

**WORKING PAPER**  
DIPARTIMENTO DI ECONOMIA PUBBLICA

**Working Paper n.114**

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Reforming the EU budgetary procedure:  
is Codecision a step forward?

*Roma, Luglio 2008*



UNIVERSITA' DEGLI STUDI DI ROMA  
"LA SAPIENZA"

# Reforming the EU budgetary procedure: is codecision a step forward?

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Submitted version: June 2008

## Abstract

*Codecision is the main EU legislative procedure and the 2007 Reform Treaty draft has adopted it to improve the budgetary process. However, at close examination, codecision and the current budgetary process show an identical structure. Both are designed as non-cooperative alternating offers bargaining games between institutions and both, although in different measure, have gone through periods of interinstitutional deadlocks and conflicts, which can be ascribed to the insufficiency of the non-cooperative bargaining setup with respect to the task of providing for joint-decision making by the Parliament and the Council of Ministers: in particular, the opportunistic interpretation of the Treaty provisions by the Parliament in the 1980s was one of the consequences of the strict bargaining design. The lacking elements for joint decision-making have been gradually inserted in the procedures by means of informal negotiation institutions, which are not only mechanisms for equilibrium selection but also corrective devices to strict non-cooperative procedures. In the change from the current budgetary procedure to the one designed in the Reform Treaty, the Parliament does not seem to gain a formal 'dominant position', whereas the Commission improves its scope for action and the Council consolidates its role.*

**Keywords:** EU's finances, legislative codecision, budgetary procedure, 2007 Reform Treaty

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The author wishes to thank Thiess Buettner, Marina Dodlova, Annamaria Simonazzi, Mika Widgrén, two anonymous referees and seminar participants for comments on previous drafts. Financial support from the Italian Ministry for Education and Research is gratefully acknowledged.

## 1. Introduction

The European Union (EU) finances have been much criticized by the political economy literature. They are considered an inappropriate tool for fostering common goals (Micossi and Gros, 2006; Buti and Nava, 2003), unable to expand the provision of public goods in new areas of integration, such as internal and external security or foreign policy (Tabellini, 2003). The accompanying decision-making procedures have equally been subject to criticism, as they are too long and complicated and as they have been repeatedly the occasion for serious interinstitutional conflicts between the European Parliament and the Council of Ministers.

The recent institutional reform wave in the EU (2002-2007) has redesigned part of the current procedural framework for the EU finances. In particular, in the 2004 and 2007 Treaty drafts the budgetary procedure has been reformed along the lines of legislative codecision. This paper aims at analyzing the changes in the assignment of institutional powers, strategies and competences implied in the new procedure and their possible effects for the development of interinstitutional relationships in the budgetary field.

The analysis discusses first the formal design of the current budgetary procedure, whose importance is often neglected. As a matter of fact, it represented the first real involvement of the Parliament in the EU decision-making processes and it traced a path for the development of interinstitutional relationships in other decision-making processes, codecision included. The paper aims, in particular, at a reconstruction of the link between the formal design of the procedure and the difficulties of its operational functioning, which finally required formal changes of the rules and the enactment of informal institutions.

With the budgetary procedure the Parliament was first given an effective role in the EU decision-making. The design of the budgetary procedure preceded both the decision to elect the Parliament's members by universal direct voting in 1976 and the upgrading of its legislative power, which started with the Single European Act and the cooperation procedure in 1987. However, when put into practice, the budgetary procedure produced many interinstitutional difficulties and periods of prolonged conflicts. The literature<sup>1</sup> ascribes them to a host of factors: the Parliament's and Council's preferences for integration, their degree of impatience, the absence of formal rules for solving conflicts, the indeterminacy of some Treaty provisions. To these reasons we add and discuss the fact that the procedure was designed as a non-cooperative alternating offers bargaining, which proved too rigid to allow for political solutions and thus inefficient with respect to the task of providing for joint-decision making by the Council and the Parliament.

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<sup>1</sup> Interinstitutional relationships in the budgetary field have been investigated, among other, by Laffan (2000), Lindner (2006), Régnier-Heldmaier (1994).

In particular, the paper complements Lindner's (2006) analysis of the opportunistic strategies of the Parliament in the 1980s. Alternating offers between institutions requires that each institution finds an internal political agreement, which can be more or less difficult to obtain depending on many factors (preferences, coalitions, voting rules), and that it accepts to redraft it at any stage of the procedure. As it is difficult and burdensome to change the internal agreement, each institution tends to stick to its initial position: the particular procedure chosen for the budget exasperates this tendency and makes dominant those strategies insisting on each actor's preferred allocation. It is because of this setting, that the most constrained authority, the Parliament, resorted in the 1980s to the opportunistic exploitation of those provisions or ambiguities in the Treaty that could enlarge its competences, i.e. the indeterminacy concerning the list of non-compulsory expenditures and the calculus of the Maximum Rate of Increase.

The solutions to the shortcomings in the procedural design were found in a formal change of rules (the institution of the Financial Perspectives and of the Interinstitutional Agreement) and in the gradual development of a set of informal institutions, including best practices for negotiations and informal occasions for political bargaining. Thus, informal institutions have been not only a mechanism for equilibrium selection, as in Farrell and Héritier (2003), but also a corrective device to the institutional setting of strict non-cooperative bargaining. However, although they remedy to procedural difficulties, informal institutions are also a channel to accommodate pressures for major changes: at the same time, they grant procedural stability and prevent those far-reaching reforms that the institutional design would require.

Non-cooperative bargaining between the Parliament and the Council is also the backbone of codecision, the legislative procedure. Again, shaping intergovernmental relationships by means of an infinite-horizon alternating offers bargaining implied interinstitutional difficulties and the need to develop informal institutions: the former experience with the budgetary procedure and the interinstitutional contacts so far developed then helped the Council to accept the political role of the Parliament and improved the operational working of codecision.

In the 2007 Treaty a modified version of codecision substitutes for the current budgetary procedure. We argue that this does not represent a substantial innovation, as codecision shares with the current budgetary procedure the same design of an alternating offers bargaining game between institutions. The limits of this procedural design are recognized by the Reform Treaty, which institutionalizes the role of informal institutions and reinforces the Commission's role as a mediator. Informal institutions will be called to intensively assist the working of the new budgetary procedure, also because budgetary codecision is shorter than the legislative process and there are fewer possibilities for amendments. This will make essential, in advance of the first reading, to clearly

state the political priorities of each institution and to reinforce the mechanisms of informal dialogue at an early stage.

Comparing the current and the reformed procedures, we also find that there are some changes in the interinstitutional balance of power. In particular, more scope for action is given to the Commission; opting-out is possible for both the Council and the Parliament in Conciliation, but it is easier for the Council; the enlargement of the competences for both the Council and the Parliament formalises what is currently their political say in informal negotiations and, on balance, seems to favour the Council. We are sceptical of the Parliament's enthusiasm for the provision that assigns it the possibility to disregard the joint text rejection by the Council and to reinstate its previous amendments after conciliation: it does not sanction the "Parliament's dominant position" in the budget (European Parliament, 2008), but it is simply functional to guarantee that the text approved in conciliation by the delegates of the Parliament and Council is not repudiated by their parent bodies.

In the analysis we try to combine an interpretation of the formal decision-making rules and of their *de facto* operation and we try to investigate how institutions have responded to the formal rules imposed on them. For this purpose we start with a formal analysis of the Treaty rules and try to analyse which elements in their design have been responsible for the operative choices of the institutions. In this sense we adopt for the budgetary issues, the intermediate approach that Burns, (2003), Rasmussen (2003) and Rittberger (2000) have employed for interpreting legislative codecision, combining the analysis of the strategic interactions among actors and elements of the *de facto* interinstitutional practice.

The analysis begins by briefly sketching the evolution of the budgetary procedure (section 2) and the budgetary conflicts of the 1980s (section 2.1). Section 3 provides a description of the formal rules for deciding the budget and of the *de facto* working of the procedure. The solutions to the budgetary conflicts are discussed in section 4. The formal rules that govern legislative codecision are presented in section 5. The final part summarises the novelties for the EU finances introduced by the 2007 Reform Treaty (section 6) and presents some conclusions (section 7).

## **2. The common pool problem and its solution in the EC Treaty**

The political economy literature has much stressed the role of institutions in dealing with the common pool resource problem which affects fiscal and budgetary issues: deficit bias, overspending, lack of transparency. The response provided by the literature (Alesina and Perotti 2004; von Hagen et al. 2002) suggests the introduction of strong institutionalised constraints or a strong minister for finance, who represents the interests of all taxpayers and ensures that the budget

reflects the true cost to the public. Both aspects contribute to better governance of the budget and to higher centralization of the decision-making process, which seems to be correlated with better budgetary outcomes (von Hagen 1992; Alesina et al. 1999).

In the EU budgetary politics, the first issue to solve is which institutional level (intergovernmental or supranational) is entrusted of the common pool problem and in which degree. The second issue concerns the consequences of the common pool problem, which are different from those related to the national budgets. In the EU, the common pool problem can not produce a deficit bias, as the Treaty prescribes that the budget must always be in balance and revenues automatically adapt to the level of the expenditures. However, the commons encourage overspending demands both from the member States, trying to minimise their net payments, i.e. to increase those items of expenditure from which they benefit more, while keeping their share of financing as small as possible, and from the European Parliament, enjoying the unique position of gaining credit from budgetary expansions, while not being associated to the related costs (Enderlein and Lindner 2006). In this contribution we focus on the first issue, while we do not touch the allocation issue, which has been extensively analysed in the literature (Baldwin, 2005; Baldwin et al., 1997; Blankart and Koester, 2008; Kauppi and Widgrén, 2005; Nava, 2000; Strasser, 1991).

The Treaty of Rome initially entrusted the budgetary problems only to the intergovernmental level of cooperation. All decision-making power over the annual budget was bestowed on the Council of Ministers and the European Parliament's role was limited to consultation (ex art. 203 TEC). This first budgetary procedure was different from the ordinary consultation procedure, (Art. 250 TEC) employed for the ordinary legislation: in fact, the preliminary budget draft prepared by the Commission was not considered a legislative proposal, but a *sui generis* act which disappeared when the Council adopted the budget draft. Thus the Commission's right to propose a preliminary draft did not correspond to an effective agenda-setting power. The budget was always regularly approved during the 1970s, as the request for qualified majority voting in the Council avoided the problems that ordinary legislation met because of the application of the Luxembourg compromise and of the unanimity rule.

The Luxembourg Treaty (1970) and the Brussels Treaty (1975) modified the original outline, upgrading the power of the Parliament to strengthen the democratic legitimacy of the Community. The access of the Parliament to the common pool problem increased the complexity of the decision-making process, which only apparently mimics the national budgetary procedures, where a Minister for finance prepares the draft budget and two Chambers discuss and amend it. The new set-up (Art. 272 TEC) provides for a draft budget prepared by the Commission and for two readings by the budgetary authorities. However, the role of the Commission cannot be compared to the role of a

minister for finance, as, although it assists the whole procedure, has information advantages and forwards compromise proposals, its formal institutional role ends with the submission of the preliminary draft budget: in principle, the budgetary authorities are not obliged to take the Commission's proposals and advices into account and can radically change them. It is true that the Commission's influence did not end with the formal assignment of strategic roles. However, right because of its institutional limits, the Commission, although engaged in reconciling the parties, was unable to prevent the emergence and escalation of interinstitutional budgetary conflicts in the 1980s.

The Treaty states that budgetary decisions must be adopted after the competent authorities have debated them and have tried to reach an agreement. In case of divergent positions, the Treaty divides the budgetary powers by establishing a complex system of different competences on the expenditures. The Council is given competence on the compulsory expenditures, those "necessarily resulting from the Treaties or from acts adopted in accordance therewith" (art. 272 TEC), i.e. those related to policy areas where decisions are kept at intergovernmental level. The Parliament can modify, by absolute majority of votes, the initial proposals on compulsory expenditures made by the Council. Modifications that increase the total expenditures must be approved by a qualified majority of the Council otherwise they decay; modifications that do not increase the expenditures can be refused by a qualified majority of the Council, otherwise they are approved. Therefore, if the Parliament gains a blocking minority (qualified majority) in the Council, it can obtain a reduction (increase) in compulsory expenditures.

The Parliament is given competence on the non-compulsory expenditures, which represented only five percent of the total budget in the early 1970s. The Parliament can amend (by majority of members) the initial proposal of the Council on non-compulsory expenditures. These amendments are automatically accepted, unless a qualified majority in the Council rejects or modifies them. To avoid overspending by the Parliament, the annual increase in the non-compulsory expenditures was limited by a Maximum Rate of Increase, a statistical indicator ascertained by the Commission. A higher Maximum Rate of Increase can be decided by the Council and the Parliament when required by the EU activities. The Brussels Treaty further expanded the power of the Parliament by granting it a 'margin for manoeuvre', i.e. a sum (equal to half of the Maximum Rate of Increase) on whose destination the Parliament can freely decide and which it can use to increase the non-compulsory expenditures or to create new lines of expenditure.

The distinction between compulsory and non-compulsory expenditures in art. 272 TEC is vague: the effective sharing of competences is made by means of political agreements between the budgetary authorities. A further element of ambiguity can be traced to the fact that the sharing of

budgetary powers does not coincide with the sharing of legislative powers: the Parliament is thus given the final say on expenditures whose execution depends on juridical acts taken by the Council<sup>2</sup>.

### 2.1 The EU budgetary conflicts: 1979-1987

When first implemented, the budgetary procedure went first through a period of frail budgetary equilibrium, due to the Council's care not to explicitly deny the Parliament's decision-making power and to the Parliament's acceptance of a sort of tutelage from the Council itself<sup>3</sup> (Bangemann, 1979). When this acceptance failed, a prolonged period of interinstitutional difficulty began (1979-1987): "the inability of Parliament and Council to agree upon a joint budget started to become a norm" (Lindner, 2006, p. 58). The Parliament increasingly perceived the investiture of the budgetary powers as a decisive moment in its existence and asserted them in all possible ways. It interpreted the Treaty provisions in the sense of an investiture of political power concerning the employment of the Community's resources: "Parliament saw itself as the conscience of the European Community on budgetary matters" (Wallace, 1987). The Council, on the other hand, sought to restrain the role of the Parliament and to maintain control over the entire process: it minimised the political character of the budget, stating that budgetary decisions were simply the financial translation of legislative decisions. As Lindner (2006) describes it:

"The annual decision-making was the key forum for interinstitutional interaction between the Parliament and the Council; its importance transcended the realm of budgetary politics. For the Parliament it was the only arena in which it could demonstrate its impact on European decision-making... [In the Parliament], the Committee on Budget used the unity on institutional issues strategically. In painting the picture of a common enemy, the Committee presented most budgetary disputes with the Council as institutional conflicts over the role of the Parliament in EC politics. Budget experts portrayed the dispute over classification of the regional funds as a *defence of the rights of the Parliament*" (Lindner 2006, pp. 50-51).

The literature (Laffan, 1997; Lindner, 2006) ascribes the conflicts between the Parliament and the Council to a number of reasons:

- i.* the reluctance of the Council to a real sharing of decision-making power, the substantial autonomy of the Parliament with respect to the member States and its desire to consolidate its institutional role;

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<sup>2</sup> The Council always insisted on the superiority of legislative acts: "prerequisite of any budgetary act was, in the eyes of the Council, the existence of a legislative decision that introduced a legal base for the expenditure decision" (Lindner 2006, p.49).

<sup>3</sup> "[The Parliament tolerated that ], by exaggeratedly reducing the appropriations proposed by the Commission in its preliminary draft budget, the Council could pre-determine in a large measure [its own] decisions.[...] [Besides, the Parliament tolerated that the Council practically exerted a veto power on the expenditures execution" (Bangemann, 1979, p.174 -own translation).



*ii.* the absence of formal rules in the Treaty to solve disputes between the budgetary authorities;

*iii.* the indeterminacy of some provisions in the Treaty, especially the scope for different interpretations in the definition of non-compulsory expenditures and in the calculus of the Maximum Rate of Increase. The possibility to resort to opportunistic interpretations hinges on some conditions: the Commission supports the Parliament, the European Court of Justice fails to limit the Parliament's interpretations; a gap exists between the own resources limit and the Maximum Rate of Increase, which opens a space for a higher budget (Lindner 2006);

*iv.* the different time horizons, a longer one for the Parliament and a shorter one for the Council, which is constrained by its six-months-long Presidencies (Farrell and Héritier 2003; Lindner 2006). The Parliament is thus more prepared to delay the budget than the Council;

*v.* the different preferences of the actors. The Parliament is more pro-integrationist, favours larger budgets and is also more interested in institutional building;

*vi.* a different sensitivity to failure (i.e. to budget rejection), lower for the Parliament, whose members face less pressure from the electorate and their national governments than the representatives of the member States in the Council (Pollack, 1997; Farrell and Héritier 2003).

Some of these elements should not *per se* provide for reasons of conflict. Incompleteness in the rules specification is often unavoidable and it is usually corrected *ex post* when the procedure is applied: this is especially true with texts, such as the EU Treaties, that use relatively broad language (Farrell and Héritier 2003). However, in the case of the EU budgetary procedure this indeterminacy was exploited by the Parliament, that adopted opportunistic interpretations of the treaty provisions on the expenditure classification and the Maximum Rate of Increase. The Parliament thus aimed at strengthening its power and at influencing the legislative domain from which it was excluded until 1987 (Laffan 1997).

Table 1 resumes the main causes for the budgetary conflicts, showing that all annual budget presented between 1979 and 1987 were either rejected by the Parliament or approved by it and then contested by the Council: the only exceptions were the 1983 and 1984 budgets, when the Council, although unsatisfied with the Parliament's decisions, settled on a compromise with it<sup>4</sup>.

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<sup>4</sup> In the 1983 budget the Parliament adopted an opportunistic interpretation over expenditure classification and the Council accommodated this move by increasing the Maximum Rate of Increase. In the 1984 budget, the Parliament classified the compensation appropriations to Germany and UK as non-compulsory expenditure and blocked them asking for a solution to the Community financing system. The Council protested against this move but did not take the Parliament to the Court of Justice. In March 1984 the Council found a compromise on compensations and accepted the Parliament's interpretations.

Table 1 - The causes of the budgetary conflicts: budgets for the years 1980-1988

Budget (year)	Final decision on the draft budget			Reasons of dispute		
				Opportunistic interpretation of Treaty provisions by EP		Other reasons
	EP approves	After budget approval CM takes action against EP before ECJ	EP rejects budget	Increase in MRI/NCE- Definition of margin of manoeuvre	Expenditure classification	
1980			√		√	Dispute on agricultural expenditure
1981	√	√		√		
1982	√	√	Supplementary Budget*		√	
1983	√				√	
1984	√				√	
1985			√			Institutional defect: CM presented a 10-month budget
1986	√	√				Insufficient resources for new accessions
1987			√	√	√	
1988			No proper procedure. EP took action against CM before the ECJ			CM disagreed on own resources ceiling and delayed first reading.

Sources : Laffan (1997); Strasser (1991); Lindner (2006).

Legenda. MRI/NCE: Maximum Rate of Increase. NCE: Non-compulsory expenditures. EP : European Parliament, CM : Council of Minister ; ECJ: European Court of Justice.

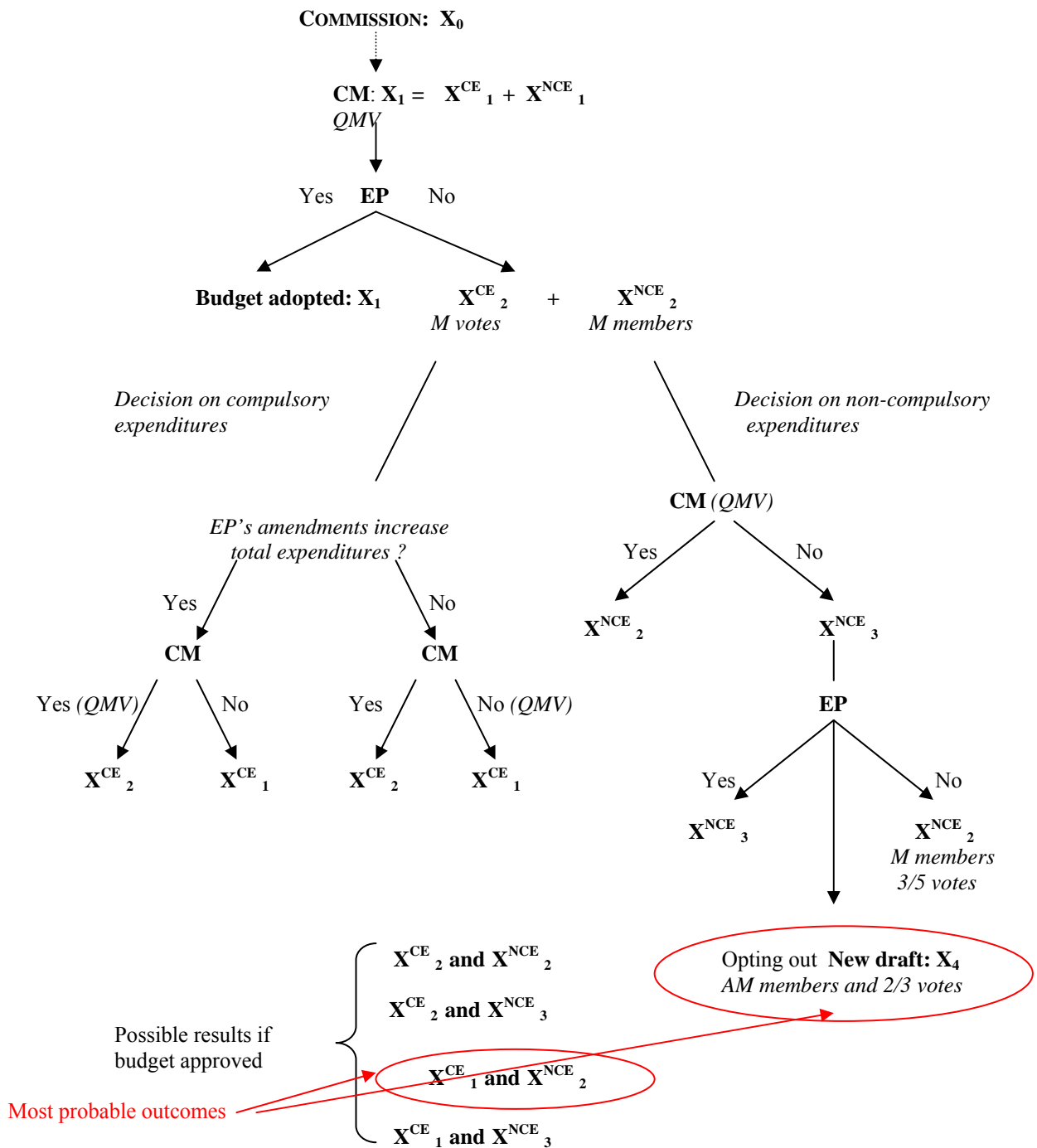
\* Supplementary budgets are submitted by the Commission in the event of unavoidable and exceptional circumstances. They increase the volume of expenditure in the initial budget or provide for new expenditures.

Lindner (2006) shows how the Parliament's recourse to an opportunist interpretation of the Treaty improved its payoffs in the strategic one-shot game with the Council, modelled as a Battle of Sexes. We complement this interpretation, arguing that the particular decision-making procedure chosen by the Treaty is to be added to the reasons explaining the Parliament's opportunism and the escalation of interinstitutional conflicts.

### 3. The procedure design as a reason for interinstitutional conflict

The budgetary procedure is designed in the Treaty as a non-cooperative alternating-offers bargaining game (Figure 1).

Figure 1. An extensive game form of the budgetary procedure (art. 272 EC Treaty)



**Legenda.** CM: Council of Ministers; EP: European Parliament;  $X_i$ : total appropriations proposed at stage  $i$ .  $X_i^{NCE}$ : appropriations for non compulsory expenditures proposed at stage  $i$ .  $X_i^{CE}$ : appropriations for compulsory expenditures proposed at stage  $i$ .  
 Voting rules: QMV, qualified majority voting; M, majority; AM, absolute majority.

The Commission has responsibility for preparing a *preliminary draft budget*, which is submitted to both authorities for a *first reading*. The Budget Council establishes at qualified

majority voting the *draft budget*, after the Budget Committee and the Coreper have discussed and voted it. The draft budget is then examined by the Parliament's Budget Committee, which votes the amendments/ modifications put forward by the sectoral committees and prepares a comprehensive *response to the budget*, which is then voted *en bloc* in the Parliament's plenary session.

The Parliament's decision is transmitted to the Council for a *second reading*, where it accepts or rejects the Parliament's proposals: if the Council fails to raise a qualified majority to reject Parliament's amendments to compulsory expenditures that do not increase total expenditures, the Parliament's position ( $X^{CE}_2$ ) will be adopted. Although this result is theoretically possible, it may be difficult to obtain, because of the intergovernmental practices of compromise<sup>5</sup>, which are at work since the first reading and which consolidate the Council's initial agreement on the budget draft. Thus, if, as it is highly foreseeable, the Council raises a qualified majority to reject the Parliament's amendments, the budget will include the Council's position on compulsory expenditures ( $X^{CE}_1$ ). The Council decides also on the Parliament's amendments on non-compulsory expenditures and to constraint them it usually invokes o questions the application of the Maximum Rate of Increase.

The Council's decision is sent back to the Parliament for a final reading: the Parliament can restore its position (by absolute majority of members and 3/5 of votes) where it has authority and approves the budget. "If there are important reasons" (art. 272(8) TEC), the Parliament can also reject the budget by absolute majority of members and 2/3 of votes: this is a political act, after which the Commission enacts the system of provisional twelfths, where spending is limited per month to the one-twelfth of the previous year's budget. A qualified majority of the Council can modify the system of provisional twelfths, while the Parliament (by majority of members and 3/5 of votes) retains power on modifications touching the non-compulsory expenditures (art. 273 TEC).

The presence of institutional actors modifies the traditional bargaining among individuals in the following ways:

- i.* The Parliament and the Council are *obliged to act* according to the procedures and to start them when the Commission presents a preliminary draft. One actor's inaction is punished by the approval of the draft in the version it has refused to decide on. Moreover, if the Council delays the vote on the budget in its first reading beyond October 5<sup>th</sup>, the Parliament and the Commission can appeal to the Court of Justice.

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<sup>5</sup> It has been difficult for the Parliament to work out alliances with Member States in the Council on spending priorities. In the procedure for the 1987 budget, the first after the Iberian accession, the Council had difficulties in approving the draft budget (1<sup>st</sup> reading), because of the blocking minority of the Southern countries, which demanded an increase in non-compulsory expenditure. Intergovernmental compromise found a solution by creating a reserve for unforeseeable events related to the Southern enlargement and by granting financing to the Integrated Med Programme: this broke the minority coalition and the draft budget was approved. When the Parliament (1<sup>st</sup> reading) proposed significant increases in non-compulsory expenditures, it did not managed to raise a minority blocking in the Council to prevent the rejections of its amendments. The Council accepted amendments only up the Maximum Rate of Increase.

ii. The formal structure of the procedure in the Treaty provides neither for *pre-play communication*, not for *focal arbitrators*. In neither case, the role of the Commission amounts to more than drafting the preliminary proposal and facilitating the discussions. This institutional disadvantage does not make it irrelevant, however it limits its room for manoeuvre and the possibility to influence the final outcome.

iii. The negotiated *agreement is enforceable* and, as such, it is protected against the players' renegeing on their decisions.

iv. The budgetary decisions are taken in a setting of *repeated interaction* between the Parliament and the Council.

We simplify the analysis assuming that EU institutions act strategically as unitary actors<sup>6</sup>, that the Parliament aims at increasing its role in the decision-making process and that the Council is mainly oriented towards maintaining the existing levels and distribution of the expenditure. We skip the details of decision-making inside each institution: however, we are well aware that the greater are the difficulties of reaching an internal agreement on a draft, the greater will be the difficulties of modifying this position in the development of the procedure. This hysteresis effect creates a rigidity in the alternating offers setup: it is far more difficult for institutions than for individuals to alternate offers, because institutions must internally renegotiate their positions and this can be politically complicated or impossible. Therefore, institutions tend to stick to their first offer.

Figure 1 sketches the extensive game form of the budgetary procedure<sup>7</sup>, which is compounded by two alternating offers bargaining games: a 3-stages game for the compulsory expenditures and a 4-stages game for the non-compulsory expenditures. We can assume that the players' preferred positions are their first offers:  $x^{CE}_1$  and  $x^{NCE}_1$  for the Council and  $x^{CE}_2$  and  $x^{NCE}_2$  for the Parliament.

Differently from the ordinary games of this type (Ståhl, 1972), in both cases at stage  $n$  the last player's refusal to accept the  $(n-1)$  offer does not entail a zero payoff, but the possibility to reinstate his own previous  $(n-2)$  offer. Thus, if the Council at its second reading does not accept the modifications to compulsory expenditures voted by the Parliament, it can reinstate  $x^{CE}_1$ , the proposal voted at its first reading. The only possibility for the Parliament to influence the decision of the Council is to make an offer which the Council strictly prefers over its own original proposal:

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<sup>6</sup> In the case of the budgetary procedure, this is maybe not a too drastic assumption, as the policy issues at stake have long been the same. The simplification may represent a potential problem in the case of the other EU decision-making procedures, where the standard assumption is that the level of integration is the main variable shaping the preference of the institutional actors. Empirical evidence has revealed the importance of other factors, such as the left-right political dimension or policy-specific elements.

<sup>7</sup> For simplicity, the distinction between the Parliament's modifications to the compulsory expenditures that increase the budget total expenditure and those that change only its composition are disregarded.

the same holds true for the Council. However, strategies insisting on each part's preferred allocation are dominant. In this non-cooperative setting, there is no incentive for either player to offer the counterpart more than his own preferred allocation.

As a matter of fact, the preferred allocation of the Parliament is bounded by the number of expenditures classified as non compulsory and by the calculus of the Maximum Rate of Increase: it would eagerly accept an higher offer, i.e. more expenditure items classified as non-compulsory or a higher Maximum Rate of Increase. However, the Council has no interest to such an offer, as this would imply reducing the number of compulsory expenditure items or accepting to increase the budget. Knowing that the counterpart has no incentive to offer more than what is granted by its own allocation-insistent strategy, each institution will stick to its own preferred position. The resulting budget will combine  $x_1^{CE}$  and  $x_2^{NCE}$ .

Besides, to 'amend' the other part's proposal is in principle preferable for both the Parliament and the Council to retain power over the expenditures assigned to them by the Treaty, especially if the issues at stake are important. Items of expenditure which are not amended at the first readings, cannot later be modified and, whenever the Council and the Parliament reach an agreement over an item, there can be no subsequent change. Inaction on the part of one authority implies the approval of the draft budget in the version passed in the counterpart's previous reading. Therefore, when the Council and the Parliament assign importance to an issue and have different positions on it, both tend to amend the original draft and each other's proposals.

No real opting-out clause is provided to the bargaining. The Parliament has the right to finally reject the overall budget (at absolute majority of members and 2/3 of votes) and to ask the Commission to provide for a new proposal: this is *de fact* interpreted as a re-draft of the second reading proposals of the Council and is submitted to both institutions for a third reading that the Treaty does not regulate. However, this is not a real outside option for the Parliament, because it is not a definite commitment of the Parliament to taking no further part in the negotiation. As the budget is essential to the EU functioning and to maintain continuity in the services it finances, the recourse to the budget rejection only delays its approval and is a sign of the Parliament's political discontent: thus the procedure is extended until the budget is finally adopted. Therefore the probability that the offer of the Parliament to the Council may, if rejected, be final, does not represent the power of commitment of the Parliament and does not substantially influence its relative share in the agreement, as it would be in a standard alternating offers game<sup>8</sup>. The weakness

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<sup>8</sup> In alternating-offers games, player *i*'s *power of commitment* ( $P_i$ ) is the probability that any offers he makes may, if rejected, be final (Myerson, 1991) Bargainers can be expected to reach an agreement in which their relative shares depend crucially on their relative powers of commitment  $P_1/P_2$ . In the EU budgetary procedure the Council is explicitly forbidden to opt out: its inaction is sanctioned by the approval of the budget in the Parliament's preferred version. The Parliament can opt out but this does not terminate the bargaining process.

of the opting-out strategy in obtaining significant results is shown in Table 2. Except for the 1980 budget, the Parliament's rejection of the budget did not grant it a substantially higher actual Maximum Rate of Increase with respect to the Commission's original proposal.

Table 2 – Actual and original Maximum Rates of Increase on non-compulsory expenditures

<b>Budget (year)</b>	<b>Parliament rejects draft/supplementary* budget</b>	<b>MRI on NCE as calculated by the Commission (%)</b>	<b>Actual MRI on NCE (%)</b>
1980	√	13,3	32,85
1981		12,2	24,4
1982	√	14,5	14,6
1983		11,8	27,77
1984		11,6	16,97
1985	√	9,0	9,75
1986		7,1	20,0
1987	√	8,1	8,2

Source: Fugmann (1992) as quoted in Lindner (2006).

Legenda. MRI/NCE: Maximum Rate of Increase. NCE: Non-compulsory expenditures.

\* Supplementary budgets are submitted by the Commission in the event of unavoidable and exceptional circumstances. They increase the volume of expenditures in the initial budget or provide for new expenditures.

Finally, the most constrained authority, the Parliament, has an incentive to resort to the exploitation of those provisions or ambiguities that can help it enlarge its competences. Therefore, as the Parliament's initial competence was on only five percent of the total budget and knowing that the Council had no interest in spontaneously increasing it, the Parliament resorted to exploit the Treaty indeterminacy concerning the list of non-compulsory expenditures and the calculus of the Maximum Rate of Increase.

The 1978-87 escalation of the budgetary conflicts has thus its roots in the procedure design, that does not provide for space of political negotiation and compromise and that substantially confines institutions with opposed preferences to stick to their own preferred solution, thus exasperating their mutual opposition. Table 3 provides an example of the allocation-insistent strategies of the Parliament and the Council, compounded with the Parliament's attempt to enlarge its exclusive competencies. The case of the 1987 budget shows the limited effectiveness of the opting out clause for the Parliament and its resorting to opportunistic interpretations due to the absence of any viable alternative other than sticking to its own preferred position.

Table 3 – The procedure for the adoption of the 1987 budget

<i>Stages of the procedure</i>	<i>Strategies of the Parliament and the Council</i>
<i>i) as in art. 272 EC Treaty</i>	
Commission preliminary draft	The draft budget presents expenditure increases only for NCE: $X_0$ .
1 <sup>st</sup> reading in the Council	The Council is split between a coalition of Southern countries demanding for increases in NCE above the MRI and a coalition favouring budget austerity. The Council finally approves a budget within the MRI. <i>This is the Council's first offer:</i> $X^{CE}_1 + X^{NCE}_1$
1 <sup>st</sup> reading in the Parliament	<i>The Parliament's counter-proposal:</i> the Parliament reinstates most of the Commission proposals, it expands the classification of NCE and increases the NCE above the MRI ( $X^{NCE}_2$ ) and it proposes reductions in CE ( $X^{CE}_2$ ).
2 <sup>nd</sup> reading of the Council	<i>The Council reinstates its first offer:</i> the Council does not accept the reductions in CE ( <i>this is the final decision on CE, <math>X^{CE}_1</math></i> ), rejects the new classification of NCE and accepts increases in NCE only up to the MRI ( $X^{NCE}_3$ ).
2 <sup>nd</sup> reading of Parliament	<i>The alternating-offers procedure offers no other viable alternative and the Parliament resorts to an opportunistic interpretation of the Treaty:</i> the Parliament approves an increase in the expanded NCE which stays within the MRI, as calculated for the new and expanded classification of NCE ( $X^{NCE}_2$ ). This move is aimed at asserting the Parliament's institutional role but prevents the final adoption of the budget, as imposed by the ECJ ruling.
Provisional twelfth system	Search for compromise: the Parliament asks the Council for a slight increase in the MRI.
<i>ii) not detailed in the Treaty</i>	
3 <sup>rd</sup> reading of the Council	The Council approves an increase of 0,049% in the MRI, from 8,1% to 8,149%: $X_4$
3 <sup>rd</sup> reading of Parliament	The Parliament accepts the offer and approves the budget: <i>the slight increase in the MRI shows the scarce effectiveness of the opting-out clause in granting power to the Parliament:</i> $X_4$

Source: Lindner (2006), Strasser (1991).

Legenda. MRI/NCE: Maximum Rate of Increase. NCE: Non-compulsory expenditures ; CE: compulsory expenditures ; ECJ : European Court of Justice.

#### 4. Solving the budgetary deadlocks: formal and informal institutional changes

The exasperated budgetary deadlocks of the 1980s escalated so much that they would have required a comprehensive reform of the interinstitutional relationships and a Treaty reform. This extremely burdensome solution was avoided by a change of rules, which included the formal transfer of the common pool problem to the highest institutional authority, the European Council, and the consolidation of the institutional role of the Parliament through the working of informal institutions<sup>9</sup>.

<sup>9</sup> A conflict-reducing element was also the association of the Parliament in the legislative process. Until the Parliament did not have legislative power, it tried to influence legislative decisions through budgetary decisions and to protect the budgetary realm against intrusions from the legislative realm (Laffan 1997; Lindner 2006).



In 1988 J. Delors transferred the common pool problem to the highest decision-making intergovernmental body, the European Council, which agrees on a medium-term financial programming (the Financial Perspectives) and thus sets an overall ceiling on the size of the annual budgets over a five/seven years horizon. The Financial Perspectives are decided by the European Council on a draft prepared by the Commission, which is modified by the Council's Presidency until consensus among all Member States is reached<sup>10</sup>. The Financial Perspectives are then included in an Interinstitutional Agreement which is jointly approved by the Commission, the Council of Ministers and the Parliament.

The Interinstitutional Agreement is a contractual instrument not mentioned in the Treaties, with no specific approval procedure but bargaining among institutions until consensus is reached. As a medium-term commitment device in a setting of repeated interactions, it ties the hands of the signing institutions and creates important credibility and reputation effects. The Council accepts to limit the compulsory expenditures, in particular the agricultural expenditure; the Parliament limits itself when voting amendments to the non-compulsory expenditures, which are now no more subject to the Maximum Rate of Increase but to the ceilings of the medium-term programming; the Commission has reduced scope in preparing the preliminary draft budget.

The Interinstitutional Agreement strengthens the institutional role of both the Commission and the Parliament. The Commission and the Parliament, in particular, are granted a veto in the subscription of the Agreement, which is a voluntary non-binding act, whose force relies only on political consensus. The Parliament has in fact repeatedly menaced to opt out, alleging that the Interinstitutional Agreement undermined its powers or that it provided for insufficient resources: however, its opposition did not last long and compliance with the Interinstitutional Agreement has continued to be its dominant strategy also during the annual budgetary procedure<sup>11</sup>. The main reasons that could account for the Parliament's compliance are its inability to radically change a decision taken by member States at unanimity and the loss of reputation and of mutual reliance that non-compliance would entail in its repeated interactions with the Council. As a matter of fact, the Parliament's threats to opt out<sup>12</sup> aimed substantially at extracting concessions on the annual

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<sup>10</sup> The Commission is not the agenda-setter, as the European Council acts as a sovereign body and can radically change its draft. However, the Commission can decisively orientate the decision, by preparing focal points for discussion and bargaining and, until the last renewal of the Financial Perspectives when this role was taken by the Presidency, by acting as a mediator.

<sup>11</sup> The Parliament has estimated that, had it used the Maximum Rate of Increase of the non-compulsory expenditures, it could have increased the budget by nearly EUR 33 billion over the 2000-2004 period (European Parliament 2004a); however, compliance with the Interinstitutional Agreement never failed in those years.

<sup>12</sup> The voluntary nature of the agreement and the veto power of the Parliament on it were restated on the occasion of the Commission's Communication presenting the 2007-2013 Financial Perspectives. The Parliament "recalls that there will be no financial perspective without an agreement between the Parliament and the Council on the financial package, as the existing Treaty foresees no obligation to have a financial perspective and only provides for annual budgets" (European Parliament, 2004a, p.6).

budgetary discipline (opinion exchanges on the financial priorities, concert on compulsory expenditures): the Parliament was ready to offer the Council “budget peace in exchange for political territory” (European Parliament, 1993). On the other hand, the Council proved to be more accommodating to the requests for institution building than to the requests for increases in the expenditure lines<sup>13</sup>.

The institutional role of the Parliament was consolidated also by informal institution-building, namely by the emergence of stricter and more timely budgetary cooperation: “[Budgetary conflicts] had put to the forefront the fact that the procedures established in the Treaty were too rigid to consolidate a political dialogue and that this latter had to be built in more informal meetings” (Bangemann, 1979, p. 177 – own translation). Since 1975 the Council had taken the habit to receive a delegation from the Parliament before its first and second reading: this first negotiation *forum* evolved into the current four trialogues and two conciliation meetings<sup>14</sup> that are not regulated by the Treaty, but that have tuned the budgetary procedure according to joint decision-making modes. The Parliament obtained that these modes were given first official recognition in the 1993 Interinstitutional Agreement.

These habits of cooperation outside the formal procedure are sustained by repetition and trust and have made less relevant the precise assignment of competences and the distinction between compulsory and non-compulsory expenditures. As a consequence, the Council has slowly and with considerable reservation come to terms with the presence of the Parliament in this policy field (Laffan, 1997, p. 89) and the Parliament has gradually, although informally, extended its political competence over the whole budget (Enderlein et al. 2005). We conclude on the relevance of informal institutions (Goodin, 2000; Farrell-Héritier, 2003), showing in detail how the particular formal setting chosen in the Treaty invited their emergence to avoid deadlock situations.

Table 4 shows how allocation-insistent strategies were still employed during the 1994 annual procedure, which was disciplined by the Interinstitutional Agreement and supported by extensive communication between the actors. Controversies on the expenditure classification and allocation insistent strategies still persisted but did not escalate into open conflict, as the main difficulties could be already settled in political negotiations. Informal institutions and predetermined ceilings on

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<sup>13</sup> According to Lindner (2006) this can be ascribed to the different time horizons of the institutions. The Parliament pursues a long-term strategy of institutional contestation against the Council which is more interested in short-term distributive outcomes. The difference in time horizons allows for a compromise that grants the Council distributive gains and the Parliament some institutional advantages.

<sup>14</sup> Trialogues are attended by the Chairman of the Committee on Budgets in the Parliament, the President of the Council (Budgets) and the Commissioner for the budget: their aim is to settle contentious issues at the first stages of the procedure. Conciliation meetings debate spending priorities and are attended by the members of Council (Budgets) and a Parliament’s delegation, while the Commission acts as mediator.

expenditure thus provided for smooth working of the procedure, although each budgetary authority retained the final word on its own share of expenditure.

The informal institutions and the Interinstitutional Agreement have thus granted stability to the decision-making system and have consolidated the institutional role of the Parliament. However, by mitigating the institutional hardships, they have contributed to postponing more far-reaching reforms, namely granting the Parliament access to the core of the common pool problem .

The budgetary procedure, its problems and solutions have marked the subsequent involvement of the Parliament in the EU decision-making processes. In particular, codecision also presents an alternating offers bargaining, which is all the more interesting as it as been adopted for the new budgetary procedure in the 2007 Reform Treaty.

Table 4 – The procedure for the adoption of the 1995 budget

<i>Stages of the procedure</i>	<i>Strategies of the Parliament and the Council (art. 272 EC Treaty)</i>
	<i>Interinstitutional dialogue on priorities and two conciliation meetings on CE</i>
Commission preliminary draft	The draft budget presents a total increase of 4%, substantial margins under the headings for internal policies, external actions and administration, expenditure increases only for structural actions: $X_0$ .  <i>Conciliation meeting</i>
1 <sup>st</sup> reading in the Council	The Council cuts the Commission proposal, except for the agricultural and cohesion policies: $X^{CE}_1 + X^{NCE}_1$
1 <sup>st</sup> reading in the Parliament	<i>The Parliament's counter-proposal:</i> the Parliament restores most of the Commission proposals; it enters reserves for the accession of Austria, Finland and Sweden: $X^{CE}_2 + X^{NCE}_2$  <i>Conciliation meeting</i>
2 <sup>nd</sup> reading of the Council	<i>The Council reinstates its first offer:</i> the Council opposed all modifications to CE ( <i>this is the final decision on CE</i> , $X^{CE}_1$ ), rejects the classification of some NCE and accepts only six out of the Parliament's 400 amendments to NCE: $X^{NCE}_3$ .
2 <sup>nd</sup> reading of Parliament	<i>The Parliament restores the cuts made by the Council on NCE:</i> the budget is approved: $X^{CE}_1 + X^{NCE}_2$

Source: Lindner (2006), Laffan (1997), European Parliament (1996).

Legenda. MRI/NCE: Maximum Rate of Increase. NCE: Non-compulsory expenditures ; CE: compulsory expenditures

## 5. Formal and informal working of legislative codecision

Codecision<sup>15</sup> is currently the ordinary legislative decision-making procedure: it was first introduced by the Maastricht Treaty (ex art. 189B TEC) and revised by the Amsterdam Treaty (Art. 251 TEC). Offers and counter-offers, that modify the original draft submitted by the Commission, alternate during two readings. However, if the Council in its second reading disagrees with even a single amendment made by the Parliament, the draft is referred to a Conciliation Committee, composed of an equal number (currently 27) of members of the Parliament and of the Council. The Committee is co-chaired by the Minister holding the Council's Presidency and by a Parliament's vice-president, while the Commission acts as a mediator. If the Committee reaches an agreement, its proposal has to be finally approved by the Parliament (by majority voting) and by the Council (by qualified majority voting). In case the Conciliation Committee fails to an agreement, the bill is definitely rejected. Figure 2 presents a simplified extensive form version of the legislative process, in both Maastricht and Amsterdam versions, that highlights some interesting features:

*i.* There is no strict assignment of competencies as in the budgetary procedure, but a 3-stage alternating offers bargaining, with the Parliament making a first offer to the Council.

*ii.* The Treaty does not specify the actual process of negotiation within the Conciliation Committee, whose outcome is the determinant of any codecision agreement if all players act strategically (Shackleton, 2000; Napel and Widgrén 2006)<sup>16</sup>.

*iii.* The Commission can modify its original proposal at every stage of the procedure until the Conciliation Committee is convened and plays a formal 'gate-keeping' role (Rasmussen, 2003), as the Council can include amendments of the Parliament by qualified majority, if they are approved by the Commission, while it need unanimity, if the Commission rejected them. However, the Commission cannot directly control the procedure, in the sense that it cannot persuade the legislators to adopt its own proposals: its main influence is exerted on the tabling and adoption of amendments and compromise texts (Rasmussen, 2003)<sup>17</sup>.

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<sup>15</sup> Codecision has been extensively studied by rational choice institutionalists, who analyze the distribution of power and the strategic interactions among actors, often employing spatial modelling: among others, Napel and Widgrén (2003 and 2006), Crombez (1997 and 2000), Tsebelis (1994 and 2002), Tsebelis and Garrett (2000), Steunenberg and Dimitrova (1999), Selck (2006). A different perspective is provided in empirical accounts with detailed case studies: Shackleton (2000), Corbett (2000 and 2001), Corbett et al. (2003a and 2003b), Burns (2002 and 2003), Rasmussen (2003).

<sup>16</sup> The bargaining inside the Conciliation Committee has been modeled in different ways in the literature: as a bilateral bargaining (Napel and Widgrén 2003), as an ultimatum game, with either the Council (Steunenberg and Dimitrova 1999) or the Parliament (Crombez 2000) making the take-it-or-leave-it proposal, and as a symmetric alternating offers bargaining with multiple rounds (Napel and Widgrén 2003 and 2006). Selck (2006) provides for an empirical test of some of these models.

<sup>17</sup> The literature is divided on the relevance of the Commission's role in codecision. Rational choice institutionalists deem that the poor formal powers assigned to it make it irrelevant (Crombez, 2001; Tsebelis and Garrett, 2001); some practitioners also deem that the consolidation of the relationships between Parliament and Council in conciliation has excluded the Commission from effective decision-making (Shackleton, 2000). On the contrary, Burns (2002, and 2003) and Rasmussen (2003) state that the Commission's weakness is overstated and empirically analyse the channels through which the Commission has formally and informally influenced legislation in codecision.

iv. As the number of rounds and the player who makes the last offer within the Conciliation Committee are not specified, it seems reasonable to consider the infinite-horizon version of the game. Rubinstein's (1982) result grants a unique sub-game perfect equilibrium, which depends on the cost-of-time formulas and on the preference specification. Thus, in equilibrium, the game should end at the first round.

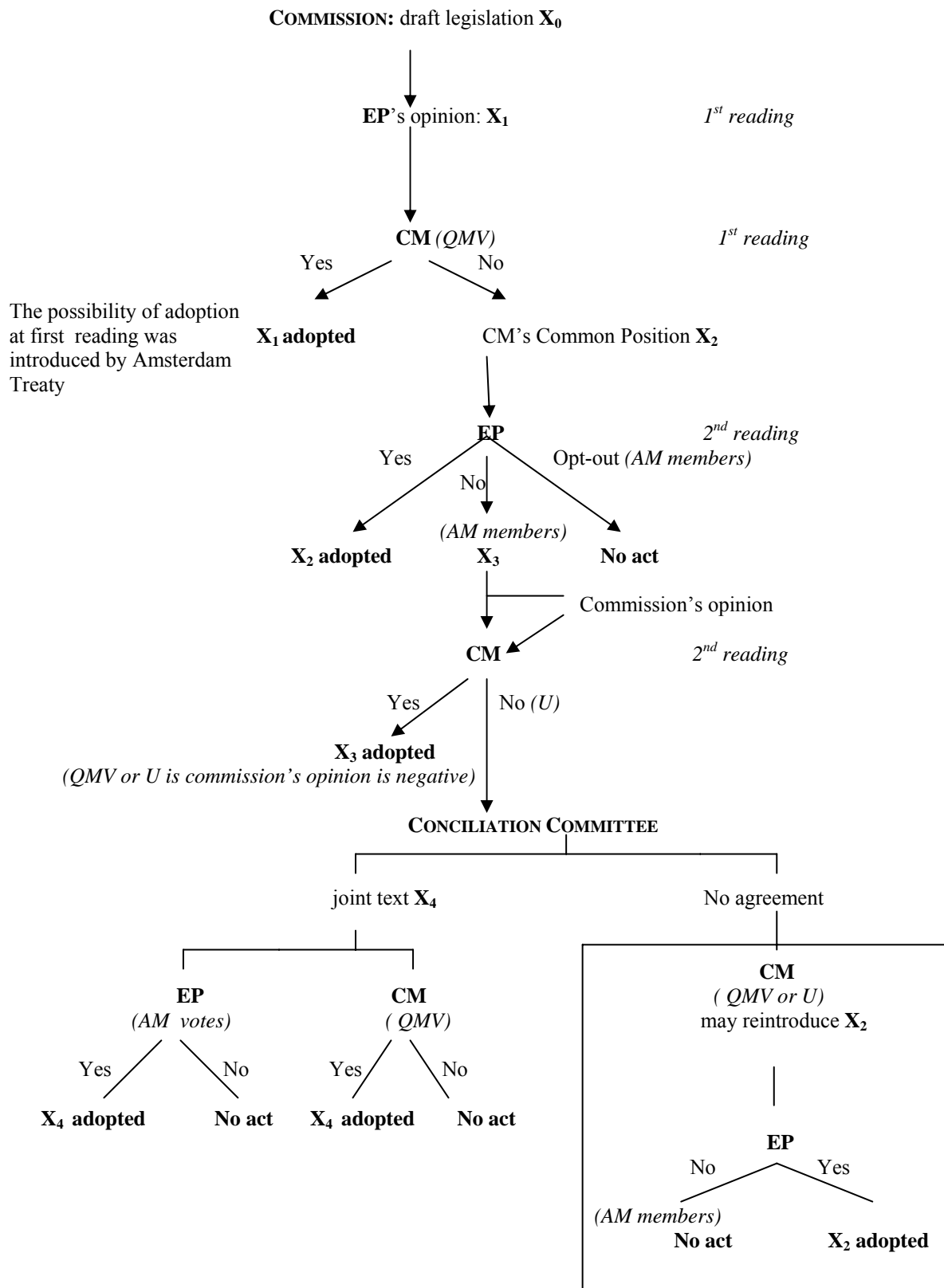
v. The opting-out clause is asymmetrically distributed: to the Parliament at its second reading, to representatives of Council and Parliament in the Conciliation Committee and to both Council and Parliament after the Conciliation Committee. The definitive rejection of the bill in case the Conciliation Committee does not reach an agreement is intended as an incentive to parties to trade positions in negotiations. From 1994 to April 2004, the Parliament opted out in 5 out of the 649 completed dossiers (0,8 percent): thus, the probability that the bargaining ends in a state of complete disagreement is very low and it does not seem to influence the equilibrium of the game. When the Parliament foresees complete disagreement with the Council, it usually prefers to withdraw the dossier before the Council adopts its common position in the first reading (10,6 percent of the dossiers in the period 1994-2004).

Like the budgetary process, this formal framework had to be filled with practice (Farrell and Héritier, 2003) and legislative codecision met the initial opposition of the Council to a real sharing of power with the Parliament:

“We practically had our common position ready when Parliament finished its first reading. And it was politically too complicated to change this [...] almost existing political agreement, so nothing of Parliament's agreement was taken on board. And then Parliament reconfirmed most of the amendments in 2<sup>nd</sup> reading, and we had most of the amendment in conciliation” (interview with Council Official, quoted in Farrell and Héritier 2003, p. 590).

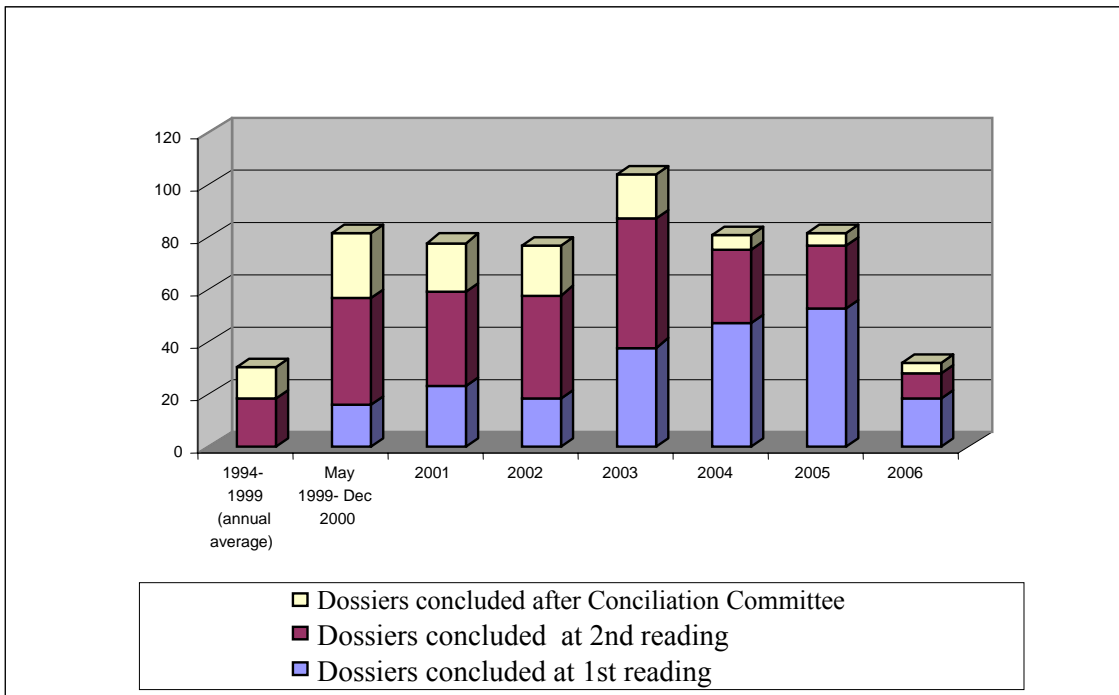
The scarce legislative output of the first years reflects these initial attitudes and shows the legislators' gradual learning of how to effectively overcome interinstitutional difficulties: Graph 1 shows the gradual increase in the number of dossiers concluded at first (2/3 of all dossiers in 2004-06) and second readings, before conciliation. The learning process which made codecision more viable was enacted by informal institutions: in this sense, codecision has followed the same path of the budgetary procedure, amending the non-cooperative bargaining set-up of the Treaty with informal institutions and habits of negotiation.

Figure 2. An extensive form game of Maastricht and Amsterdam Codecision (art 251 TEC)



Legenda. CM: Council of Ministers; EP: European Parliament;  $X_i$  : draft proposed at stage i.  
 Voting rules: QMV, qualified majority voting; AM, absolute majority; U, unanimity.

Graph 1 - Codecision dossiers: 1994-2006



Source: European Parliament (2000) and (2004b) and European Parliament website.

The formal bargaining has been gradually supported by best practices and informal negotiation, in particular triologue meetings, which have developed a continuous interinstitutional dialogue. Trialogues prepare, and sometimes avoid conciliation, as negotiations take place within a smaller group of officials and representatives and they help both parties to develop strategies not only of persuasion but also of compromise on a third position. On the contrary, the Conciliation Committee still keeps its character of non-cooperative bargaining, with only very rare exchanges of views (European Parliament, 2004b). Whether the development of informal institutions leads to a larger scope for the Commission to act in the legislative process is a debated issue: Tsebelis and Garrett (2000) argue that the Commission's influence is likely to rely more on informal channels, due to the poor assignment of formal powers. On the contrary, Schakleton (2000) suggests that the consolidation of direct relationships between Parliament and Council has excluded the Commission from decision-making and Burns (2002) also point to the reduced role of the Commission as informal interlocutor.

The habits of continuous bargaining made possible the development of best practices<sup>18</sup>, such as ‘early’ second reading agreements (15 per cent of all 2004-06 dossiers) concluded after the Parliament has adopted its first reading position and before the Council agrees on its common position: “While, formally speaking, procedures concluded in this way are concluded at second reading stage, in reality a political agreement has already been reached before Council completes its first reading” (European Parliament, 2007, p.12).

## **6. The 2007 Reform Treaty**

The budgetary matters were deeply discussed in the 2002-03 European Convention<sup>19</sup>. In particular, for the budgetary procedure, the Convention suggested the rejection of the distinction between compulsory and non-compulsory expenditures and proposed a new budgetary process combining joint decision-making and an asymmetric distribution of strategies to the advantage of the Parliament: one reading of both authorities plus conciliation, and, in case conciliation fails or if the Council rejects the conciliation text, the possibility for the Parliament to have the final say, i.e. to confirm its amendments, with no reply for the Council<sup>20</sup> (Figure 3). This provisions disrupted the alternating offers framework and introduced an incentive for the Parliament first to raise a majority in favour of amending the Council’s draft and then to reject both the joint text in conciliation and the Council’s position ( $X_1$ ) in order to approve its preferred version ( $X_2$ ). The Inter-governmental Conference, which drafted the 2004 Constitution, however, corrected the asymmetry in the strategies assignment and reduced the role of the Parliament .

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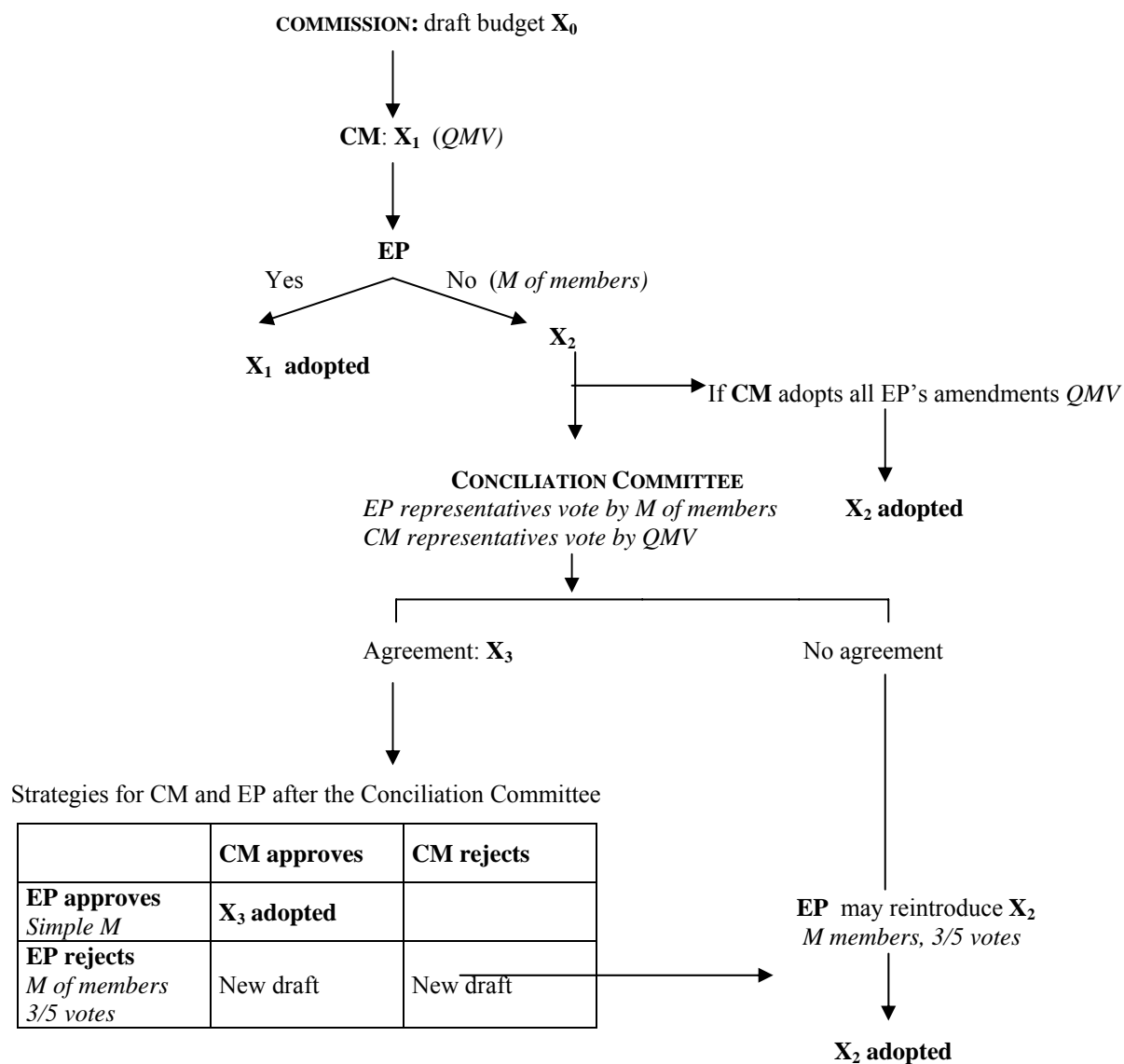
<sup>18</sup> The standard practices developed between institutions have been the object of two Joint Declarations (1999 and 2006): practical arrangements are clearly spelled out, widely-used terms are clarified, provisions for greater transparency and commitment are detailed. Guidelines for first and second reading agreements were adopted by the Conference of the Presidents in November 2004.

<sup>19</sup> For a detailed account of the 2002-04 Constitutional debate, see Benedetto and Hoyland (2007).

<sup>20</sup> This was a reminiscence of Maastricht version of legislative codecision (ex art.189b), with inverted roles for Parliament and Council. In Maastricht codecision, the conciliation failure entailed a third reading by the Council which could revert to its common position. The Parliament could reject the Council’s position by absolute majority. This asymmetry, which favoured the Council, was opposed by the Parliament which committed to veto all Council’s common position: in the Amsterdam version of codecision, the failure of conciliation entails the final rejection of the bill.



Figure 3  
The budgetary procedure in the European Convention's draft (art. III-310, CONV 850/2003)



Legenda. CM: Council of Ministers; EP: European Parliament;  $X_i$  : budget proposed at stage i.  
Voting rules: QMV, qualified majority voting; M, majority.

The 2007 Lisbon Treaty and the new Treaty on the Functioning of the European Union (TFEU), which incorporates it, substantially confirm the 2004 Constitution with respect to the financial issues. The Reform Treaty does not substantially change the Parliament's access to the core of the financial decisions, the Own Resources Decision (art. 311 TFEU) and the Multi-Annual Financial Framework (article 312 TFEU), which are strictly kept at intergovernmental level. In both

decisions the decision-making power is entrusted to the Council voting at unanimity<sup>21</sup> and the also monopoly of initiative of the Commission is transferred to the Council. The Parliament is consulted in the Own Resources Decision and it is required to express, by a majority of its members, its consent to the Council's proposal on the Multi-Annual Financial Framework. As the Interinstitutional Agreement has been eliminated, the say of both the Commission and Parliament on the financial programming is reduced: they have no more the possibility to opt-out from subscribing a voluntary agreement<sup>22</sup> and the Parliament can no longer resort to the Maximum Rate of Increase. In case the Parliament does not consent to the Financial Framework presented by the Council, "the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that act is adopted" (art. 312 TFEU).

The Reform Treaty formally upgrades the Parliament to the role of equal co-legislator in the budgetary procedure<sup>23</sup>, it sanctions the abandonment of the allocation of power according to types of expenditure, granting the Parliament competence on the whole budget and modelling the procedure according to legislative codecision (art. 314 TFEU). Budgetary codecision replicates Amsterdam codecision, but with one reading less before conciliation and a more detailed specification of the final stage after the Conciliation Committee (Figure 4).

The provisions concerning the final approval after conciliation outline a sort of simultaneous moves one-shot game, as the joint text of conciliation is submitted *en bloc* to both budgetary institutions. In general, if one or both of them reject the joint text, a new budget proposal will be drafted by the Commission. However, if the Parliament approves the conciliation text while the Council rejects it, the Parliament can confirm its amendments unconditionally and the Council has no veto power: this is a reminiscence of the Convention's proposal. Assuming complete and perfect information, rational behaviour of the players and that the Parliament prefers its own reintroduced position or the conciliation text to a new draft<sup>24</sup>, the dominant strategy for both institutions is always to approve the joint text.

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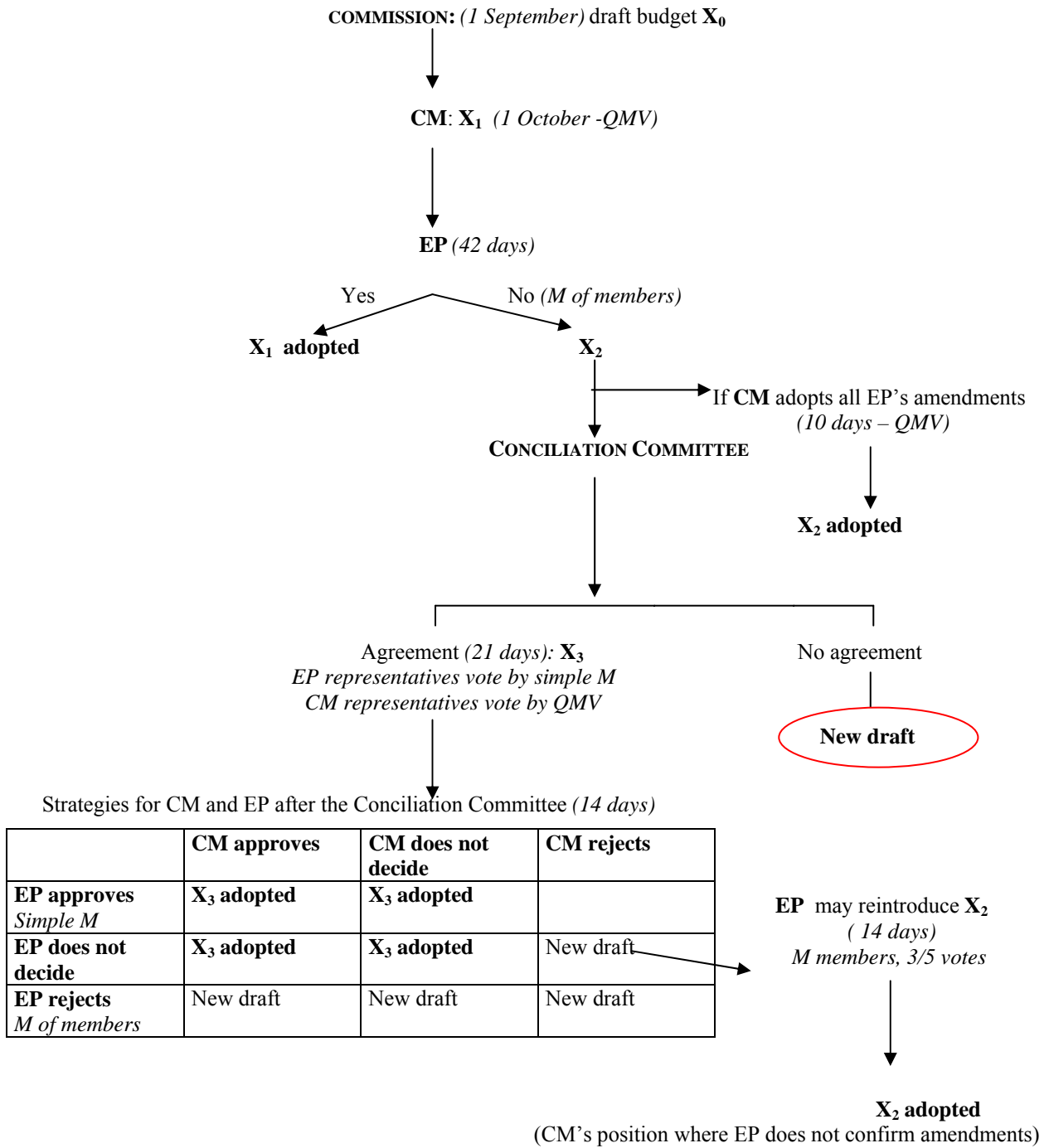
<sup>21</sup> The 2004 Constitution and the Lisbon Treaty provide for a 'passerelle' towards qualified majority voting. However, the use of this bridging clause is made difficult by art. IV-144 of the Constitution, granting veto power to national Parliaments.

<sup>22</sup> Both the Parliament and the Commission are called to interinstitutional cooperation, which must be applied from the start of the procedure in order to ensure its conclusion. To ease the approval of the Financial Framework, Article 270(5) of the Lisbon Treaty stipulates that "*Throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate its adoption*".

<sup>23</sup> Doubts are expressed in the literature on the effective powers of the Parliament in codecision. See Napel and Widgrén (2003) and (2006).

<sup>24</sup> The actors' impatience also plays a role in the preference for a new draft. Rittberger (2000) finds that the Parliament is more patient than the Council in legislative codecision. The same could be said also for the budgetary process, due to the fact the Parliament is less interested in short-term distributive issues than in long-term institutional positions: "as long as EU expenditure and pressure from constituencies on MEPs remain low, the Parliament can be assumed to have a long time horizon and a strong interest in enhancing its institutional powers in the decision-making power" (Lindner, 2006, p.31). However, in some instances (the 1987 budget), the Parliament conditioned its position on the budget to more important upcoming negotiations on the future EU financing and avoided displeasing the Council with rejection.

Figure 4. The budgetary procedure in the 2007 Reform Treaty (art. 314 TFEU)



Legenda. CM: Council of Ministers; EP: European Parliament;  $X_i$  : budget proposed at stage i.  
 Voting rules: QMV, qualified majority voting;  $M$ , majority.

This result entails some consequences. First, asymmetrically assigning the Parliament the possibility to disregard the joint text rejection by the Council and to reinstate its previous

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Besides, the Parliament's impatience is increased by the risk to new policies that follows from the absence of the budget and from the Commission enacting the provisional twelfths system.

amendments after conciliation does not correspond to a real veto power, but is simply functional to guarantee that the text approved in conciliation by the delegates of the Parliament and Council is not repudiated by their parent bodies. Therefore, the Parliament's enthusiasm for this provision should be dampened, as it does not sanction the "Parliament's dominant position" in the budget (European Parliament, 2008)<sup>25</sup>.

Besides, the dominance of the approval strategy after Conciliation, makes essential that the Parliament's delegation in Conciliation be as representative as possible and enjoy the broadest support in plenary. Among other things, this implies that the delegations should include members of the Committee on Budget and also of other parliamentary committees responsible for issues with significant financial impact (as suggested also in European Parliament, 2008).

Finally, like in the current procedure, opting-out, when possible, does not end the procedure, but prolongs it, because the Commission is required to submit a new draft and to begin a new process. Given that, under the above mentioned hypotheses, after conciliation the Parliament's dominant strategy is to always approve the joint text, the possibility of asking the Commission for a new draft is left to both delegations in the Conciliation Committee. The delegations have, however, different voting rules to approve the joint text: qualified majority voting for the Council representatives and majority voting for the Parliament's representatives. The possibility to opt-out, i.e. to find a blocking minority in conciliation, is thus easier for the Council than for the Parliament.

Some other provisions of the Reform Treaty modify the balance of interinstitutional powers. In particular, the enlargement of the competences of the European Parliament formalises what is currently its political say on compulsory expenditures in informal negotiations, but it cancels the formal provisions of the Treaty, that currently entrust the Parliament the final say on non-compulsory expenditures and the possibility to cut compulsory expenditures, whenever backed by a blocking minority in the Council. Under the reformed procedure, the Council formalises its current informal say on non-compulsory expenditures, but it loses the power to autonomously raise the compulsory expenditures. On balance, the Council seems to gain under the new provisions (see also Benedetto and Hoyland, 2007), all the more if we take also into account that the core of the expenditure decisions is entrusted to the Multi-annual Financial Framework, where the Council is the agenda-setter.

The enlargement of competences impinges also on the regime in the event that the budget cannot be definitively adopted before the beginning of the financial year. The Reform Treaty retains the system of the provisional twelfths (art. 315 TFEU). The Parliament loses the power to increase

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<sup>25</sup> Commenting the new procedure, the Committee on Budget enthusiastically states: "The suggestion that Parliament would gain a dominant position in the new budget procedure is confirmed. No annual budget may be adopted without the EP's agreement, but the EP may approve a budget against the wishes of – or in the absence of an opinion from – the Council" (European Parliament, 2008a, p.9).

the current non-compulsory expenditures and gains the power to reduce the current compulsory expenditures.

In the Reform Treaty, the Commission is given the same power it enjoys in legislative decision-making. It prepares not more ‘a preliminary draft’ but ‘the draft budget’, which is more than a formal change: in the line of Burns (2003) we believe that this implies more agenda-setting power for the Commission, as it is much harder for the budgetary authorities to modify the draft, once it has been formally published. Besides, the Commission can amend its own proposal until the Conciliation Committee is convened, which facilitates its role as a mediator between the Parliament and the Council. Its role is strengthened also in the Conciliation Committee and in the informal institutions (art. 324 TFEU). This should provide the Commission the opportunity to better exert its influence in formal and informal negotiations and it should avoid that the Commission’s scope to act be reduced by the budgetary authorities’ willingness to avoid mediators and to talk to each other directly.

The role of informal institutions is going to be enhanced by the Reform Treaty procedure. Budgetary codecision is shorter than the legislative process and the importance of the first readings is increased: this implies that there are fewer possibilities for amendments and that amendments adopted at first reading will not be corrected by one single authority alone, but will be examined in conciliation by both authorities. This shorter process will make essential, in advance of the first reading, to clearly state the political priorities of each institution and to reinforce the mechanisms of informal infra-institutional and interinstitutional dialogue at an early stage, so that conciliation can be adequately prepared. As in legislative codecision, the need of trialogues and informal contacts at early stages creates new agenda-setting power for the Parliament and enhances its bargaining position.

The role of the current trialogues, and consequently the limits of the formal alternating-offers procedural design, are explicitly recognized by the Reform Treaty (art. 324 TFEU). Budgetary trialogues are convened on the initiative of the Commission, whose role as a mediator is reinforced. Besides, the Presidents of the budgetary authorities are encouraged to take all the necessary steps to promote consultation and the reconciliation of the positions. This provision reinforces the general duty of sincere cooperation between the institutions by creating what is practically an obligation for the institutions to consult one another (European Parliament, 2008a). The explicit recognition of the role of informal institutions is evidence of an ‘iterated process of constitutional change’ (Farrell and Héritier, 2003), in which the new provisions are the product of previous informal rule-making.

Informal institutions are therefore called to intensively assist the working of the new budgetary procedure. Their mitigating role should however be counted among the reasons<sup>26</sup> that have prevented a more thorough institutional budgetary reform: along the years, they have accommodated much of the pressure for change, by granting an escape to the strict non-cooperative setting designed by the Treaty.

## 7. Conclusions

Legislative codecision and the current budgetary procedure are generally given different appreciation: while codecision is generally praised as efficient, the budgetary procedure is normally disregarded as obsolete and complicated. However, they share a common root: they both are designed as alternating offers bargaining games, which is the peculiar way chosen in the EU to reconcile national sovereignty and supranational authority. Early in their application, both procedures caused interinstitutional difficulties, misunderstandings and deadlocks. Explanations for this are provided by a consolidated literature, but an inbuilt reason lies also in the non-cooperative nature of the bargaining games, that exasperates the interinstitutional tensions, and in the difficulty that institutions have in applying the alternating offers setup: it can be politically too complicated for institutions to change their internal agreements on a draft in order to accept the counterpart's amendments.

Part of the solution to the above procedural problems has come from the mitigating role of early and continuous negotiation entrusted to informal institutions, as argued also by Goodin (2000), Farrell and Héritier (2003) and Shackleton (2000). By means of informal negotiation, the Parliament and the Council have been able to change the decision-making process from the non-cooperative alternating offers bargaining prescribed by the Treaty into cooperation and the search for compromise. Informal institutions have played, however, an ambiguous role: although they could circumvent the difficulties of decision-making, they also provided an escape to more radical changes in the assignment of institutional roles and have delayed reforms. The budgetary procedure has certainly benefited from the presence of trialogues and conciliation meetings: however, they have diluted the spur to a deeper involvement of the Parliament in the core of the budgetary decisions.

The 2007 Reform Treaty does not change much the current combination of national sovereignty and supranational authority in the decision-making process. It does not substantially

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<sup>26</sup> Benedetto and Hoyland (2007) argue that the substantial maintenance of the *status quo* in the reformed budgetary process, is due to the fact that the Parliament gains in constitutional forms where it is a formal actor and unanimity is not required (the Convention), while it loses in a closed forum (the IGC) where it only attends the meeting and the voting rule is unanimity. Enderlein and Lindner (2006) argue that the present state of political integration has prevented the more radical changes of the decision-making processes for the EU finances.

change the Parliament's access to the core of the financial decisions, the Own Resources Decision and the Multi-Annual Financial Framework, which are strictly kept at intergovernmental level. The adoption of codecision for the budget and the formal upgrading of the Parliament to the role of equal co-legislator amount to the "consolidation of the rules which have been necessitated by practical constraints outside the Treaty machinery", as the European Convention had suggested (European Convention, 2003, p.12). In particular, the role of informal institutions is formalized, thus explicitly recognizing their mitigating influence in the too strict design of the procedure. They will be all the more important, as the new procedure is shorter and thus requires trialogues and informal contacts at an early stage: this will be an opportunity for the Parliament to create new occasions to increase its influence in the agenda-setting.

Some shifts in the balance of powers occurs with the new procedure. The Commission gains some scope for action, as it is recognized a formal role in negotiations and during the readings. The Council gains from the enlargement of competences on the expenditures and from the possibility to opt-out in conciliation more easily than the Parliament. The Parliament is not given a formal dominant position, as the provision that assigns it the possibility to disregard the joint text rejection by the Council and to reinstate its previous amendments after conciliation is simply functional to guarantee that the text approved in conciliation by the delegates of the Parliament and Council is not repudiated by their parent bodies.

The assignment of powers in the decision-making processes for the EU finances mirrors the present state of political integration, as Enderlein and Lindner (2006) suggest. This is not the end of the story, but it is the starting point for new interactions between the budgetary authorities, which obey not only a formal procedural design, but also those informal rules of decision-making, which, since the first budgetary procedure in 1970-75, have blurred and modified the original formal outline. To the working of the current trialogues and of new informal spaces for negotiations is entrusted the possibility for the Commission and the Parliament to build intensive interinstitutional dialogue with the Council and stronger bargaining positions. As in the past, this will probably be, in the future, the basis for redefining relationships among institutions.

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Publicato in proprio  
Dipartimento di Economia Pubblica  
Facoltà di Economia  
Università degli Studi di Roma “La Sapienza”  
Via del Castro Laurenziano 9 – 00161 Roma

**Working Paper del Dipartimento di Economia Pubblica  
Università degli studi di Roma “La Sapienza”  
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**I Working Paper del Dipartimento di Economia Pubblica ottemperano agli obblighi previsti dall’art. 1 del D.L.: 31.8.45 n. 660 e dal Decreto del Presidente della Repubblica 3 maggio 2006 n.252, art.37.**