

Extract from:

Paolo Ponzano, Costanza Hermanin, Daniela Corona,
"The Power of Initiative of the European Commission: A Progressive Erosion?",
Notre Europe, Study No. 89, February 2012.

Executive Summary

This study investigates to what extent the power of legislative initiative of the EC has been exercised and maintained over time by comparing a select number of innovative legislative proposals adopted by four colleges two years after they took up their post: Delors (1991), Santer (1997), Prodi (2002), Barroso (2007).

It enables to draw the following main conclusions:

1. The changes brought about by successive rounds of treaty reforms **have not formally changed the right of the Commission to initiate legislation**; by contrast, its exercise *in practice* has been progressively eroded by the expansion and normalization of the *codecision* procedure.
2. The **practice of direct negotiations between the European Parliament and the Council** since the very first steps of the *codecision* procedure has affected the possibility of the Commission to actively participate in the definition of the content of the legislative measures – by modifying or withdrawing its proposals. Indeed, the Commission is more and more engaged in exercising the role of “*honest broker*” since the early stages of the decision-

making, in order to facilitate the achievement of an agreement between the two co-legislators.

3. The weakened role of the Commission in the codecision procedure also **impacted its power to define the *degree of ambition* of its legislative proposals**. As a consequence, the European Commission has started taking into account the positions of the co-legislators already since the drafting of the proposal, refraining from setting contentious objectives that are likely to be opposed by during the negotiation process.
4. **The power to initiate legislation has been significantly eroded also by both the *European Council* and the *Council***. As to the former, the Commission has increasingly considered itself politically committed to following up to the “conclusions” of the European Council. As to the latter, beyond the possibility to ask the Commission to submit specific proposals, a possibility sanctioned by the Treaty, the Council’s resolutions are considered as informal “mandates” for the Commission.
5. The comparative analysis of the activity pursued by the four colleges shows several interesting trends.
 - First, over the years there has been a **reduction in the share of the innovative proposals** adopted by the European Commission, a pattern explainable with reference to the exhaustion of virgin policy domains – e.g. the internal market for the Delors’s cabinet – and to the impact of the “Better Regulation” initiative – starting with the last years of Romano Prodi’s mandate.
 - Second, the expansion of the codecision procedure to more policy domains was accompanied by a reduction in the time needed for the adoption of the legislative proposals, and by a **lower degree of conflict over the Commission’s innovative proposals**. In particular, the last “political withdrawal” by the Commission dates back to 1994.

6.To sum up, the introduction of the codecision procedure in the EU decision-making and the functioning in practice of the inter-institutional system have **transformed the role of the Commission from that of an *autonomous initiator* to that of a *reactive initiator*.**

It will be worthwhile to study if and to what extent the modifications to the right of initiative provided by the Lisbon Treaty will contribute to further erode the quasi-monopoly of power on initiating legislation that still formally pertains to the Commission.