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Vice-Presidents responsible for the Conciliation

ACTIVITY REPORT
on Codecision and Conciliation

14 JULY 2009 - 30 JUNE 2014
(7th parliamentary term)

presented by

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Vice-Presidents responsible for conciliation

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FOREWORD

As Vice-Presidents responsible for conciliation in the European Parliament, we are honoured to present this Activity Report on Codecision and Conciliation during the 7th legislative term (14 July 2009 - 30 June 2014).

The Treaty of Lisbon, which entered into force in December 2009, introduced a series of changes and innovations, which inevitably had a significant impact on Parliament's codecision-related work and practices. The scope of the now 'ordinary legislative procedure' was almost doubled, with important repercussions on the work of many parliamentary committees (in particular those previously unacquainted with the codecision procedure) and on interinstitutional cooperation more generally. Codecision has been transformed considerably since its introduction over 20 years ago under the Treaty of Maastricht and has come a long way since the 'clash of cultures' that characterised its early days. It is now a well-oiled legislative procedure involving institutions that, by and large, have never before worked so closely and effectively together and which have made the best possible use of the flexibility inherent in the Treaty provisions.

It is not surprising, therefore, that the 'ordinary legislative procedure' has embraced the trend towards early agreements already apparent under the preceding legislatures. First reading agreements alone represented 85% of adopted codecision files in 2009-2014, and they have become one of the defining features of the EU's primary legislative procedure. But with the parallel rise of informal trilogue negotiations, valid questions have been asked about the transparency of codecision, and Parliament therefore took a further step towards improving the openness and accountability of its internal working methods on interinstitutional negotiations, once more fine-tuning its Rules of Procedure. Perhaps the time has now come for the institutions to reflect together on how to address some of the legitimate concerns raised by citizens.

The present Activity Report differs slightly in structure and content from previous editions. Reflecting the key changes post-Lisbon, and therefore also the most striking trends and political issues of the 7th legislative term, it focuses very much on codecision facts, figures and developments - such as the negotiations on the Multiannual Financial Framework instruments, delegated and implementing acts and the consent procedure - with conciliation taking a less prominent role (under 2% of files went to third reading). It ends with a series of recommendations for our successors, which we hope will serve to better equip Parliament for some of the challenges ahead.

The report covers the entire 7th legislative term, and we would like to warmly thank former Vice-President Rodi Kratsa-Tsagaropoulou for her work during the first half of this legislature.

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Introduction

Under the Treaty of Lisbon, which entered into force on 1 December 2009, codecision officially became the 'ordinary legislative procedure' and the general rule for passing legislation at EU level,¹ with new legal bases introduced in the areas of, *inter alia*, freedom, security and justice, international trade, agriculture and fisheries. Only a relatively small number of policy areas are still subject to the consultation procedure, and Parliament now legislates jointly and on an equal footing with the Council on a large majority of the legislative proposals tabled by the Commission.

The **first part** of this Activity Report begins with a quantitative and qualitative analysis of the most relevant codecision-related statistical data, providing a wide-ranging **overview of the codecision procedure during the 7th legislative term (section 1.1)**, also pin-pointing relevant medium- or long-term developments. In particular, it focuses on some of the main changes post-Lisbon, such as the numbers of codecision proposals and adopted files (also in comparison with those subject to the consultation procedure) and their distribution among parliamentary committees. The data also reveal or confirm certain trends, concerning, for example, the stage of adoption of codecision files and the length of the codecision procedure.

This statistical analysis is followed by a presentation of key recent **developments regarding codecision (section 1.2)**. Viewed together, they provide a comprehensive guide to the state of play on codecision-related matters during and at the end of the 7th legislative term, also highlighting certain challenges that the next Parliament will have to seek solutions to, and covering areas where further internal and interinstitutional progress needs to be made. Overall, Parliament has continued to rise in stature and influence over the past five years. This has been the corollary of successive Treaty revisions, but it is also evidence of the institution's ability to adapt effectively to a frequently-changing interinstitutional environment, and proof of the manner in which it has successfully assumed the various Treaty powers and prerogatives conferred upon it.

Interinstitutional relations (section 1.2.1) continued to evolve during the 7th legislative term, generally reflecting the key changes introduced by the Treaty of Lisbon. While the ordinary legislative procedure now involves numerous practices that the institutions have developed and fine-tuned over the years, the extension of the scope at the end of 2009 saw a number of Parliament's committees deal for the first time with codecision files. This, inevitably, had an effect on Parliament internally, but it also meant that tried-and-tested interinstitutional practices were extended to new policy areas, often with the involvement of actors (in Parliament, the Council and the Commission) previously unaccustomed to the formal and informal mechanisms that drive the interinstitutional codecision legislative process. Some policy areas were also marked by conflicting interpretations of Treaty provisions and institutional responsibilities, leading to a number of political and legal tensions. Many issues related to interinstitutional relations, and the evolution of the codecision procedure more generally, were discussed at Parliament's Conference on '20 Years of Codecision' on 5 November 2013, organised under the auspices of the three Vice-Presidents responsible for conciliation.

¹ The term codecision remains prevalent and, in this Activity Report, will be used interchangeably with the new terminology.

The challenges were therefore considerable, particularly given the political and budgetary significance of the many **legislative files negotiated in the context of the multiannual financial framework (MFF) (section 1.2.2)**. For the first time, Parliament had extensive codecision powers on the financial programmes and a right of consent on the overall MFF regulation. Substantial resources were mobilised over a long period (from mid-2011 until spring 2014), while the task of coordinating Parliament's approach, both at political and administrative levels, proved a tremendous exercise.

Given the high number of codecision files now tabled by the Commission per legislative term, and with the progressive rise of first reading agreements (and therefore of trilogue negotiations), issues related to transparency and democratic accountability remained on the table, and it proved necessary to revise **Parliament's internal working methods related to interinstitutional negotiations (section 1.2.3)**. Following the adoption at the end of the 6th parliamentary term of Parliament's Code of conduct for negotiating in the context of the ordinary legislative procedures, the Conference of Presidents initiated a revision of former Rule 70 (now Rule 73) of Parliament's Rules of Procedure (which entered into force in December 2012) in order to harmonise and make binding certain internal practices (particularly at committee level) related to interinstitutional legislative negotiations.

Codecision under the Treaty of Lisbon has given Parliament certain powers that extend beyond the adoption of legislation. More specifically, the introduction of **delegated acts (section 1.2.4)** extended the scope of Parliament's power to scrutinise certain non-legislative acts, over which it has an unrestricted veto right. In addition, Parliament's **consent (section 1.2.5)** is now required for all international agreements in fields to which the ordinary legislative procedure applies, thereby significantly strengthening parliamentary oversight of the external dimension of internal policy areas.

The **second part** of this Activity Report covers Conciliation. It begins with an **overview of the conciliation procedures that have taken place during the 7th legislative term (section 2.1)**, confirming the trend towards fewer conciliations already evident under previous legislatures, while highlighting certain specific issues - linked to the practical implementation of new post-Lisbon competences - of those files that reached this final stage of the codecision procedure. This overview is followed by a short assessment of the key **developments regarding conciliation (section 2.2)**, focusing on the new features and actors specific to the conciliation files and negotiations under the 7th legislature.

Finally, the Activity Report ends with a series of **conclusions and recommendations (sections 3.1 and 3.2)** on the main codecision-related changes, trends and developments under the 7th legislative term following the entry into force of the Treaty of Lisbon, looking also at the 'open' issues and the principal challenges that the next Parliament may be called upon to tackle.

1. Codecision, or the ordinary legislative procedure

1.1. Overview of codecision

Codecision as proportion of legislative files

Since the introduction of the codecision procedure under the Treaty of Maastricht in 1993, its relative importance has increased with each legislature. The 7th legislative term was no exception: with the entry into force of the Treaty of Lisbon, codecision became the *ordinary legislative procedure* and, true to its new denomination, overtook consultation as the most common procedure used by the Commission for the adoption of legislative proposals.² When compared with the consultation procedure (and with the old cooperation procedure under the 4th legislative term)³ its proportional increase over the years has mirrored the importance, from a codecision perspective, of successive Treaties: while the change was gradual to begin with under the Treaties of Amsterdam and then Nice, the Treaty of Lisbon represented a veritable transformation of the EU legislative framework and marked the beginning of a new era. Indeed, during the 2009-2014 period, it applied to almost 90% of legislative proposals adopted by the Commission. As illustrated in figure 1, this was a significant increase compared to the 4th (21%) 5th (42%) and 6th (49%) legislative terms. Also of note is the significant drop in the total number of legislative proposals adopted by the Commission under the 7th legislative term, decreasing approximately 40% to 658 compared to the three previous legislatures.

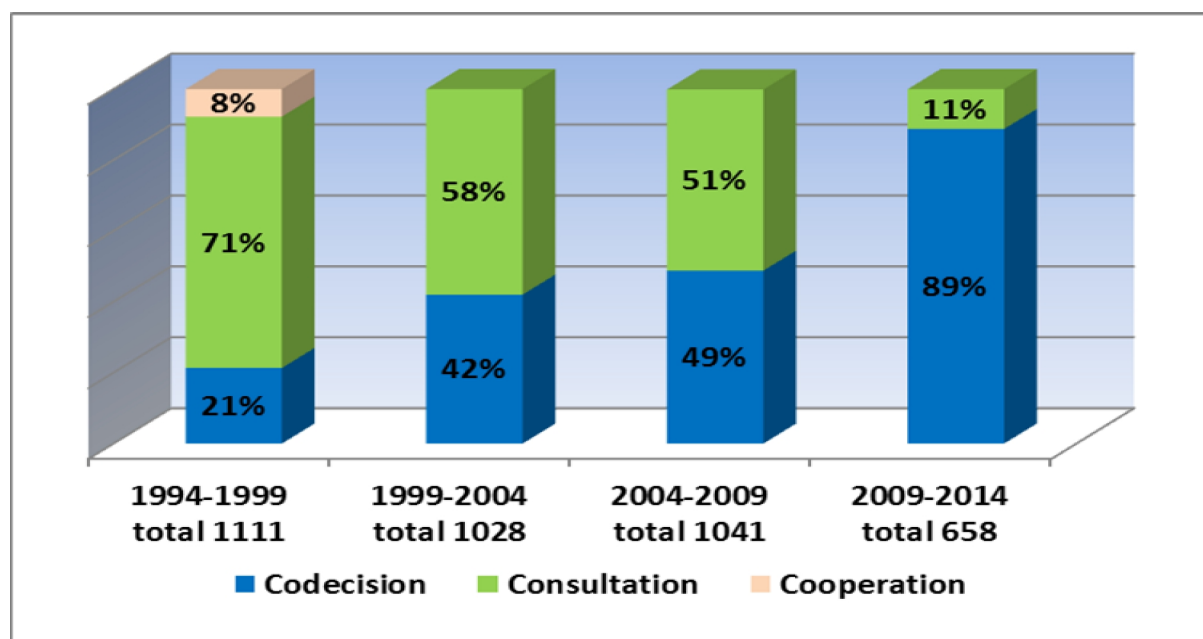


Figure 1: Distribution of legislative proposals under the cooperation, consultation and codecision procedures per legislative term⁴

² A full list of codecision legal bases under the Treaty of Lisbon can be found in Annex I.

³ The importance of the cooperation procedure diminished with the entry into force of the Treaty of Amsterdam, where it was reserved for a limited number of provisions on Economic and Monetary Policy. The procedure was abolished after the entry into force of the Treaty of Lisbon.

⁴ These statistics are based on the dates on which the legislative proposals were adopted by the Commission. See <http://eur-lex.europa.eu/>. The legislative terms for this and all following figures are: 01/05/1994 - 30/04/1999, 01/05/1999 - 30/04/2004, 01/05/2004 - 13/07/2009 and 14/07/2009 - 30/06/2014.

The increase in the number of codecision files has coincided with a decrease in the use of the consultation procedure in both absolute and relative terms.⁵ Consultation as a *special legislative procedure*, which now applies to certain measures in a limited number of policy areas (such as competition, monetary policy, Common Foreign and Security Policy, employment and social policy, and certain measures of a fiscal nature in the areas of environment and energy),⁶ was used for only 11% of the legislative proposals adopted by the Commission during the 7th legislative term - a significant reduction since 1994-1999, when the proportion compared to codecision (and cooperation) was 71%.

Number of codecision proposals and files adopted

The growing relative importance of codecision correlates with a progressive increase in the number of codecision proposals adopted by the Commission: 432 proposals were tabled by the Commission in the 5th legislative term, 508 in the 6th legislative term, with the number rising to 584 in the 7th legislative term.

Correspondingly, there has been a steady increase in the number of codecision files adopted by the co-legislators over the course of successive legislative terms. This trend was confirmed in the 2009-2014 period, during which 488 files were adopted. Figure 2 illustrates the increasing numbers of codecision proposals tabled by the Commission and of codecision files adopted by the co-legislators in the 5th, 6th and 7th legislative terms.

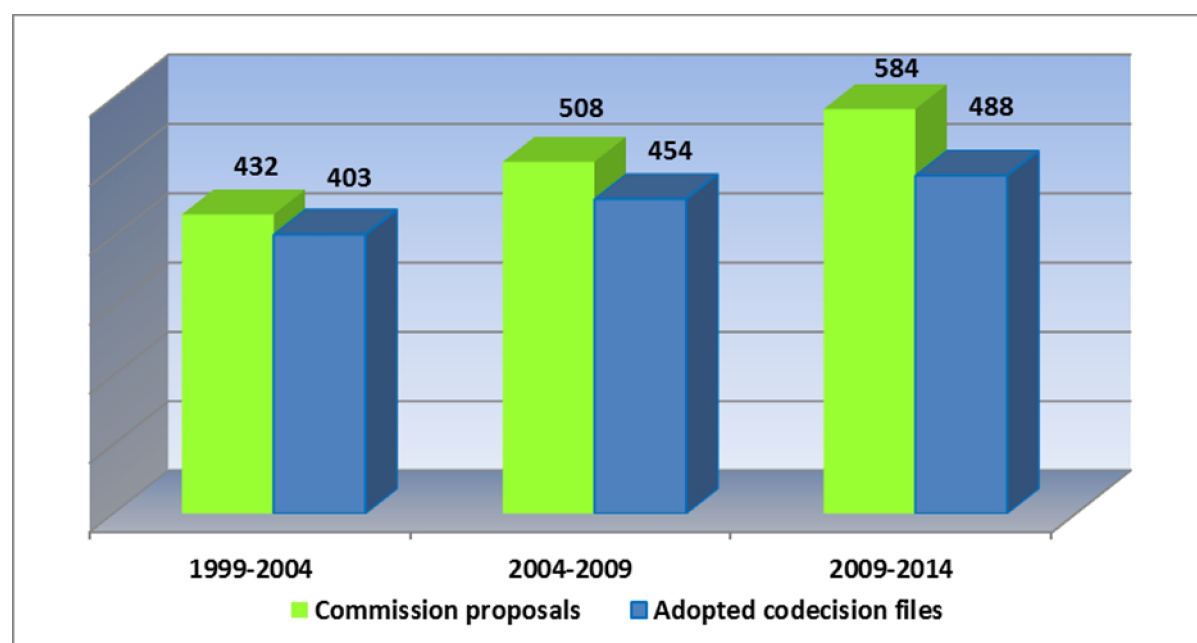


Figure 2: Number of Commission proposals and adopted codecision files per legislative term between 1999 and 2014, based on date of adoption⁷

⁵ Under the consultation procedure (Article 289 TFEU), Parliament is asked for its opinion on proposed legislation before the Council adopts it. The Council cannot act before Parliament has adopted its opinion, but the latter is not binding.

⁶ A full list of consultation legal bases can be found on the Conciliations and Codecision website.

⁷ Except where indicated otherwise, all statistics related to files adopted by the co-legislators are based on the date of adoption.

Figure 3 presents the number of adopted files per legislative year, and reveals a cyclical trend: the numbers rise almost constantly over the course of each legislative term, with a significant increase in the final legislative year. The 7th legislative term followed the same pattern: 192 files were adopted in the year 2013-2014, which was more than twice as high as the previous year (2012-2013). Of course, Parliament and the Council work hard to agree and conclude files before the end of each parliamentary term; but a further explanation for the particularly sharp increase at the end of the 7th legislature is the conclusion of a large number of multiannual financial framework legislative instruments (approximately 65) in 2013-2014.

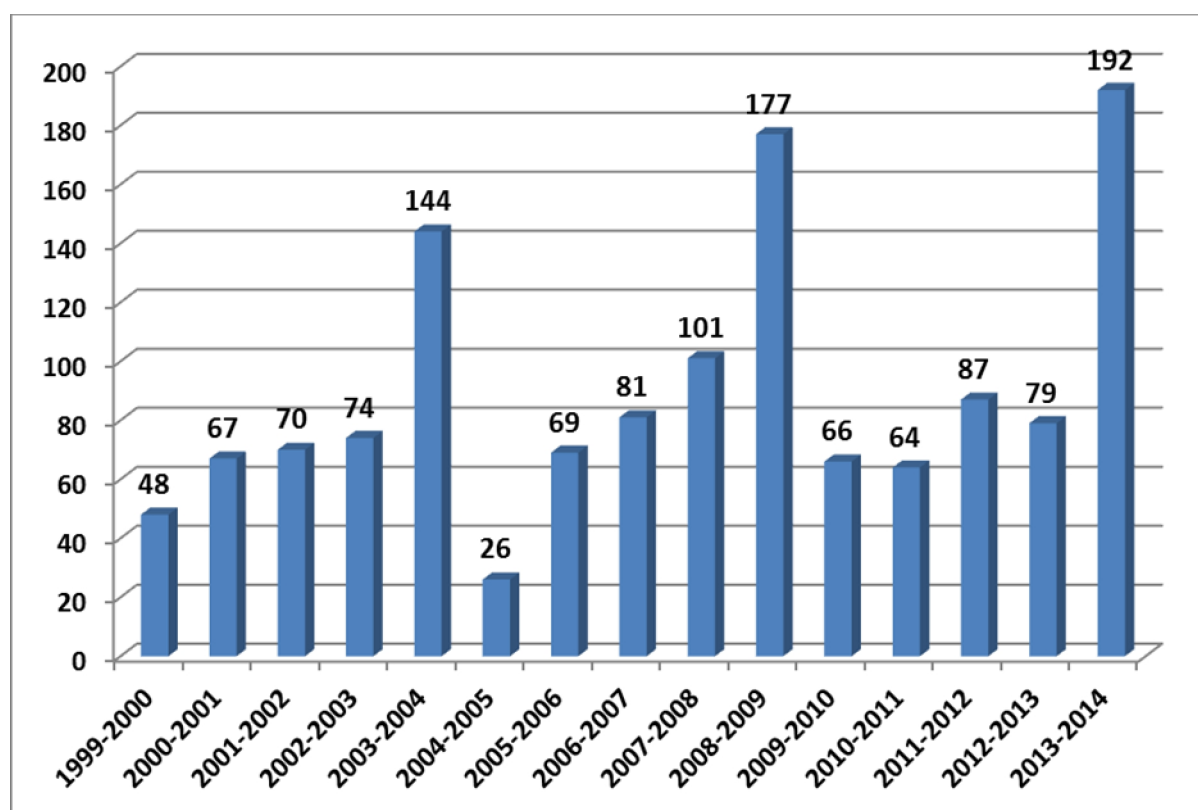


Figure 3: Number of codecision files adopted over the course of a legislative year in the period 1999-2014⁸

Increase in number of legal bases providing for codecision

During the 7th parliamentary term 488 codecision files were adopted, an increase of 34 files compared with the 6th parliamentary term. This was a relatively moderate rise considering the extension of the scope of the codecision procedure under the Treaty of Lisbon, which almost doubled the number of codecision legal bases to 85. In most of the new codecision areas the Union previously applied a different legislative procedure, but 17 legal bases cover entirely new areas of Union action. Of the 488 codecision files adopted in 2009-2014, 210 files were adopted using new codecision legal bases. Among these, 13% (or 27 files) were adopted under the codecision procedure

⁸ For the period 1999-2009: files adopted between 1 May of the first year and 30 April of the second year; for the period 2009-2014: files adopted between 14 July of the first year and 13 July of the second year, except for 2013-2014, which runs until 30 June 2014.

in areas where Union competence was introduced following the entry into force of the Treaty of Lisbon.⁹

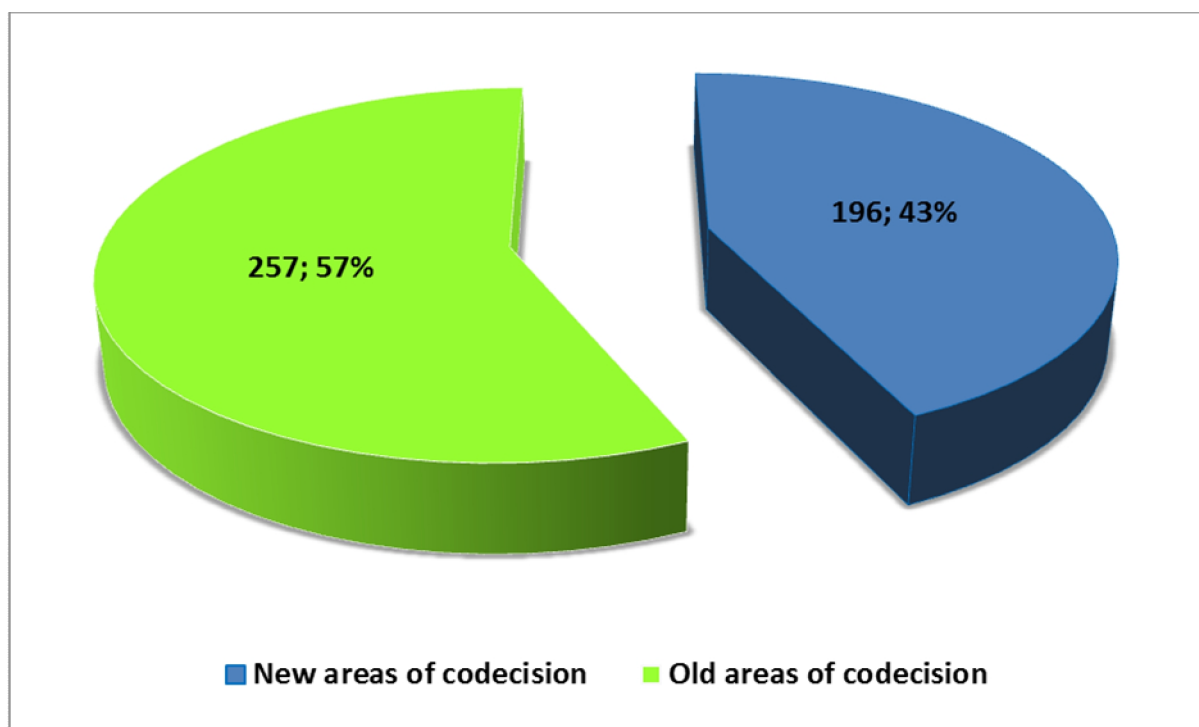


Figure 4: *Distribution of adopted codecision files in old and new areas of codecision in 2009-2014*

As illustrated in figure 4, files adopted by the co-legislators in areas with new codecision legal bases accounted for 43% of the codecision files adopted in 2009-2014. The number of files adopted in areas already covered by codecision before the Treaty of Lisbon decreased by 39% in the 7th legislative term, from 454 files in 2004-2009 to 278 files in 2009-2014.

Distribution of codecision files by parliamentary committee

As a logical consequence of the widened scope of the ordinary legislative procedure, the distribution of codecision files among the different committees changed under the 7th legislative term. Whereas in 2004-2009 the three largest legislative committees (Environment, Public Health and Food Safety (ENVI), Legal Affairs (JURI) and Transport and Tourism (TRAN)) were responsible for almost half of all codecision files, in 2009-2014 the files were more evenly distributed across a larger number of committees, as shown in figure 5.

⁹ This included seven acts in the field of energy (Article 194(2) TFEU) and files in the fields of intellectual property (Article 118(2) TFEU), space policy (Article 189 TFEU) and civil protection against man-made and natural disasters (Article 196(2) TFEU).

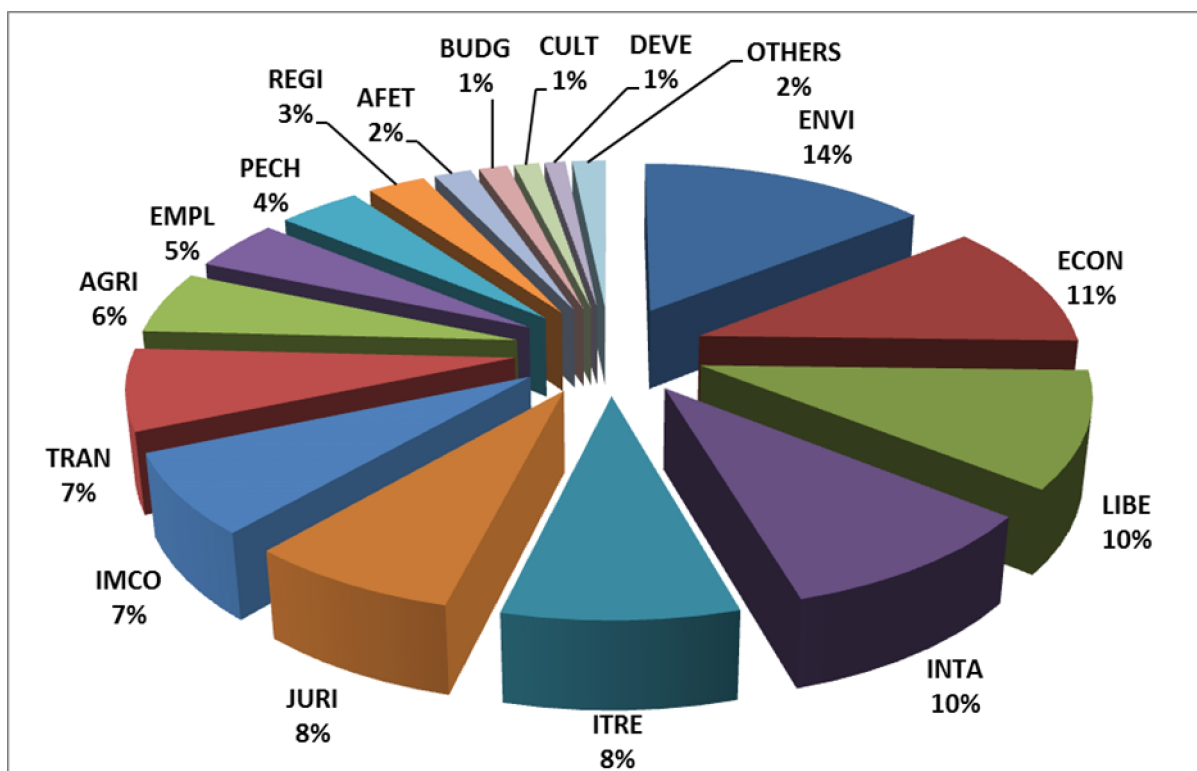


Figure 5: Distribution of codecision files adopted from July 2009 until June 2014 by parliamentary committee

Indeed, the extension of the codecision procedure introduced or extended codecision powers in the Committees on Agriculture and Rural Development (AGRI), Regional Development (REGI), International Trade (INTA), Civil Liberties, Justice and Home Affairs (LIBE) and Fisheries (PECH). Together, these committees accounted for 33% of the codecision files under the 7th legislative term. The rise of the INTA Committee (10%) and, to a lesser extent, of the AGRI Committee (6%) are among the most striking changes compared to the previous legislative term, and the strengthened codecision powers of the LIBE Committee (up from 8% to 10%) is also worth noting.

While under the 7th legislative term the ENVI Committee still had the largest share of codecision files (albeit down from 20% to 14%), the second and third largest codecision committees were the Committee on Economic and Monetary Affairs (ECON) (11%) and the INTA Committee (10%).

The Committee on Industry, Research and Energy (ITRE) was responsible for 11 of the 27 files that were adopted by codecision in new areas of EU competence, mainly in the field of energy and space policies.¹⁰

The stage of adoption of codecision files

As demonstrated in figure 6, the trend observed under previous legislatures towards an increase in the number of files adopted at first reading and a decrease of those concluded following conciliation was confirmed under the 7th legislative term. Agreements at the early stage of the procedure (i.e. first or early second reading agreements) characterised the vast majority of codecision files, while

¹⁰ Before the entry into force of the Treaty of Lisbon, decisions in the field of energy were taken on the basis of the former Article 308 TEC (now Article 352 TFEU). This article enables community action necessary to attain one of the objectives set out in the Treaties in the absence of a specific legal basis.

those concluded at conciliation (generally only the very difficult files) became very much the exception.

Compared to the two previous legislatures (1999-2004 and 2004-2009), the number of early agreements increased significantly in 2009-2014. In the 7th legislative period, 415 of 488 files, i.e. 85% of codecision files, were adopted at the first reading stage. Of the mere 65 files (13%) adopted at second reading, a majority (40 files) were early second reading agreements. A very large number of files, 455, were therefore early agreements (i.e. first or early second reading agreements). This constitutes 93% of all adopted codecision files, compared to 54% and 82% during the 5th and 6th legislative terms, respectively. The number of files adopted at the third reading stage has decreased significantly over the last three legislative terms: between the 5th and the 6th legislative terms the number of files adopted at the third reading stage dropped from 88 to 23 files and during the 7th legislative term only 9 files went to conciliation, of which 8 were adopted at the third reading stage.

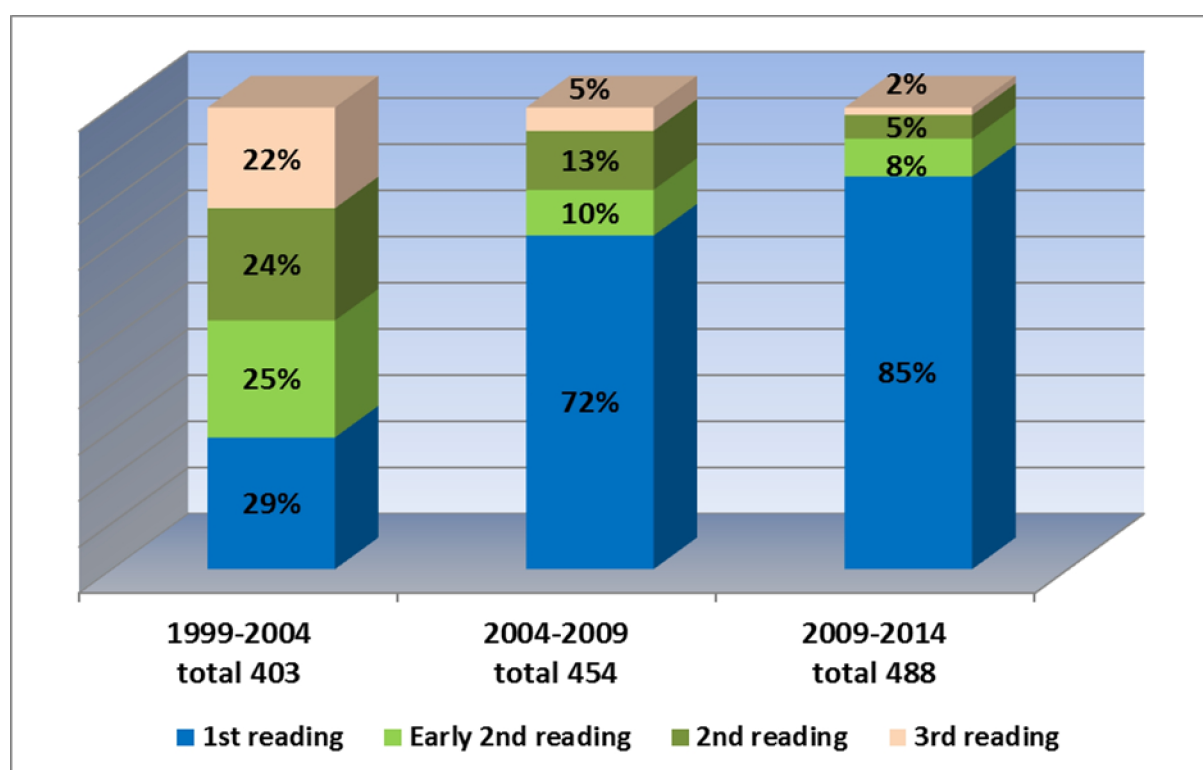


Figure 6: Percentage of codecision files adopted at 1st, early 2nd, 2nd or 3rd reading per legislature since 1999-2004

The stage at which codecision files were agreed varied considerably across committees (see figure 7). While some concluded their codecision files almost exclusively at first reading, others used a more varied approach.

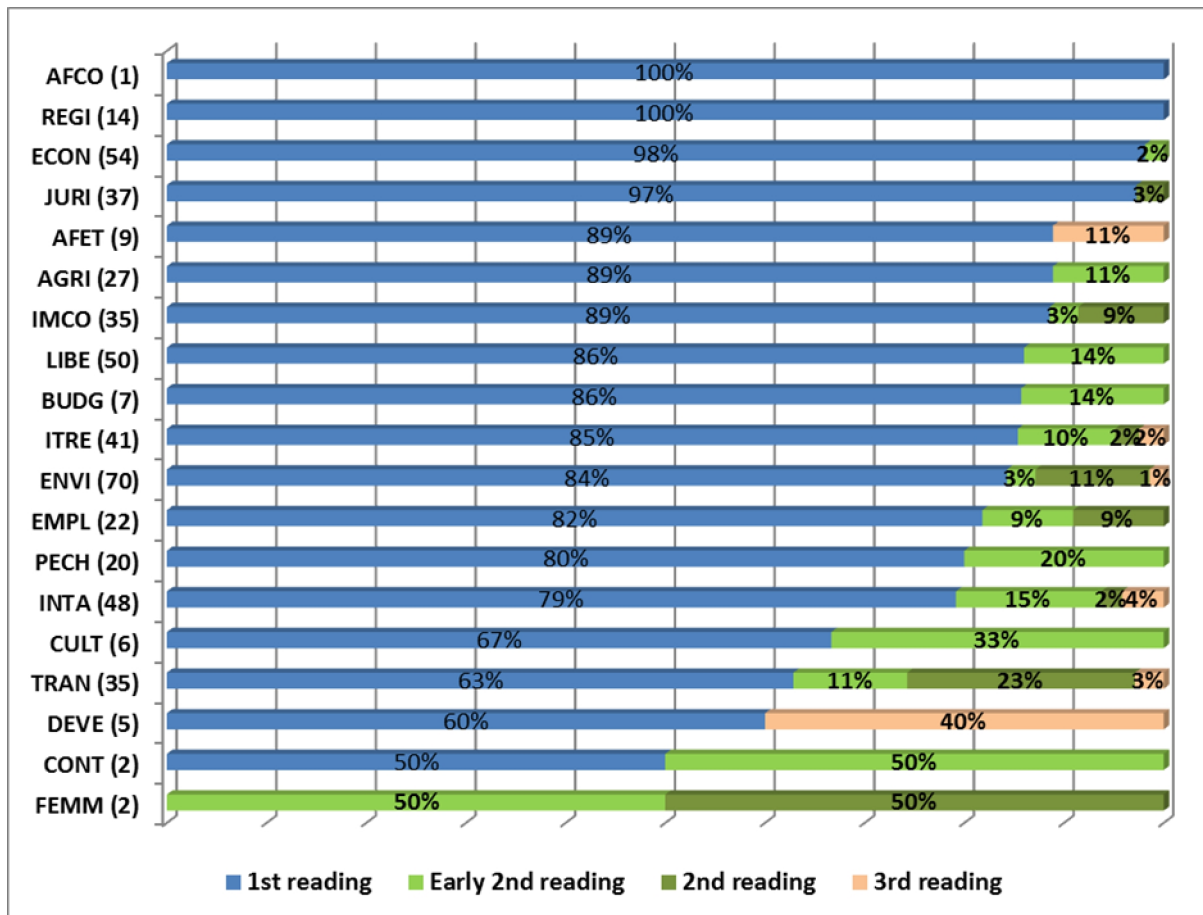


Figure 7: Percentage of concluded codecision files adopted at 1st, early 2nd, 2nd and 3rd reading during 2009-2014 by committee. The number in brackets is the number of files adopted by the committee in the 7th legislative term¹¹

With the exception of the Committees on Budgetary Control (CONT) and Women's Rights and Gender Equality (FEMM) (2 files each), all committees concluded a majority (in most cases, a large majority) of their files at first reading. Two committees stand out in this respect: the REGI Committee, which agreed 100% of its 14 files at first reading, and the ECON Committee, which agreed 98% of its 54 files at first reading (i.e. all but one file, which was finalised at the early second reading stage). Many of the ECON Committee's files were adopted in the context of the financial crisis, and economic and political factors can explain the relative urgency with which they were concluded (it is no coincidence that the ECON Committee was responsible for the largest number of trilogue meetings - see section 1.2.3 on interinstitutional trilogue negotiations for more details).

The JURI and AGRI Committees and the Committee on Internal Market and Consumer Protection (IMCO) concluded 89% or more of their files at the first reading stage, and all committees with a relatively high number of legislative files concluded at least 79% of files at first reading.¹² Only five committees have less than 90% early agreements (three of which with less than 10 files each). Of the committees that deal with large numbers of codecision files, the TRAN Committee is exceptional, as

¹¹ Three files were handled under the procedure with joint committee meetings (Rule 55 of the Rules of Procedure) and concluded at first reading: 2011/0129 COD (LIBE/FEMM), 2011/0130 COD (JURI/FEMM), 2011/0302 COD (ITRE/TRAN).

¹² Defined as committees that adopted 20 files or more in the 2009-2014 legislative term.

it concluded 23% of its 35 files at the second reading stage. ENVI, IMCO and the Committee on Employment and Social Affairs (EMPL), three other committees with significant codecision powers, adopted 11% (8 files), 9% (3 files) and 9% (2 files) of files at the second reading stage, respectively.

Average length of the codecision procedure

Developments regarding the average length of the codecision procedure (see table 1) are inevitably linked to the evolution towards first reading agreements. Since the 5th legislative term (1999-2004), when the average total time to adopt codecision files was 22 months, there has been a gradual decrease in the average total length of the codecision procedure, to 21 months in 2004-2009 and further down to 19 months under the 7th legislative term. This reduction of the average length of the procedure is explained by the significant fall in the number of files adopted at the second and third readings. In addition, the average length of the procedure for files adopted at the third reading stage dropped from 31 months in 1999-2004 to 29 months in 2009-2014. However, it should be noted that the average time has increased for first and second reading agreements between the 1999-2004 and 2009-2014 legislative terms: by six months for files concluded at the first reading stage and by eight months for those concluded at the second reading stage.

	1999-2004	2004-2009	2009-2014
1st reading	11 months	16 months	17 months
2nd reading	24 months	29 months	32 months
3rd reading	31 months	43 months	29 months
Total average length	22 months	21 months	19 months

Table 1: *Average length of the codecision procedure for files adopted at 1st, 2nd and 3rd reading stage and total average length for all codecision files*

An explanation for the increased length of first and second reading agreements is that certain difficult files, which would previously have been concluded at the conciliation phase, are now also being negotiated at these early stages of the procedure. Crucially, at the first reading stage the institutions are not bound by time limits, as they are at later stages of the procedure.¹³

It is also worth noting that in the 2009-2014 legislative period, the average time of the procedure for files adopted at the third reading stage was shorter than for files adopted at the second reading stage. As there are time limits for second and third readings, this difference can probably be explained by differences in the time used at the first reading, which will be concluded faster in cases where the co-legislators feel there is little chance to reach an early agreement, and longer for files where they try to set up an early reading agreement.

¹³ At the second reading, each of the co-legislators has three months, extendable by one month, to adopt its second reading position. At the conciliation and third reading stage, the co-legislators have a maximum of 24 weeks (3 x 8 weeks), of which 8 weeks may be devoted to conciliation as such.

1.2. Developments regarding codecision

1.2.1. Interinstitutional relations

Very early during the 7th legislative term, in December 2009, the Treaty of Lisbon entered into force. The implications for Parliament in general and for relations with the Council and the Commission were considerable. The overall legislative framework was transformed, with codecision extended to cover a large majority of Treaty legal bases and becoming the *de facto* 'ordinary legislative procedure'. Further changes included the strengthening of Parliament's role in and influence over the negotiation and conclusion of international agreements (the scope of its power of consent was aligned with that of the ordinary legislative procedure and its equal right to immediate and full information confirmed) and its acquisition of important scrutiny and veto rights over powers delegated to the Commission for certain non-legislative acts (Article 290 TFEU).

In 2010, Parliament and the Commission concluded a revised Framework Agreement on relations between the two institutions¹⁴, which further formalised the new legislative and institutional reality post-Lisbon, clarifying how the new forms of cooperation between the two institutions should be implemented in practice. In particular, the Commission committed itself to take due account of and apply "the basic principle of equal treatment for Parliament and the Council, especially as regards access to meetings and the provision of contributions or other information, in particular on legislative and budgetary matters" (point 9).

The ordinary legislative procedure

As the balance of legislative powers between the institutions changed over the years, so did the nature and intensity of the cooperation between them. Parliament is now a fully-fledged co-legislator, acting jointly and on an equal footing with the Council on a large majority of Commission legislative proposals. Generally, this has led to closer and better working relations between Parliament, the Commission and the Council, which are inevitably bound to work together efficiently and effectively in pursuit of shared objectives.

Codecision has developed into a well-oiled legislative procedure. Since the Treaty of Amsterdam, which introduced the possibility to reach agreements and conclude files at the first reading stage, the overarching formal framework has remained relatively stable. Crucially, the Treaty provisions on the ordinary legislative procedure (Article 294 TFEU) and the 2007 Joint Declaration on practical arrangements for the codecision procedure¹⁵ set out general rules and guidelines but have left the institutions with a degree of room for manoeuvre and flexibility to define and put in place less formalised working arrangements and therefore to determine the most suitable approach for each individual legislative proposal. Time and practice have led to a cultural rapprochement of Parliament and the Council: each institution's distinctive internal rules, procedures and methods are better understood by the other, as are their respective administrative and political needs and constraints. Indeed, the dynamics of the now ordinary legislative procedure have evolved significantly: informal tripartite negotiations are the drivers of much of the interinstitutional legislative activity, and working methods between Parliament and the Council – with the Commission as mediator and

¹⁴ OJ L 304, 20.11.2010, p. 47.

¹⁵ OJ C 145, 30.6.2007, p. 7.

facilitator – have been progressively fine-tuned, for example through the generalised use of four-column documents.

These trends have been accompanied by a number of practical arrangements between the institutions that have enabled the co-legislators and the Commission to better plan and coordinate their legislative activities. A good example are the so-called 'speed dating' meetings, when Parliament's committee Chairs meet each successive incoming Council Presidency at the beginning of its respective six-month mandate to discuss legislative priorities and expectations in specific policy fields.

Practices such as these have helped to improve already very good working relations within the institutional triangle. Nonetheless, certain characteristics of the interinstitutional cooperation between Parliament, the Council and the Commission reveal elements of imbalance, which can be explained historically but now appear outdated and in need of revision. Key among these is the impossibility for Parliament to attend or access documents of working party, Coreper or Council meetings, at which the Commission is a key participant and interlocutor. When compared with the openness of Parliament's 'equivalent' decision making bodies, and notably of the parliamentary committees and the plenary, which the Member States, the Presidency of the Council, and the Council General Secretariat are encouraged to attend, the different levels of transparency of each institution's respective decision making procedures inevitably have an impact throughout the legislative process, and more specifically during legislative trilogue negotiations.

There are two important repercussions: firstly, the Presidency is often perceived as being at an unfair advantage entering into negotiations, as it is generally able to closely follow the development and definition of Parliament's negotiating mandate (including possible differences of opinion between Members or groups) and can also use the secretive nature of Council's working methods to bargain more effectively; secondly, given the Commission's important and active role during Council working party (and even Coreper) discussions, its status as 'honest broker' during trilogue negotiations is sometimes questioned in practice.

The Treaty of Lisbon in practice

The changes to the scope of the codecision procedure under the Treaty of Lisbon were of course most strongly felt by those parliamentary committees responsible for new codecision policy areas, namely the Committees on Agriculture and Rural Development (AGRI), Fisheries (PECH), Civil Liberties, Justice and Home Affairs (LIBE), Regional Development (REGI), and International Trade (INTA). The share of codecision files among these increased during the 2009-2014 legislative period compared to the previous legislative term (see section 1.1 on the 'Overview of codecision'), and they had to adapt and learn quickly.

This was particularly true in the framework of the multiannual financial framework (MFF) (see section 1.2.2 on the multiannual financial framework). For example, the AGRI and REGI Committees negotiated the reform of key policies - the Common Agricultural Policy (CAP) and the cohesion policy - and the distribution of corresponding funds, representing, together with the Common Fisheries Policy (CFP) negotiated by the PECH Committee, over 80% of the budget for the next financial period.

Most of Parliament's 'new' codecision committees rapidly became acquainted with the tried-and-tested informal interinstitutional practices for the adoption of legislation, engaging in sustained periods of negotiation, particularly on MFF-related legislative files. In reality, while the AGRI and REGI Committees were among those committees with the highest proportion of codecision files agreed at first reading (100% for the REGI Committee, which dealt largely with MFF-related files), a closer look reveals that, with high numbers of trilogue meetings per codecision file, negotiations in many new codecision policy fields were often far from straightforward.

The biggest change, however, was probably for the INTA Committee. Not only did it deal with a large number of codecision files, mostly in areas on which it was previously not even consulted, it also acquired powers of consent for a range of international agreements with third countries. The rejection by Parliament (on 4 July 2012) of ACTA (for which the INTA Committee was responsible), an international agreement on intellectual property rights, was an important demonstration of Parliament's new Treaty prerogatives, more than two years after Parliament's first show of strength on the SWIFT agreement (a LIBE Committee file) (see section 1.2.5 on consent for more details). In addition, the INTA Committee was responsible for one of the files - macro-financial assistance to Georgia - adopted at third reading under the 2009-2014 legislative term (see section 2 on conciliations).

Political and legal developments between the co-legislators

The agreements reached in, for example, the AGRI, PECH and REGI Committees on politically and financially important files represented the more positive side of a transitional period marked also by a degree of frustration. More specifically, in a number of new codecision policy areas, it has been a constant challenge to ensure that Parliament is considered and treated as an equal player by the Council and the Commission. This has been partly due to entrenched attitudes in the other institutions as well as a necessary overhaul of some of the committees' working methods. In addition, given the European Council's approach to negotiations on the MFF, Parliament has had to manoeuvre carefully to ensure that its standing as a co-legislative authority with the Council be fully respected by the Council, which has, on occasion, demonstrated a tendency to not consider or treat it as an equal player.

The changes introduced by the Treaty of Lisbon have also been a source of political and legal discord between the co-legislators. For example, in the framework of the CAP and the CFP, Parliament and the Council have disagreed on the interpretation of Articles 43(2) and 43(3) TFEU¹⁶, and therefore on the precise delimitation of legislative competences. In fisheries, tensions have been such that Parliament and the Commission have brought the matter before the European Court of Justice (ECJ) against the Council, and an interinstitutional taskforce on multiannual management plans was established to resolve the issue. For the LIBE Committee, which already had quite substantial experience of the codecision procedure under the Treaty of Nice, the transition following the Treaty of Lisbon has been marked by some specific problems, with Parliament repeatedly calling on the Commission to adopt proposals to amend the acts of the former third pillar in order to align them to

¹⁶ Whereas pursuant to Article 43(2) TFEU Parliament and the Council “shall establish the common organisation of agricultural markets (...) and the other provisions necessary for the pursuit of the common agricultural policy and the common fisheries policy” according to the ordinary legislative procedure, under Article 43(3) TFEU the Council adopts on its own, on a proposal from the Commission, “measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities”.

the hierarchy of norms of the Treaty of Lisbon, to give the Commission the right to launch infringement proceedings, and to extend the powers of the ECJ in this area. While awaiting such proposals, Parliament initiated three proceedings before the ECJ.¹⁷

Parliament Conference on '20 Years of Codecision'

On 5 November 2013, 20 years after the entry into force of the Treaty of Maastricht on 1 November 1993, the European Parliament hosted a conference on '20 Years of Codecision', under the auspices of the three Vice-Presidents responsible for Conciliation, Mr Gianni Pittella, Mr Alejo Vidal-Quadras and Mr Georgios Papastamkos.

Speakers included former and current MEPs (Ms Nicole Fontaine, Sir Ken Collins, Mr Ingo Friedrich, Mr Brian Simpson, Ms Carmen Fraga Estévez, Mr Bas Eickhout, Sir Graham Watson and Ms Pervenche Berès), Commission Vice-President Maroš Šefčovič, the Irish Deputy Permanent Representative Tom Hanney, Mr Jean-Paul Jacqué, former Director in the Council's Legal Service, and Professor Adrienne Héritier from the European University Institute. The conference was opened and closed by Vice-Presidents Pittella and Vidal-Quadras, respectively.

The lively discussions, which can still be viewed in their entirety¹⁸, served as an important reminder of the manner in which codecision has developed from its introduction in 1993 onwards, posed critical questions concerning current working methods and interinstitutional practices, and addressed certain overarching challenges that the institutions, and the actors directly involved in interinstitutional negotiations, increasingly face.

A full report of the conference, which includes detailed coverage of the three panels and a list of recommendations made by speakers during the conference, can be found on the Conciliations and Codecision website.¹⁹

¹⁷ The three actions brought by Parliament against the Council for the latter's use of a legal base repealed with the entry into force of the Treaty of Lisbon are ongoing: Case C-317/13 (7 June 2013), Case C-540/13 (15 October 2013), Case C-679/13 (19 December 2013).

¹⁸ The conference was webstreamed live:

Sessions 1 and 2:

<http://www.europarl.europa.eu/ep-live/en/other-events/video?event=20131105-0900-SPECIAL>

Session 3:

<http://www.europarl.europa.eu/ep-live/en/other-events/video?event=20131105-1230-SPECIAL-UNKN2>

¹⁹ <http://www.wcms2.ep.parl.union.eu/8087/code/events/20131105/report.pdf>.

1.2.2. Negotiations on the Multiannual Financial Framework instruments

In line with Article 312 TFEU, the multiannual financial framework (MFF) determines, over a period of at least five years, the maximum amounts of appropriations by categories of EU expenditure, which are limited in number and correspond to major sectors of EU activity.²⁰ The MFF exercise includes two important dimensions: the budgetary dimension, i.e. the MFF as such (the MFF regulation and accompanying Interinstitutional Agreement), and the policy dimension, which consists of the legal bases for the approximately 65 multiannual programmes and instruments for activities including research, cohesion, agriculture and development.²¹ This chapter focuses on the policy dimension of the MFF: the negotiations on the MFF-related instruments.

Since the entry into force of the Treaty of Lisbon, the MFF is a Treaty-based legally binding act (the MFF regulation) adopted unanimously by the Council after the consent of Parliament.²² In addition to its veto power on the MFF regulation, Parliament exercises co-legislative powers on almost all the related financial programmes, allowing it to shape the policies in different areas and to ensure democratic and political control over the programming of instruments.

In June 2011, a few weeks before the Commission's proposal for the MFF regulation²³ was presented, Parliament adopted a resolution on the policy challenges and budgetary resources after 2013.²⁴ From mid-June 2011 onwards, the Commission presented a series of legislative proposals for the financial programmes and instruments in different fields. The political agreement on the MFF figures was reached in June 2013 after two years of intense negotiations. Pending the result of the negotiations on the MFF regulation, the specialised committees already engaged in intense interinstitutional negotiations with the Council over the content of the sector-specific legislative proposals. The current MFF regulation, adopted in December 2013, covers the period 2014-2020 with six categories of expenditure that correspond to broad policy areas.²⁵ The final approval of MFF instruments took place between the autumn of 2013 and the last plenary session of the 7th legislative term in April 2014.²⁶

Figure 8 illustrates the key events of the negotiations on the 2014-2020 MFF.

²⁰ According to Article 312(3) TFEU, the MFF "shall determine the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations. The categories of expenditure, limited in number, shall correspond to the Union's major sectors of activity".

²¹ These include very diverse programmes and funds such as the EU Structural and Investment Funds (ESIFs), the Connecting Europe Facility (CEF), the Horizon 2020 programme, the Erasmus+ programme and the Creative Europe programme.

²² The four previous MFFs, while also legally binding, were part of interinstitutional budgetary agreements.

²³ COM(2011) 398 final: *Proposal for a Council Regulation laying down the multiannual financial framework for the years 2014-2020* (2011/177 APP).

²⁴ The SURE report (Report on Investing in the Future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe (2010/2211 (INI)).

²⁵ The MFF regulation is complemented by an Interinstitutional Agreement containing additional specific rules on budgetary discipline, cooperation in budgetary matters and sound financial management.

²⁶ A list of concluded MFF legislative files is included in Annex II.

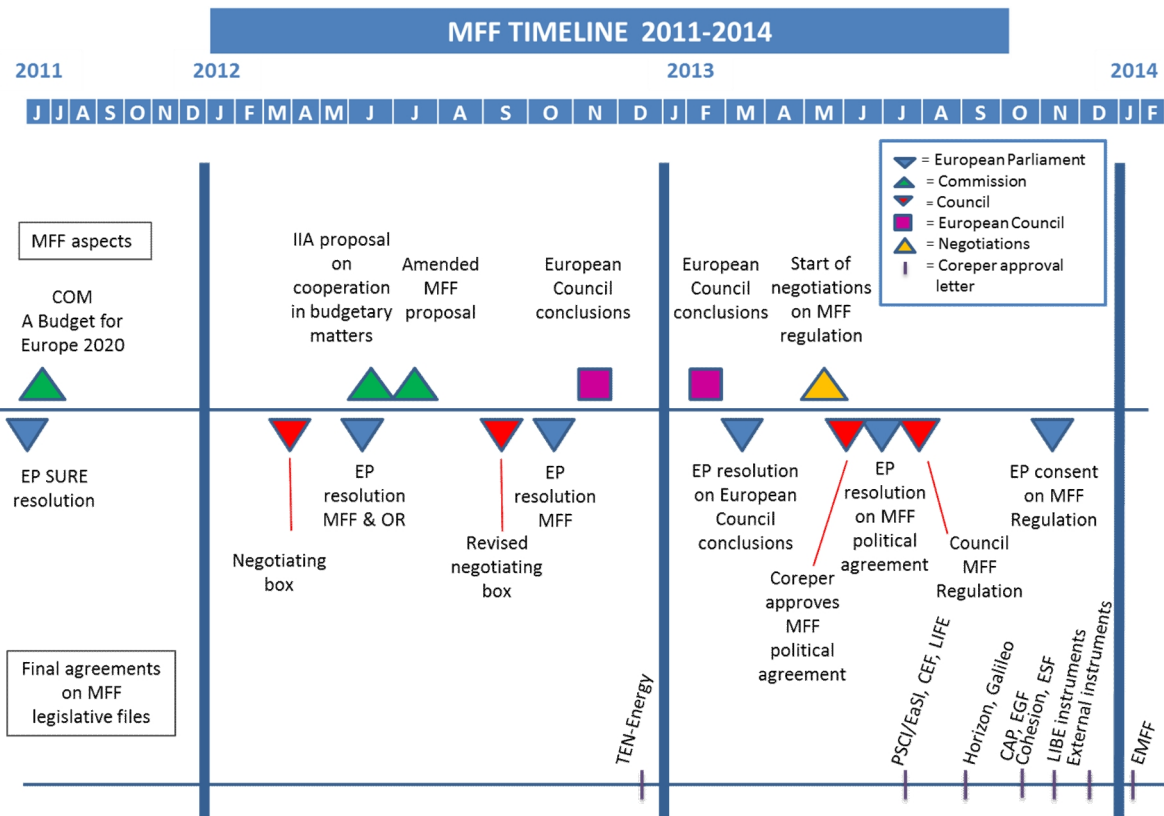


Figure 8: Key events during the MFF negotiations (2011-2014)

Challenges during the negotiations on the MFF legislative instruments

Coordination of the EP position

Finding an agreement on the MFF legislative programmes turned out to be a particularly challenging experience for Parliament. Considerable time and effort were invested to coordinate the MFF budgetary and legislative aspects. Considerable information exchange and internal coordination in Parliament were required to ensure consistency between the more than 65 MFF legislative files negotiated in parallel. In a series of resolutions from the beginning of negotiations, Parliament highlighted the importance of reaching an overall agreement on the MFF - including on the related legislative proposals - under the guiding principle of 'nothing is agreed until everything is agreed'. The Conference of Presidents ensured internal cooperation by setting up a contact group chaired by the President. At the administrative level, an MFF network was set up to ensure coordination on horizontal issues between the committee secretariats by facilitating the exchange of information about ongoing negotiations.

Heavy workload

The workload was considerable and the negotiations were challenging for all committees involved, particularly for the committees which gained codecision powers following the entry into force of the Treaty of Lisbon. The intensity of negotiations is reflected in the number of MFF trilogues reported by the committees (see figure 9): 364 trilogues including 24 joint trilogues.²⁷ The workload was

²⁷ Joint trilogues were organised to coordinate topical files such as the External Financing Instruments or under the procedure with joint committees of Rule 55 of Parliament's Rules of Procedure, e.g. the Connecting Europe Facility (CEF).

particularly heavy for the Committees on Regional Development (REGI) and on Agriculture and Rural Development (AGRI), which together with the Committee on Fisheries (PECH), negotiated extensive reforms of their policies, which represent over 80% of the budget of the new MFF. As an extreme example, the REGI Committee negotiated the Common Provisions Regulation (see the EU Structural and Investment Funds (ESIFs) in footnote 21) in a total of 54 trilogues.

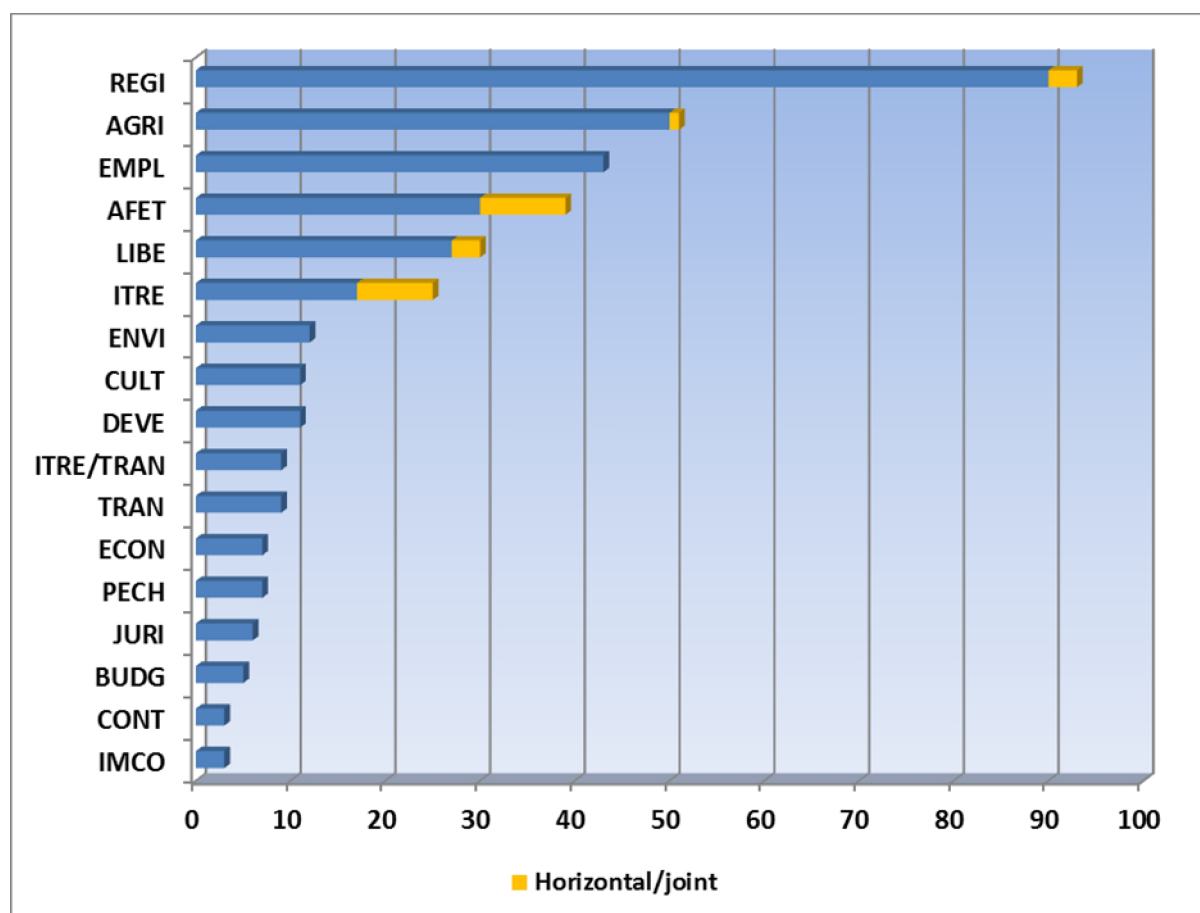


Figure 9: Committee trilogues on MFF legislative files (from July 2012 until April 2014)²⁸

Influence of the European Council

An additional challenge during the negotiations was the influence of the European Council on the Council's 'negotiating box'. Parliament advocated a clear demarcation line between MFF core issues and codecision matters and opposed, in line with Articles 14(1) and 15(1) TEU²⁹, the approach of the Council which tried to treat the European Council conclusions as non-negotiable.

Ensuring EP role in the implementation of programmes

Within the framework of its simplification agenda for the 2014-2020 MFF (which aimed to facilitate access to EU funding), the Commission simplified and introduced greater flexibility in the specific legislative proposals by adopting programmes of a more general nature, and fewer of them. As part

²⁸ Figures are based on the monthly information reported by the Conference of Committee Chairs to the Conference of Presidents (pursuant to Rule 73(2) of the Rules of Procedure). These statistics do not include technical preparatory meetings, and horizontal/joint trilogues (covering several files) are counted only once.

²⁹ Article 14(1) TEU states that Parliament shall exercise legislative functions "jointly with the Council" and Article 15(1) TEU states that the European Council "shall not exercise legislative functions".

of this approach, the Commission proposed to use multiannual and annual working programmes, to be adopted through implementing acts.

This was not acceptable to Parliament as the working programmes, given the general nature of the MFF programmes, would contain a variety of further policy choices, such as priorities, objectives and broad financial allocations, which according to the Treaty of Lisbon can only be decided upon in the basic act or through delegated acts.³⁰ The fact that the Commission proposed to take these decisions through implementing acts, pursuant to which Parliament would have had virtually no power, resulted in an interinstitutional dispute in almost all MFF legislative negotiations. The Conference of Presidents therefore flagged delegated acts as a key issue for Parliament in the MFF legislative negotiations and developed general principles to guide the negotiations.³¹ Strongly opposed by both the Council and the Commission, Parliament had to insist on the use of delegated acts or the basic act to take these policy choices.

Where delegated acts could not be accepted by the Council, the coordinated horizontal approach enabled Parliament to negotiate the detailed provisions in the basic acts in order to ensure its prerogatives as co-legislator and to exercise ex-ante democratic control by limiting the Commission's margin of discretion when implementing the programmes. In this respect, Parliament managed to include in the basic acts detailed provisions on general and operational objectives, principles and eligibility criteria, support measures, financial provisions and performance indicators, and/or delegated acts to increase, *inter alia*, flexibility and address unforeseen developments.

The next Parliament will need to scrutinise whether the Commission adequately implements the agreements endorsed in the basic acts. Thorough attention should be given to the different political commitments, also in the context of the political dialogues with Parliament, and to the scrutiny of the multiannual and annual financial programming documents and of the various delegated acts.

1.2.3. Interinstitutional negotiations and Parliament's internal rules of procedure

Following the progressive extension of Parliament's codecision powers, interinstitutional negotiations on legislative files have become standard practice for the adoption of EU legislation. They enable the co-legislators to reach agreement at any stage of the legislative procedure.³² For Parliament, the Rules of Procedure (Rules 73 and 74 and Annex XX³³) set out the general framework for conducting such negotiations, which was reformed at the end of 2012 in order to harmonise and

³⁰ With the entry into force of the Treaty of Lisbon, the co-legislators have the possibility to delegate the power to adopt non-legislative acts of general application to the Commission (see also section 1.2.4 on delegated and implementing acts).

³¹ The Conference of Presidents further underlined the necessity to strictly uphold the horizontal principles for the use of delegated acts in all negotiations on legislative programmes. These principles stated, *inter alia*, that elements such as the objectives, priorities and broad financial allocations should be adopted by delegated acts in the cases where they are not included in the basic act.

³² This interinstitutional cooperation is codified in the Joint Declaration of the Parliament, the Council and the Commission on practical arrangements for the codecision procedure (OJ C 145, 30.6.2007, p. 7; Annex XIX to the Rules of Procedure).

³³ Under the 7th parliamentary term these were Rules 70 and 70a and Annex XXI.

make binding certain internal practices (particularly at committee level) related to interinstitutional legislative negotiations.³⁴

Interinstitutional trilogue negotiations on legislative files

Negotiations between the institutions on legislative proposals generally take the form of tripartite meetings ('trilogues') between Parliament, the Council and the Commission. Trilogues may be organised at any stage of the legislative procedure (first, second or third reading), after the adoption of a negotiating mandate at the first or second reading stage. While there is no reference to trilogues in the Treaties, they have been progressively institutionalised, firstly in the revised Joint Declaration on practical arrangements for the codecision procedure,³⁵ subsequently with their explicit mention in Parliament's Rules of Procedure.

With codecision files now representing almost 90% of all legislative proposals adopted by the Commission, and the proportion of those concluded at the first or early second reading stage rising to 93% during the 7th legislative term,³⁶ trilogues have steadily increased in number over recent years and have become a defining feature of the ordinary legislative procedure.³⁷

During the 7th legislative term, over 1,500 trilogues took place on approximately 350 codecision files (see figure 10). Certain files required an uncommonly large number of trilogue meetings, particularly in the framework of the multiannual financial framework (see section 1.2.2. on the multiannual financial framework for more information), an extreme example being the Common Provisions Regulation (Committee on Regional Development (REGI)), which was agreed following 54 trilogues. However, two-thirds of files negotiated during the 2009-2014 term required only between one and four trilogues.

The Committee on Economic and Monetary Affairs (ECON) had by far the largest number of trilogue meetings (331), followed (some way behind) by the Committees on Environment, Public Health and Food Safety (ENVI), on Civil Liberties, Justice and Home Affairs (LIBE) and on Agriculture and Rural Development (AGRI) (with 172, 155 and 105, respectively). Together, the concluded codecision files of these four committees accounted for almost 50% of all trilogue negotiations.

³⁴ Rules 73 and 74 of Parliament's Rules of Procedure can be found in Annex III.

³⁵ See points 7 and 8 of the Revised Joint Declaration.

³⁶ See the 'Overview of codecision' in section 1.1 for more details.

³⁷ For a given file, each institution designates its negotiators and defines its negotiating mandate. As a general rule, trilogues involve political negotiations between the Presidency of the Council (in particular the chairs of Coreper I and II, but also chairs of working parties, and sometimes ministers), Parliament's negotiating team (comprising the Chairs of Parliament's relevant committees, its rapporteurs and shadow rapporteurs), and Commission representatives. The Commission acts as a mediator with a view to facilitating an agreement between the co-legislators, particularly at conciliation stage. If the trilogue negotiations lead to a final compromise text (agreement), it must be confirmed by the Council and Parliament. The agreement then needs to be adopted by the institutions according to their respective internal rules of procedure.

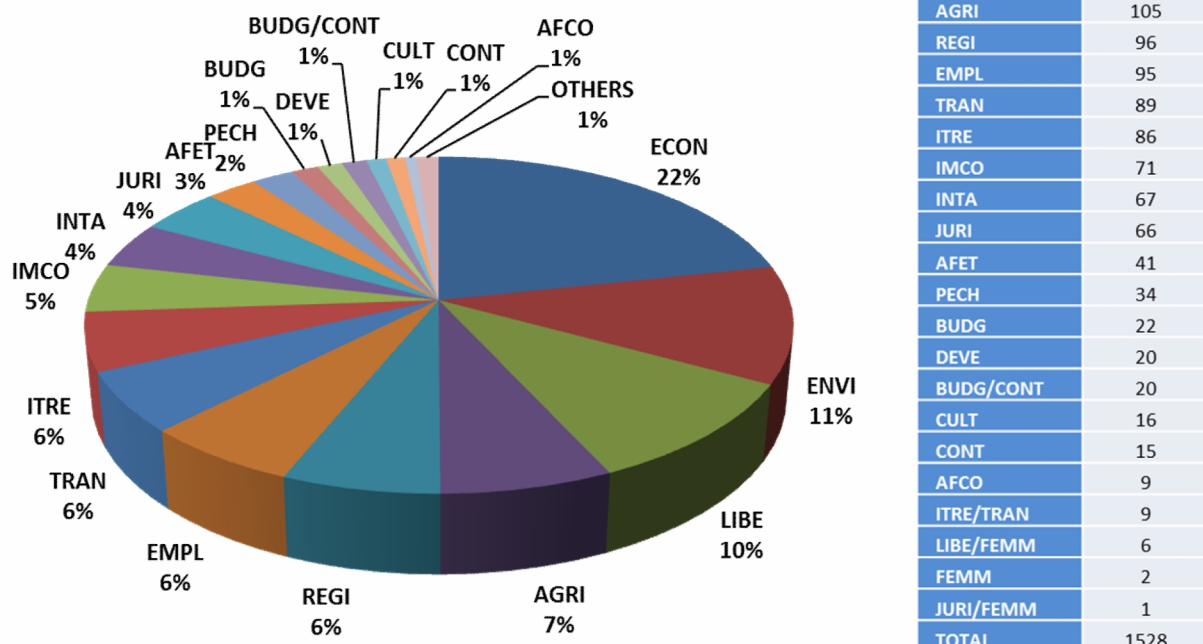


Figure 10: *Percentage of trilogues per committee during 7th legislative term*³⁸

Revision of Parliament's internal rules of procedure for interinstitutional negotiations

Given the increase in the number of codecision files adopted at early stages, and the parallel rise of behind-the-scene interinstitutional negotiations, concerns about the openness and accountability of the legislative process continued under the 2009-2014 legislature, despite the reforms introduced in Parliament at the end of the 6th parliamentary term.³⁹ In March 2011, the Conference of Presidents therefore initiated a review of Parliament's internal working methods related to interinstitutional negotiations in legislative procedures, calling on the Committee on Constitutional Affairs (AFCO) to make certain procedures related to the conduct of interinstitutional negotiations more effective, transparent and inclusive. The AFCO Committee's report (Rapporteur: Enrique Guerrero Salom) was adopted by plenary on 20 November 2012, and the revised Rules entered into force on 10 December 2012.

Under the new rules, a formal committee decision is required before negotiations are opened. There are two different procedures: (i) a standard procedure (Rule 73), under which negotiations can start

³⁸ Figures are based on the monthly information reported by the Conference of Committee Chairs to the Conference of Presidents (pursuant to Rule 73(2) of the Rules of Procedure), including 24 third reading trilogues held in preparation for the Conciliation Committee files. These statistics do not include technical preparatory meetings, and horizontal trilogues (covering several files) are counted only once.

³⁹ Following the outcome of the Working Party on Parliamentary Reform, which was set up by a decision of the Conference of Presidents of February 2007, a new rule on 'interinstitutional negotiations in legislative procedures' was introduced in the Rules of Procedure, to which a non-binding 'Code of Conduct for negotiating codecision files' - adopted by the Conference of Presidents in September 2008 - was annexed (the Code of Conduct still applies). For more information, see the Activity Report for the 6th parliamentary term (PE427.162v01-00) and the mid-term Activity Report for the 7th parliamentary term (DV\903361EN.doc).

immediately on the basis of the report adopted in committee, and (ii) an exceptional procedure (Rule 74), which applies to negotiations that start prior to the adoption of a report in committee, and involves the plenary.⁴⁰

Both procedures apply to all stages⁴¹ of all legislative procedures for which negotiations are planned, and include important binding elements:

- the decision to enter into negotiations requires an absolute majority of committee members, and must define the mandate and composition of the negotiating team;
- documentation (in the form of a four-column document) indicating the respective positions of the institutions involved and possible compromise solutions must be circulated to the negotiating team in advance;
- the negotiating team must report back to the committee after each trilogue;
- the committee must be informed of the final compromise, and the agreed text must be formally voted on in committee and, if approved, tabled for consideration in plenary.

First lessons learned

The revised Rules of Procedure have increased the political accountability and the inclusiveness of the interinstitutional negotiations in legislative procedures. Furthermore, they have enhanced the visibility of mandates and the transparency of proceedings in committee and of the negotiation process in trilogues, strengthened the role of the committee Chair (who plays an important coordination role), and have contributed to a more uniform application across committees of internal working methods on legislative files.

Since the entry into force of the amended rules, the large majority of decisions to enter into negotiations on codecision files were adopted under the standard procedure (Rule 73). Furthermore, instead of using the exceptional procedure (Rule 74) - which was used only for the CAP reform by the AGRI Committee and the LIBE Committee's MFF files - committees have used an 'alternative procedure', combining the standard procedure (Rule 73) with a plenary vote solely on the amendments (Rule 61(2) – referral back to the committee), either to adopt Parliament's mandate (in cases where the absolute majority of committee Members was not reached) or to confirm or amend the mandate already adopted at committee level (see figure 11).

⁴⁰ Following announcement in plenary, the committee decision on the opening of the negotiations prior to the adoption of the report can be approved, rejected or its content (mandate) amended.

⁴¹ These rules also apply to negotiations taking place after the adoption by Parliament of its position at first reading, it being understood that the latter will constitute the mandate of the negotiating team.

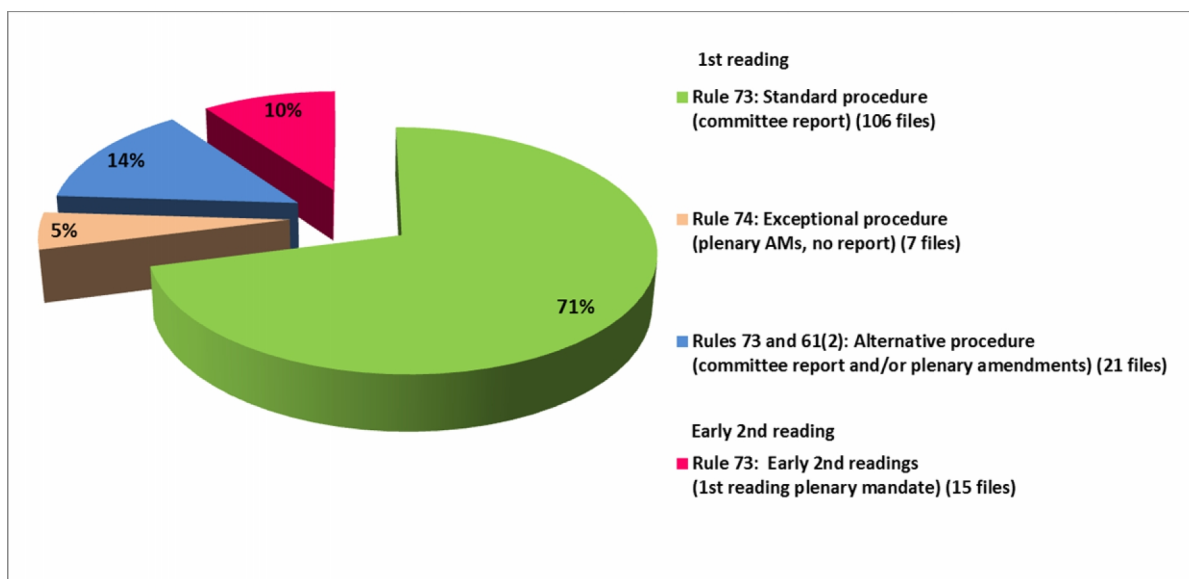


Figure 11: *Procedures used for decisions to enter into interinstitutional legislative negotiations*

1.2.4. Delegated and Implementing Acts

Delegated and implementing acts, which replaced the pre-Lisbon ‘comitology’ procedures, were one of the key features of relations between Parliament, the Council and the Commission during the 7th legislative term. Differing interpretations by the institutions of the respective Treaty provisions (Articles 290 and 291 TFEU) led to recurrent problems during trilogue negotiations on legislative files. While solutions were agreed on a case by case basis, the overarching difficulties remain unresolved and will be among the key institutional challenges that the next Parliament will have to face.

Introduction to the system of delegated and implementing acts

The term ‘comitology’ referred to the implementing powers given to the Commission in certain legislative acts, for the execution of which it was assisted by so called ‘comitology committees’, chaired by a Commission official and composed of Member State experts.⁴² One of the comitology procedures, the Regulatory Procedure with Scrutiny (RPS), which was introduced in 2006, gave Parliament a right of ‘veto’ over measures adopted by the Commission, subject to certain criteria.⁴³

The introduction of delegated acts (Article 290 TFEU), which are measures of general application to amend or supplement certain non-essential elements of the basic legislative act, further extended Parliament's prerogatives: its veto power is unrestricted, and it can at any moment revoke the Commission's power to adopt delegated acts under a given basic act. For implementing acts (Article 291 TFEU), Parliament's power is limited and it has no right of veto.

⁴² These implementing powers were conferred on the Commission to, for example, define procedural rules, update annexes, technical and market standards and formats for reporting, and set and update quotas.

⁴³ Council decision 1999/468/EC of 28 June 1999, as amended by decision 2006/512/EC of 22 July 2006, laying down the procedures for the exercise of implementing powers conferred on the Commission – OJ L200, 22.7.2006, p. 11. RPS measures result from legislative acts adopted before the entry into force of the Lisbon Treaty. They are progressively being replaced by delegated and implementing acts.

The Common Understanding on delegated acts and the implementing acts regulation

As the Treaty of Lisbon does not require the procedure for delegated acts to be further clarified in secondary legislation (as is the case for implementing acts⁴⁴) a non-binding Common Understanding was agreed in 2010 between Parliament, the Commission and the Council to streamline practices and clarify provisions.⁴⁵ It addresses issues such as the consultation of Parliament and the Council, the transmission of information, recess periods, the duration of the delegation, the period for objection, the urgency procedure and the procedure for early non-objections. Proposals for standard clauses are annexed to the Common Understanding.

New Rules of Procedure on delegated acts, implementing acts and RPS measures

Parliament's internal procedures concerning delegated and implementing acts are laid down in Rules 105, 106 and 107 of the Rules of Procedure, which entered into force on 21 May 2012. Rule 105 on delegated acts includes provisions on their announcement in plenary, reasoned motions for a resolution raising objections, the possibility for a political group or 40 Members to table resolutions in plenary, and the possibility to extend the deadline to raise objections, to express a so-called 'early non-objection' and to revoke the delegation. Rule 106 addresses the procedures in relation to implementing acts and RPS measures and Rule 107 the procedures to follow in the case of associated or joint committees.

Parliament also adopted Rule 40 of the Rules of Procedure, which enables the responsible committee to request the Committee on Legal Affairs (JURI) for an opinion on the delegation of legislative powers in Commission legislative proposals. The JURI Committee may also provide such an opinion on its own initiative.⁴⁶

Scrutiny of delegated and implementing acts and RPS measures

Since the entry into force of the Treaty of Lisbon, Parliament has received an increasing number of delegated acts, from only four in 2010, to 60 in the first three months of 2014.⁴⁷ In total the Parliament received 166 delegated acts during the 7th legislature. As figure 12 shows, Parliament continues to receive many RPS measures (963 since 2007) due to the fact that a large amount of legislative acts containing RPS provisions have not yet been aligned to the Treaty of Lisbon.

⁴⁴ The Treaty of Lisbon specifies that a regulation should lay down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. The so-called implementing act regulation was adopted under the ordinary legislative procedure in 2011 (Regulation (EU) No 182/2011; Rapporteur: József Szájer).

⁴⁵ Following the Communication from the Commission on the 'Implementation of Article 290 of the Treaty on the Functioning of the European Union' (COM/2009/0673) of 9 December 2009 and the subsequent Parliament resolution of 5 May 2010 on the power of legislative delegation (2010/2021(INI); Rapporteur: József Szájer).

⁴⁶ Under the 7th legislative term, the JURI Committee provided five opinions pursuant to Rule 40 (formerly Rule 37a): three files in the Committee on the Environment, Public Health and Food Safety (ENVI), one in the Committee on Agriculture and Rural Development (AGRI) and one in the JURI Committee.

⁴⁷ The institutions agreed that the Commission would not transmit any delegated acts to Parliament and the Council between 14 March 2014 and the end of the 2014 election recess period.

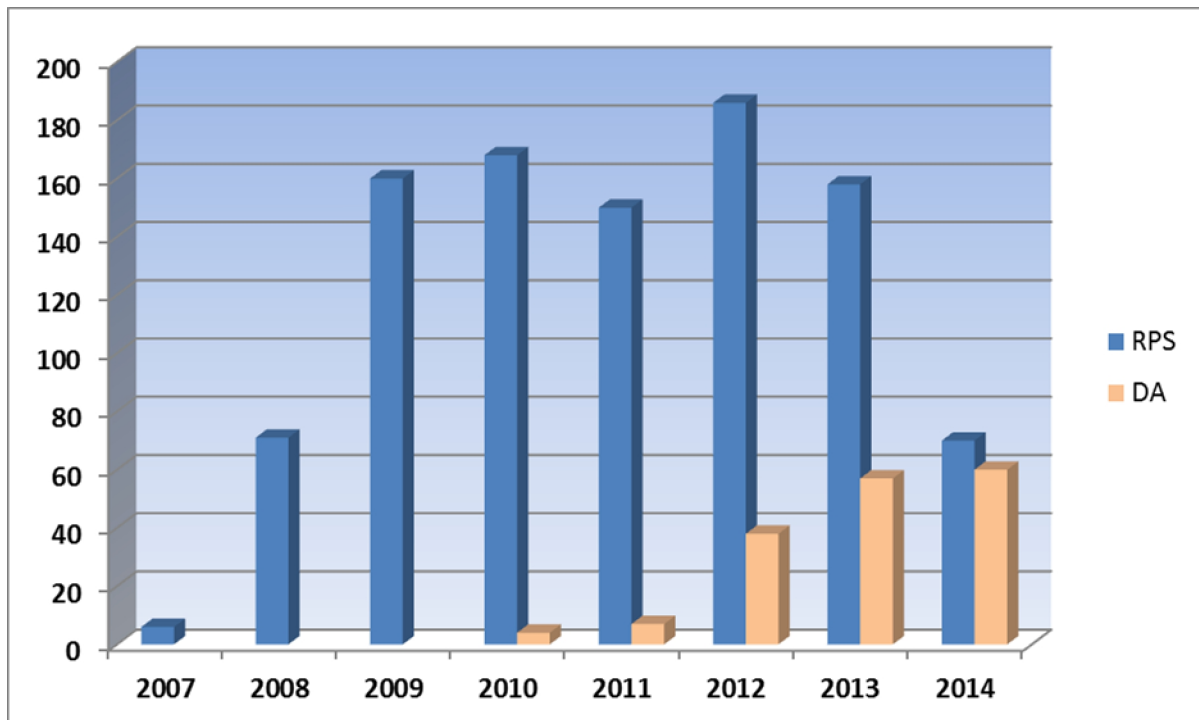


Figure 12: Final draft RPS measures and delegated acts (DA) submitted to Parliament per year

Parliament and the Council have each objected only once to a delegated act.⁴⁸ Parliament has objected to six RPS measures, four of which during the 7th legislature⁴⁹, while five further objections were rejected in plenary (four during the 7th legislature). With regard to implementing acts, Parliament at the end of the 7th legislature twice voted a resolution stating that the implementing measure exceeded the powers conferred on the Commission⁵⁰, although Parliament's opinion is not binding on the Commission (i.e. it has no right of veto).

Although Parliament vetoes to delegated acts and RPS measures have been rare, discussions at committee level on these acts and measures have been increasingly common, often triggered by an objection from one or more committee Members. Frequently, the responsible committees decided not to object to a given delegated act as a result of such discussions and after receiving further information and explanations from the Commission, in several cases following a commitment by the Commission that the problems identified by the committee would be resolved.

⁴⁸ Parliament objected to the Commission delegated regulation of 12 December 2013 amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers as regards the definition of 'engineered nanomaterials' (C(2013)08887 – 2013/29979(DEA); Text adopted: P7_TA-(PROV)20140218); the Council objected to the Commission delegated decision concerning the adoption of the common minimum standards referred to in Decision No 1104/2011/EU of the European Parliament and of the Council on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme.

⁴⁹ "The Capital Requirements Directive" (Responsible committee ECON; resolution T6-0607/2008), "Energy Labelling of TVs" (ITRE; T6-0357/2009), "Thrombin" (ENVI; T7-0182/2010), "Nutrition Claim" (ENVI; P7-TA(2012)0022), "Spirit Drinks (Absinthe)" (ENVI; P7-TA(2013)0083), "Recovered paper" (ENVI; P7-TA(2013)0544).

⁵⁰ "Pioneer 1507 GM Maize" (ENVI; P7_TA-PROV(2014)0036) and "Country of origin or place of provenance for meat" (ENVI; P7_TA-PROV(2014)0096).

Negotiations on provisions on delegated and implementing acts - Screening exercise

Since the entry into force of the Treaty of Lisbon, the choice between delegated and implementing acts has, in many negotiations, been a significant stumbling block to finding an agreement between the co-legislators and the Commission. The Council has proved extremely reluctant to accept the use of delegated acts, even for provisions which according to Parliament and the Commission clearly meet the Treaty criteria. The main problem for the Council is that there is no formal procedure for the consultation of national experts during the preparatory phase of the acts, contrary to the procedure for implementing acts and the RPS procedure, where there is a mandatory discussion and vote on the draft measure, allowing the national experts to significantly influence a measure before it is adopted by the Commission.

The Conference of Presidents (CoP) and the Conference of Committee Chairs (CCC) held several discussions on Council's opposition to delegated acts. On 13 January 2011, the CoP endorsed a common approach requiring all Parliament negotiating teams to always insist, in all interinstitutional negotiations, on the inclusion of delegated acts where the criteria are fulfilled and their use would be desirable. On 19 April 2012, the CoP further decided that agreements in which the institutional rights of Parliament concerning delegated acts were not safeguarded would *not* be put on the plenary agenda for a vote. This would be decided on the basis of a screening exercise carried out by the CCC in close cooperation with the competent Parliament services. Three general screening exercises have since taken place, for which the committees were asked to indicate the pending files on which the three institutions had different negotiating positions with regard to delegated acts.⁵¹ In addition, all final agreements scheduled to be voted in a plenary were screened by the CCC Chair, Mr Lehne, in order to inform the CoP by letter (21 letters since 2012) whether the agreements were acceptable from an institutional point of view.

The preparation of delegated acts in expert meetings – point 15 of the Framework Agreement

Although there is no formal procedure for the involvement of national experts in the preparation of delegated acts, the Commission in practice organises meetings in which they are consulted. In point 15 and Annex I of the revised Framework Agreement on relations between Parliament and the Commission⁵², the latter committed itself to provide Parliament with full information and documentation on such meetings and, if so requested by Parliament, to “invite Parliament’s experts to attend those meetings”.

Parliament's right to be invited to expert meetings (to attend as observer) that prepare delegated acts and to receive full information at the same time as the Member States represented an important step forward. Since the Framework Agreement entered into force at the end of 2010, Parliament has requested several improvements, firstly in a letter from President Buzek to President Barroso (in 2011), more recently (in 2014) in a letter by the CCC Chair to Commission Vice-President Šefčovič in relation, *inter alia*, to the required clear distinction between expert meetings and comitology committee meetings and to the need to ensure at least the same level of information and transparency for delegated acts as for the existing 'Comitology register'.

⁵¹ See letters from the Chair of the CCC to the Conference of Presidents on 13 June 2012, 21 November 2012 and 22 October 2013.

⁵² Framework agreement on relations between the European Parliament and the European Commission, OJ L 304, 20.11.2010, p.47.

Challenges for the next legislature

A first challenge under the next legislative term will be to reach agreement with the Council and the Commission on aligning all 'comitology' provisions in legislative acts that existed before the Treaty of Lisbon to delegated and implementing acts. Article 13 of the implementing act regulation provided for an automatic transitional alignment of all former 'right of scrutiny' provisions to implementing acts.⁵³ However, the existing provisions under the RPS remain in the basic acts until these acts are aligned to the Treaty of Lisbon.

In 2013 the Commission adopted three alignment proposals: while the first two omnibus proposals foresee an automatic alignment of the RPS provisions to delegated acts, the third omnibus proposal also aligns some to implementing acts. Parliament's first reading positions on these proposals were adopted on 25 February 2014 (Rapporteur: József Szájer, JURI Committee), with negotiations with the Council to begin only under the next Parliament.

A second challenge should be to agree with the Council and the Commission on common criteria for the application of Articles 290 and 291 TFEU to ease the work of legislators. Parliament's position for likely forthcoming negotiations was adopted in its resolution of 25 February 2014 on delegated and implementing acts (2012/2323(INI); Rapporteur József Szájer, JURI Committee), which provides a non-exhaustive list of criteria that should guide Parliament.

Related to these two challenges is the recent initiative of the Council to amend provisions on the consultation of experts in the Common Understanding on delegated acts "in the hope avoiding a repetition of the difficulties [of the 7th legislative term] under the next legislative term".⁵⁴ The Council has argued that more clarity on the criteria "will not suffice to unblock the situation as long as the issue of consultation of experts in the preparatory phase of delegated acts is not properly addressed". It will be up to the new Commission and Parliament to decide how to deal with this initiative by the Council.

1.2.5. Consent

The 'consent' procedure, just like the pre-Lisbon assent procedure that it replaced, gives Parliament a de facto right of veto. 'Consent' can be either a legislative or a non-legislative procedure.⁵⁵ The scope of application of both forms was significantly extended under the Treaty of Lisbon, and the implications of this reinforced parliamentary oversight have been considerable, both on the working practices within Parliament and on interinstitutional relations.

⁵³ When a legislative act is under revision, the co-legislators can decide otherwise, if they are of the opinion that the choice of the procedure is not adequate.

⁵⁴ By letter of 20 February 2014 the Chair of Coreper II informed both the President of the Parliament and of the Commission about this initiative.

⁵⁵ This distinction was introduced by the Treaty of Lisbon. Under the latter, only acts adopted in accordance with the ordinary or special legislative procedures are therefore formally considered as legislative acts (see Article 289(3) TFEU, according to which "legal acts adopted by legislative procedure shall constitute legislative acts"). The converse is also true, irrespective of the content of the act. In practice, however, the distinction can be artificial.

Parliament's consent as a special legislative procedure, defined in Article 289(2) TFEU, is now required in a variety of fields.⁵⁶ But the key innovation compared to the assent procedure is rather in the application of 'consent' as a non-legislative procedure, with Parliament's role in and influence over the Union's external affairs, and in particular on the external dimension of internal policy areas, considerably strengthened by the Treaty of Lisbon. Indeed, according to Article 218(6)(a)(v) TFEU, the consent of Parliament is now required for all international agreements in fields to which the ordinary legislative procedure applies.⁵⁷

Impact at committee level

Parliament's new powers on international agreements had an immediate and considerable impact on the work of a number of committees, and in particular the Committees on International Trade (INTA), Civil Liberties, Justice and Home Affairs (LIBE), Transport and Tourism (TRAN), Fisheries (PECH), Industry, Research and Energy (ITRE) and Foreign Affairs (AFET).

Since the entry into force of the Treaty of Lisbon, Parliament has given its consent to 162 international agreements (IAs) (see figure 13). The INTA Committee was responsible for 28% (46 IAs) of these, the LIBE Committee for 19% (30 IAs), the TRAN Committee for 13% (21 IAs), the PECH Committee for 12% (20 IAs), and the ITRE and AFET Committees for 8% each (13 IAs each).

The Committees on the Environment, Public Health and Food Safety (ENVI), Legal Affairs (JURI), Employment and Social Affairs (EMPL), Culture and Education (CULT) and Development (DEVE) were responsible for one or more of the remaining 19 international agreements, which, together, amounted to approximately 12% of the total number.

⁵⁶ These include the establishment of a European Public Prosecutor's Office (Article 86(1) TFEU), provisions for elections of the Members of the European Parliament (Article 223(1) TFEU), the system of own resources of the Union (Article 311 TFEU), the multiannual financial framework (Article 312 TFEU), and for the subsidiary general legal basis (also referred to as the flexibility clause) (Article 352(1) TFEU). A full list of legal bases subject to the special legislative consent procedure can be found on the Conciliations and Codecision website. With the exception of the procedure for elections to the European Parliament (previously Article 190(4) TEC) and the subsidiary legal basis (previously Article 308 TEC), to which the assent procedure already applied, all represent new, modified or increased areas of competence for Parliament. Nonetheless, given the rather limited number and very specific nature of the legal bases, there has not been a significant change in the number of files adopted according to the special legislative consent procedure under the 7th legislative term. A majority of proposals tabled by the Commission during the 2009-2014 period were based on Article 352(1) TFEU. See <http://eur-lex.europa.eu/>.

⁵⁷ Previously, Parliament was merely consulted by the Council on international agreements that covered fields for which the codecision procedure was required for the adoption of internal rules (former Article 300 TEC). The 'assent' procedure only applied in limited cases, such as association agreements, agreements establishing a specific institutional framework by organising cooperation procedures, and agreements having important budgetary implications for the Community, which are also covered by Article 218(6) TFEU.

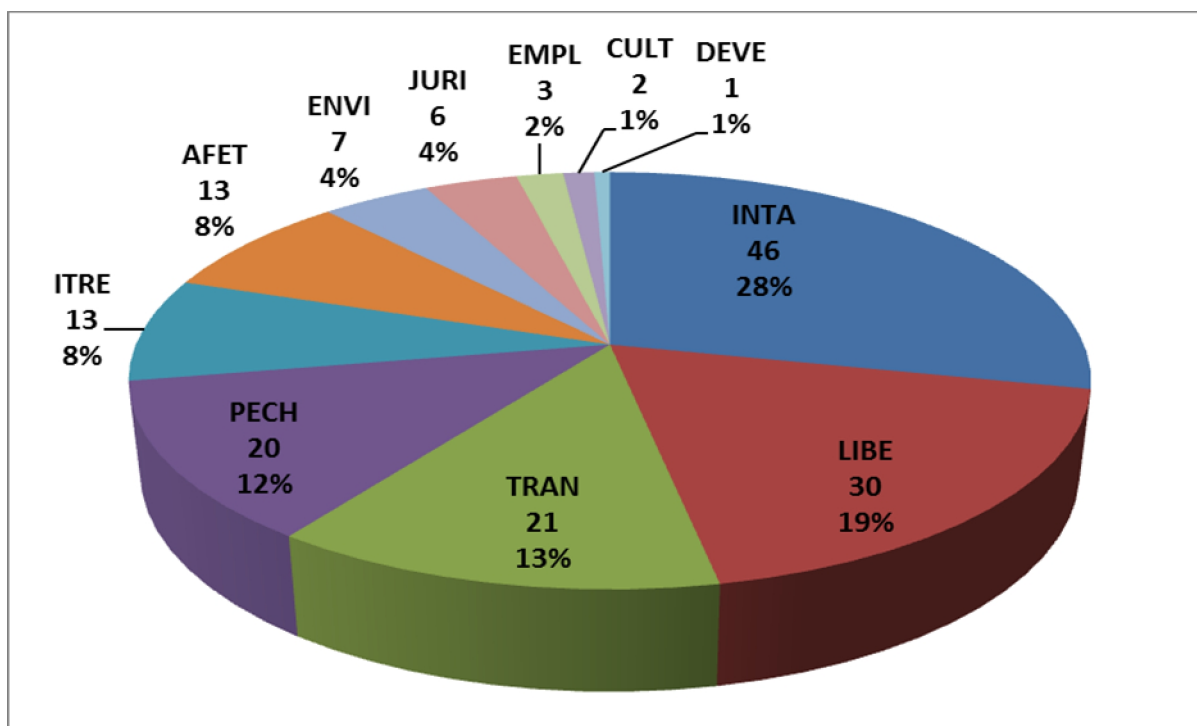


Figure 13: *Distribution of adopted consent procedures on international agreements per legislative committee*

Parliament's formal involvement comes only at the very end of the process, when the Council requests Parliament's consent, i.e. after the negotiations have been concluded and the agreement has been signed, but before the Council's final decision adopting the agreement. In accordance with Rule 99 of Parliament's Rules of Procedure, Parliament must decide by means of a "single vote on consent" (by a simple majority⁵⁸), taking into account the responsible committee's recommendation (which may be to approve or reject the proposed act). It cannot, therefore, propose amendments to the international agreement submitted for its consent.

Nonetheless, this has not prevented Parliament from exercising its new powers to considerable effect. It has done so using the primary tool at its disposal, namely its veto right, as the Council cannot adopt a decision (or a legislative proposal) without having obtained Parliament's consent, nor can it overrule Parliament's opinion, should it vote to reject the proposed act (see the examples below).

But this veto right has, in parallel, served as leverage to ensure that Parliament is also involved at earlier stages of the procedure, and that its rights pursuant to the Treaties, and other institutions' obligations and commitments towards it, are properly respected. Article 218(10) TFEU clarifies that Parliament must be "immediately and fully informed at all stages of the procedure". Furthermore, in the Framework Agreement on relations between Parliament and the Commission⁵⁹, the latter commits (in points 23-29) to, amongst other things, act in a manner "to give full effect to its obligations pursuant to Article 218 TFEU", including to provide information to Parliament "in sufficient time for it to be able to express its point of view (...) and for the Commission to be able to

⁵⁸ Unless a different majority is indicated in the corresponding Treaty article.

⁵⁹ OJ L 304, 20.11.2010, p. 47.

take Parliament's views as far as possible into account".⁶⁰ Pursuant to Rule 99(3), the committee responsible may present an interim report to Parliament, including a motion for a resolution containing recommendations for the modification or the implementation of the envisaged international agreement.

The following examples, for which the LIBE, PECH and INTA Committees were responsible, and covering new codecision policy areas of police cooperation (Articles 87(2) and 88(2) TFEU), the Common Fisheries Policy (Article 43(2) TFEU) and the common commercial policy (Article 207 TFEU), respectively, serve to illustrate how Parliament has effectively assumed and implemented its new powers of consent on international agreements.

The SWIFT agreement

The first demonstration of Parliament's newly acquired prerogatives concerned the SWIFT agreement between the EU and the US on the processing and transfer of Financial Messaging Data for the purposes of the Terrorist Finance Tracking Programme. At its plenary vote on 11 February 2010, Parliament withheld its consent, citing, in particular, data protection concerns⁶¹, in line with the recommendation made by the LIBE Committee. Following this rejection, the SWIFT agreement was renegotiated, and a number of safeguards and improved data protection standards were introduced.⁶² The revised agreement was re-submitted to Parliament, which gave its consent on 8 July 2010.⁶³

The EU-Morocco Fisheries Partnership Agreement

On 14 December 2011, Parliament rejected the proposed Fisheries Partnership Agreement (FPA) with Morocco⁶⁴, following the opinion of the PECH Committee's rapporteur (although the PECH Committee itself had recommended otherwise), who had expressed concerns about a range of economic and environmental shortcomings and legal issues concerning the territory of Western Sahara.⁶⁵ This marked the first occasion on which Parliament withheld its consent on an FPA.

On the same day, Parliament adopted a resolution calling on the Commission to initiate a fresh round of negotiations on a new Protocol, which, *inter alia*, had to be economically, ecologically and

⁶⁰ Annex 3 of the Framework Agreement lays down more detailed arrangements for the provision of information to Parliament concerning the negotiation and conclusion of international agreements. In addition, Rule 108 (formerly Rule 90) of Parliament's Rules of Procedure includes the possibility for the committee responsible to monitor the negotiations, calls on the responsible committee Chair(s) and rapporteur(s) to ensure that Parliament is provided with "immediate, regular and full information (...) at all stages of the negotiation and conclusion of international agreements", including the drafts and final texts of negotiating directives, by the Commission and the Council, and states that Parliament can "adopt recommendations and require them to be taken into account before the conclusion of the international agreement under consideration". Parliament's access to Council documents containing classified information (in non-CFSP areas), examples of which include negotiating directives for international agreements, is dealt with in a specific bilateral Interinstitutional Agreement of March 2014 (OJ C 95, 1.4.2014, p. 1).

⁶¹ See the resolution of 17 September 2009 (P7_TA(2009)0016) and the legislative resolution of 11 February 2010 (05305/1/2010 REV 1 – C7-0004/2010 – 2009/0190(NLE)).

⁶² Parliament adopted, on 5 May 2010, a resolution again outlining its concerns and recommendations for the agreements (P7_TA(2010)0143).

⁶³ Legislative resolution of 8 July 2010 (11222/1/2010/REV 1 and COR 1 – C7-0158/2010 – 2010/0178(NLE)).

⁶⁴ Legislative resolution of 14 December 2011 (11226/2011 – C7-0201/2011 – 2011/0139(NLE)).

⁶⁵ See recommendation of the Committee on Fisheries and the opinions of the Committee on Budgets and the Committee on Development (A7-0394/2011), also for the views of the rapporteur Carl Haglund.

socially sustainable, and should ensure compliance with human rights and international law.⁶⁶ Thereafter, negotiations were re-opened by the Commission, and a revised Protocol submitted to Parliament, which was approved in plenary on 10 December 2013.⁶⁷

The Anti-Counterfeiting Trade Agreement (ACTA)

A further case concerns ACTA, an international agreement on intellectual property rights, which Parliament rejected on 4 July 2012⁶⁸. This was in line with the recommendation of the INTA Committee, which, while recognising the importance of efficient and enforced global coordination in copyright protection, argued that the text of the agreement was not sufficiently clear or precise and could lead to unintended interpretations and consequences, particularly with regard to civil liberties.⁶⁹ In December 2012, the Commission withdrew its request (which pre-dated Parliament's rejection) for an opinion of the ECJ on the compatibility of ACTA with the European Treaties (and in particular with the EU Charter of Fundamental Rights), signalling that negotiations on the agreement are unlikely to resume.

Parliament and international agreements: first conclusions

As the examples above clearly show, Parliament's support for international agreements cannot be taken for granted. Parliament has demonstrated a willingness to make full use of its new powers under the revised consent procedure. This has meant that, while the Treaty of Lisbon only explicitly accords Parliament a formal role in the final stage of the process (and a right of information throughout), it has become a key and unavoidable actor during the negotiation phase of important (and often politically sensitive) international agreements.

As stated by the then President of Parliament, Mr Buzek, in reaction to Parliament's rejection of SWIFT, the Treaty of Lisbon has "given MEPs a right of veto over international agreements of this kind" and the Member States "must accept that the European Parliament will use this power in a way which reflects its own assessment of the concerns of Europe's citizens".⁷⁰

⁶⁶ Resolution of 14 December 2011 (P7_TA(2011)0573).

⁶⁷ Legislative resolution of 10 December 2013 (14165/2013 – C7-0415/2013 – 2013/0315(NLE)).

⁶⁸ Legislative resolution of 4 July 2012 (12195/2011 – C7-0027/2012 – 2011/0167(NLE)).

⁶⁹ Recommendation of 22 June 2012 (12195/2011 – C7-0027/2012 – 2011/0167(NLE)), A7-0204/2012.

⁷⁰ REF.: 20100211IPR68856, 11 February 2010.

2. Conciliation

2.1. Overview of conciliation procedures under the 7th legislative term

Less conciliation but the first conciliations in the external relations area

During the 7th parliamentary term a total of nine conciliation procedures (under 2% of files) took place. This is in absolute and relative terms a further decline in comparison to the 6th legislature, which saw 24 (5%) conciliation procedures.

The Committee on the Environment, Public Health and Food Safety (ENVI) was responsible for two files that led to conciliation, the Committees on Transport and Tourism (TRAN) and Industry, Research and Energy (ITRE) for one each. For the first time since the introduction of the codecision procedure, the remaining conciliations concerned files in the external relations area: one conciliation, on the External Financing Instruments, involved four files and three committees, namely the Committees on Foreign Affairs (AFET), Development (DEVE) and International Trade (INTA), and another was on a file for which the INTA Committee was responsible.

The Conciliation Committee⁷¹ failed to reach an agreement on one of the files, namely the proposal for a Regulation on Novel Foods (ENVI) and, subsequently, the proposed act was deemed not to have been adopted.⁷²

Some of the files which went to conciliation, e.g. Novel Foods (partly), the External Financing Instruments and macro-financial assistance (MFA) to Georgia, dealt in particular with the practical implementation of new post-Lisbon competences of Parliament, namely the delimitation between delegated and implementing acts and the choice of the procedure (advisory or examination) to be applied.

A summary of each of the conciliation procedures will be presented in the following part.

2.1.1. Conciliation on Macro-Financial Assistance to Georgia⁷³ (2013)

Negotiating team: Alejo Vidal-Quadras, Vice-President of the European Parliament and Chair of the EP Delegation⁷⁴, and Vital Moreira, rapporteur and INTA Chair

Procedure

The Council adopted its first reading position on 10 May 2012 and the plenary adopted Parliament's second reading position on 11 December 2012. On 16 May 2013 the Council informed Parliament

⁷¹ The Conciliation Committee is an interinstitutional body made up of representatives of Parliament and of the Council (two delegations). The Council Delegation has 28 Ministers or their representatives and the EP Delegation has 28 MEPs nominated by the political groups. There is a separate Conciliation Committee for each procedure.

⁷² The Conciliation Committee failed to reach an agreement only three times before, on Voice Telephony (1994), the Securities Committee (1998) and the Working Time Directive (2009). For three other files (Biotechnology (1995), the Takeover Directive (2001) and the Port Services Directive (2003)) the agreement reached in conciliation failed to find a majority in plenary at third reading.

⁷³ Further macro-financial assistance to Georgia (2010/0390 COD), Rapporteur: Vital Moreira.

⁷⁴ The Conciliation was due to be led by Vice-President Georgios Papastamkos, who was replaced by Vice-President Alejo Vidal-Quadras due to exceptional circumstances.

that it could not accept all of its second reading amendments and conciliation was therefore necessary.

Four trilogues (one on 16 April and three on 28 May 2013) and three meetings of the EP delegation (one meeting on 5 February and two on 28 May 2013) took place.⁷⁵ The Conciliation Committee on macro-financial assistance to Georgia was formally opened on the evening of 28 May 2013 and agreement was reached. The text and the joint Parliament and Council Declaration were published in the Official Journal on 14 August 2013.⁷⁶

Main elements of the compromise reached

European Union macro-financial assistance (MFA) aims to provide support to third countries experiencing short-term balance-of-payments difficulties. Its objective is to restore a sustainable external financial situation, while encouraging economic adjustments and structural reforms. MFA is intended strictly as a complement to International Monetary Fund financing. In the case of Georgia, agreement had to be found on the procedure to provide the MFA for an amount of EUR 46 million.⁷⁷

Before the entry into force of the Treaty of Lisbon, measures on economic, financial and technical cooperation with third countries were adopted by the Council acting by a qualified majority and after consultation of Parliament.⁷⁸ Such measures are now adopted according to the ordinary legislative procedure, with Parliament a co-legislator on these decisions.⁷⁹ In the case of Georgia, the Council and Parliament had different opinions on how the Memorandum of Understanding (MoU), which contains the economic policy and financial conditions to which the MFA is subject, should be adopted. For Parliament this had to be done in accordance with the *advisory* procedure (Council has no veto right but the Commission must take utmost account of Member States' opinion), while for the Council this had to be done by means of the *examination* procedure (Member States have a veto right).

The file in conciliation could not be seen in isolation, as it was (partly) linked to another, namely the proposal for a Horizontal Framework Regulation for macro-financial assistance to third countries, which was at the first reading stage (Rapporteur: Metin Kazak)⁸⁰ and on which parallel negotiations took place. The main issues of contention in discussions on the Horizontal Framework Regulation were the procedures for deciding upon individual programmes and how to adopt the MoU (via the advisory or the examination procedure).⁸¹ It was thought that a horizontal framework for MFA

⁷⁵ EP delegation: Vice-President Alejo Vidal-Quadras, Chair of the delegation, Vital Moreira, Rapporteur and Chair of INTA; Vice-President Pittella, Laima Liucija Andrikienė, Daniel Caspary, Christofer Fjellner, Mairead McGuinness, Godelieve Quisthoudt-Rowohl, Peter Šťastný, Manfred Weber, Iuliu Winkler, Paweł Zalewski, Maria Badia i Cutchet, George Sabin Cutaş, Tanja Fajon, Evgeni Kirilov, Bernd Lange, Metin Kazak, Graham Watson, Cecilia Wikström, Franziska Keller, Ulrike Lunacek, Emma McClarkin, Jan Zahradil, Paul Murphy, and Bastiaan Belder.

⁷⁶ Decision No 778/2013/EU of the European Parliament and of the Council of 12 August 2013 providing further macro-financial assistance to Georgia, OJ L 218/15 of 14.8.2013.

⁷⁷ This is a relatively modest amount compared to similar files, e.g. MFA to Jordan (EUR 180 million) and Tunisia (EUR 250 million).

⁷⁸ Former Article 181A TEC.

⁷⁹ Article 212 TFEU.

⁸⁰ COM (2011)0396.

⁸¹ Before the entry into force of the Treaty of Lisbon, providing MFA to third countries was based on ad hoc country-specific decisions of Parliament and the Council.

assistance would make the decision-making procedure smoother and quicker and would give more certainty to the process.

However, on 8 May 2013, the Commission informed Parliament's President by letter that, for institutional reasons related to its right of initiative, it had withdrawn the proposal for the Horizontal Framework Regulation.⁸² This decision was taken on the same day a possible last trilogue was to be held on that Regulation. Instead, the EP negotiating team and the Presidency of the Council organised an informal meeting and reached agreement on a so-called 'virtual compromise' text.

In the conciliation it was decided that the advisory committee procedure would be used for macro-financial assistance equal to or below EUR 90 million and the examination procedure for amounts above. Parliament and the Council also agreed that the adoption of the MFA Georgia Decision should be seen in a wider context, namely the need for a framework that should ensure sound and effective decisions on macro-financial assistance to third countries. To this end, the main elements of the 'virtual compromise' on the Horizontal Framework Regulation were laid down in a joint statement that was adopted together with the MFA Georgia Decision, on which agreement was found on the evening of the conciliation.⁸³ Parliament and the Council agreed that the adoption of decisions on macro-financial assistance operations should be based on considerations and principles set out in the joint statement and both committed to fully reflect these considerations and principles in the future individual decisions on granting the Union's macro-financial assistance.⁸⁴ The 'virtual compromise' as laid down in the joint statement then served as a model for other files concerning macro-financial assistance.⁸⁵

2.1.2. Conciliation on the external financing instruments (four files)⁸⁶ (2011)

Negotiating team: Alejo Vidal-Quadras, Vice-President of the European Parliament and Chair of the EP Delegation, Elmar Brok (replacing the AFET Chair Gabriele Albertini), Eva Joly (DEVE Chair) and Vital Moreira (INTA Chair), Kinga Gal, Charles Goerens, Barbara Lochbihler, Gay Mitchell and Helmut Scholz, rapporteurs

The aim of this file was to get a commitment from the Commission on including delegated acts for the future financing instruments (post 2013) as well as to find a solution for the current financing instruments (ICI+ and DCI/BAM). Any agreement had to be in line with the position of the

⁸² On 18 July 2013 the Council filed an action for annulment, C-409/13, on the basis of infringement of Article 13(2) TEU and Article 296 TFEU.

⁸³ Decision No 778/2013 EU of the European Parliament and of the Council of 12 August 2013 providing further macro-financial assistance to Georgia (OJ L 218 of 14.8.2013), p.15.

⁸⁴ The Commission did not oppose the text.

⁸⁵ See e.g. MFA to the Kyrgyz Republic of 22 October 2013 (OJ L 283 of 25.10.2014, p. 1), as well as MFA to the Hashemite Kingdom of Jordan (OJ L 341 of 18.12.2013, p. 4) and MFA to Tunisia (COM(2013)0860 – C7-0437/2013 – 2013/0416 (COD)).

⁸⁶ Financing instrument for cooperation with industrialised and other high-income countries and territories (ICI+) (2009/0059 (COD)), rapporteur: Helmut Scholz; Financing instrument for development cooperation (DCI) (2009/0060A (COD)), rapporteur: Gay Mitchell; Financing instrument for the promotion of democracy and human rights worldwide (EIDHR) (2009/0060B (COD)), rapporteurs: Barbara Lochbihler/Kinga Gál; Financing instrument for development cooperation: Banana Accompanying Measures (DCI/BAM) (2010/0059 (COD)), rapporteur: Charles Goerens.

Conference of Presidents outlined in the letter of President Buzek to President Barroso⁸⁷, according to which both co-legislators had to be involved in the adoption of key decisions (e.g. objectives, priorities, expected results, financial allocations in broad terms).

Following Parliament's second reading vote on 3 February 2011, conciliation was necessary as the Council was not in a position to accept Parliament's amendments to apply delegated acts to strategic decisions (e.g. multiannual strategy papers and multiannual indicative programmes) in the External Financing Instruments. The conciliation was chaired by Mr Vidal-Quadras, Vice-President of the EP. The constituent meeting of the EP delegation to the Conciliation Committee took place in Strasbourg on 15 February 2011.⁸⁸

The EP delegation decided to negotiate the four files as a package: the financing instrument for development cooperation (DCI), the financing instrument for development cooperation: Banana Accompanying Measures instrument (DCI/BAM), the financing instrument for the cooperation with industrialised and other high income countries and territories (ICI+) and the financing instrument for the promotion of democracy and human rights worldwide (EIDHR). The negotiations took place only on those instruments for which new strategy papers had to be presented before 2013, i.e. on the ICI+ and the DCI/BAM files, given that in the mid-term reviews of the DCI and the EIDHR it was agreed that these instruments would remain unchanged as no new strategy papers were foreseen until 2013.

Procedure

The coordination of this conciliation was very challenging as it involved three committees (AFET, DEVE and INTA), five rapporteurs and three committee Chairs. Eight trilogues (30 March, 11 and 25 May, 22 June, 6 July, 6 and 27 September and 19 October 2011) and six EP delegation meetings (15 February, 12 May, and 5 July, 20 September, 11 and 25 October) took place. The Conciliation Committee on the "External Financing Instruments"⁸⁹ was formally opened on the evening of 6 September 2011. It was agreed that the negotiations should be continued at trilogue level.

The last meeting of the EP delegation was held on 25 October 2011, where the compromise on the package was finally adopted. The conciliation was concluded by an exchange of letters (24 and 26 October 2011).⁹⁰ The plenary adopted the agreement on 1 December 2011. The texts and declarations were published in the Official Journal on 31 December 2011.⁹¹

⁸⁷ Letter of 7 February 2011.

⁸⁸ Members of the EP delegation: Alejo Vidal-Quadras, Vice-President and Chair; Elmar Brok, replacing the AFET Chair; Eva Joly, Chair of DEVE; Vital Moreira, Chair of INTA; Barbara Lochbihler, Kinga Gál, Gay Mitchell, Helmut Scholz, Charles Goerens, rapporteurs; Gabriele Albertini, Michael Gahler, Maurice Ponga, Godelieve Quisthoudt-Rowohl, José Ignacio Salafranca Sánchez-Neyra, Manfred Weber, Gianni Pittella, Ana Gomes, Thijs Berman, Richard Howitt; Gianluca Susta, Patrice Tirolien, Niccolò Rinaldi, Marietje Schaake, Nirj Deva, Robert Sturdy, Nikolaos Salavrakos.

⁸⁹ The Conciliation Committee was chaired by Mr Vidal-Quadras, Vice-President of the European Parliament, and Mr Dowgielewicz, the Polish Secretary of State for European Affairs. The Commission was represented by Andris Piebalgs, Commissioner.

⁹⁰ The deadline expired on 31 October 2011.

⁹¹ <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2011:347:SOM:EN:HTML>.

Main elements of the compromise reached

As a result of Parliament's insistence, the Commission accepted to considerably strengthen its Communication for the new MFF⁹², promising "the extensive use of delegated acts" for the future programmes in the external policy field. On this basis, the Council agreed to a joint statement ('Brok statement') taking note of the proposed use of delegated acts and committing itself to 'duly consider' them in the future external financing instruments.⁹³

The Commission Communication, together with the joint statement, improved considerably Parliament's negotiating position on delegated acts in the future multiannual financial instruments, although the latter, as adopted by the Commission, fell far short of the commitments made. Nonetheless, Parliament and the Council decided under the codecision procedure on important strategic decisions, in line with the letter of President Buzek.⁹⁴

On ICI+, Parliament and the Council agreed on several improvements, the main one being the inclusion of an Annex with the financial allocations of funds per priority area with minimum percentages.

Regrettably, on DCI/BAM, the Council was not willing to fully take on board Parliament's requests to be involved in the decision-making. However, the list of criteria fixing the amounts to be spent on the eligible countries left almost no discretionary powers to the Commission. Also, Parliament and the Council were to be informed of the intended use of the indicative financial allocations before the Commission adopts the multiannual support strategy.

2.1.3. Conciliation on novel foods (2010-2011)⁹⁵

Negotiating team: Gianni Pittella, Vice-President and Chair of the EP Delegation, Kartika Liotard, rapporteur, Pilar Ayuso and Jo Leinen, ENVI Chair

The Regulation on Novel Foods (EC 258/97) lays down the general principles for the authorisation of novel foods and food ingredients in the European Union. The purpose of the Commission proposal was to amend this Regulation in order to simplify and centralise the procedures for authorising novel foods and placing them on the market.

In the conciliation on Novel Foods the Conciliation Committee was not able to reach an agreement.

Procedure

Seven trilogues, seven meetings of the EP delegation and three meetings of the Conciliation Committee⁹⁶ (1 February, 16 and 28 March) took place. The final meeting of the Conciliation

⁹² Commission Communication 'A Budget for Europe 2020' (COM(2011) 500) states that "the future legal bases for the different instruments will propose the extensive use of delegated acts" and that the "democratic scrutiny of external aid must be improved. This could be achieved by the use of delegated acts in accordance with Article 290 of the Treaty for certain aspects of programmes, [...] placing the co-legislators on an equal footing."

⁹³ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2011.347.01.0030.01.ENG.

⁹⁴ Letter of President Buzek to President Barroso (7 February 2011).

⁹⁵ Proposal for a regulation of the European Parliament and of the Council on novel foods and amending Regulation (EC) No 1331/2008 and repealing Regulation (EC) No 258/97, rapporteur Kartika Tamara Liotard.

⁹⁶ The Committee was chaired by Gianni Pittella, Vice-President of the European Parliament, and Sándor Fazekas, Minister of Rural Development of Hungary. The delegation of the European Parliament was

Committee on 28 March 2011 lasted until the early hours of the next day (the day on which the deadline expired). It proved impossible to reach an agreement. Both Parliament and the Council tabled 'last offers', but neither side could accept the compromise proposed by the other. The EP delegation decided with 15 votes against (no votes in favour and 5 abstentions) to reject the final compromise proposal. Pursuant to Article 294(12) TFEU, the proposed act was deemed not to have been adopted.⁹⁷ The legislative process was concluded at this point, given that Parliament and the Council did not have the possibility to vote on a joint text at third reading.

Main outstanding issues

Delegated acts:

The Council refused to accept delegated acts for the authorisation procedure for novel foods, arguing against national experts losing their voting rights (which they had under the former comitology procedures). Parliament's Legal Affairs Committee (JURI) had for the first time adopted an opinion under Rule 40 of Parliament's Rule of Procedure⁹⁸, which supported Parliament's request for delegated acts.

Food from cloned animals, their offspring and descendants:

At second reading Parliament had adopted, with a large majority, a ban on food from cloned animals and their descendants. The arguments were based on animal health, welfare and ethical concerns. The Council first argued that food from cloned animals was safe for consumption, also underlining the practical difficulties (traceability of the food) and the possibility of a 'trade war' at the WTO. Afterwards, both Parliament and the Council agreed that a ban on food from cloned animals was needed. The discussions then focussed on the so called 'offspring' (first generation after the clone): the Parliament negotiating team was willing to abandon the ban on food from cloned animals in exchange for a comprehensive labelling system for the food derived from the offspring so that the consumer could make an informed choice when buying a product. The Council was only willing to accept a labelling obligation for fresh bovine meat from the offspring; the labelling for all other food products would be assessed in a report of the Commission and would, if appropriate, be introduced at a later stage. This was judged insufficient by the EP delegation, as it would not guarantee consumers' rights of information on the products they buy.

Possible explanations for the conciliation non-agreement:

It is difficult to precisely determine why no agreement was reached on this file in conciliation. Among the institutional difficulties was the hand-over of the file from the Belgian to the Hungarian Presidency of the Council, which gave the latter only limited time to finalise the negotiations. Crucially, Members also argued that the Commission did not play its Treaty role of 'honest broker' in a constructive way.

represented by Gianni Pittella, Vice-President and Chair of the delegation, Kartika Tamara Liotard, rapporteur; Jo Leinen, Elena Oana Antonescu, Pilar Ayuso, Elisabetta Gardini, Peter Liese, Sirpa Pietikäinen, Corien Wortmann-Kool, Kriton Arsenis, Karin Kadenbach, Linda McAvan, Dagmar Roth-Behrendt, Daciana Octavia Sârbu, Corinne Lepage, Satu Hassi, Bart Staes, Anna Rosbach, Struan Stevenson, Sophie Auconie, Christofer Fjellner, Cristina Gutiérrez-Cortines, Radvilė Morkūnaitė-Mikulėnienė, Marit Paulsen, Margrete Auken and Bas Eickhout. The Commission was represented by John Dalli, Commissioner.

⁹⁷ According to Article 294(12) TFEU, a proposed act is deemed not to be adopted if a joint text is not approved within six weeks after the Conciliation Committee is convened.

⁹⁸ Rule 37a under the 7th legislative term.

But perhaps the key point was that Members felt the final compromise was not enough to protect the interests of consumers. As a result the current Novel Foods Regulation remains in force. The Commission promised to adopt specific legislative proposals on cloning: these were tabled on 18 December 2013 in three draft laws on animal cloning and on novel foods.⁹⁹

2.1.4. Conciliation on passengers' rights¹⁰⁰ (2010)

Negotiating team: Rodi Kratsa-Tsagaropoulou, Vice-President and Chair of the EP Delegation, Antonio Cancian, rapporteur, Brian Simpson, TRAN Chair

The aim of this proposal was to provide passengers travelling in buses and coaches with rights comparable to those for other modes of transport such as railways and maritime transport.

At the stage of conciliation the most controversial issue was the scope of the future regulation. The Council's approach was that the Regulation should apply only to passengers using buses or coaches for a distance over 500 km. For Parliament this distance was not acceptable as it would have excluded a considerable number of bus connections and even whole Member State territories.

Procedure

Before the formal opening of the Conciliation Committee, three trilogues (14 September, 13 October, 16 November) and three EP delegation meetings (8 September, 19 October, 23 November) took place to prepare the ground for a possible agreement.

The Conciliation Committee¹⁰¹ met on 30 November 2010 to open and possibly conclude the conciliation procedure. After two trilogues and a meeting in a more restricted setting the EP delegation, following intense discussions, finally accepted the compromise package agreed with the Council.

⁹⁹ The proposals intend to ban the use of cloning in the EU for farm animals (bovine, porcine, ovine, caprine, and equine species) and the import of these animal clones. In the proposals the marketing of food from animal clones should also be prohibited. Cloning should not be prohibited for purposes such as research, conservation of rare breeds and endangered species or use of animals for the production of pharmaceuticals and medical devices; see COM(2013) 894 final: *Proposal for a Regulation on Novel Foods* (COD 2013/0435); COM(2013) 893 final: *Proposal for a Council Directive on the placing on the market of food from animal clones* (APP 2013/0434); and COM(2013) 892 final: *Proposal for a Directive on the cloning of animals of the bovine, porcine, ovine, caprine and equine species kept and reproduced for farming purposes* (COD 2013/0433). In Parliament the proposals are dealt with by the AGRI and ENVI Committees.

¹⁰⁰ Rights of passengers in bus and coach transport; cooperation between national authorities (2008/0237(COD)), Rapporteur Antonio Cancian.

¹⁰¹ The Committee was chaired by Rodi Kratsa-Tsagaropoulou, Vice-President of the European Parliament and Etienne Schouppe, Belgian State Secretary for Mobility. The delegation of the European Parliament was represented by Brian Simpson, Chair of TRAN; Antonio Cancian, rapporteur; Georges Bach, Mathieu Grosch, Dieter-Lebrecht Koch, Ádám Kósa, Marian-Jean Marinescu, Inés Ayala Sender, Saïd El Khadraoui, Debora Serracchiani, Izaskun Bilbao Barandica, Michael Cramer, Eva Lichtenberger, Carlo Fidanza, Werner Kuhn, Bogdan Kazimierz Marcinkiewicz, Hella Ranner, Spyros Danellis, Ismail Ertug, Guido Milana, Nathalie Griesbeck, Vilja Savisaar-Toomast. The Commission was represented by Siim Kallas, Commissioner.

Main elements of the compromise reached

Scope:

The Regulation shall apply to all regular bus or coach services of a scheduled distance longer than 250 km. For regular services of a shorter distance, passengers shall enjoy a number of basic rights focusing, in particular, on the needs of disabled persons and persons of reduced mobility (e.g. training of staff, compensation for damaged wheelchairs, etc.). With the exception of these basic rights, Member States may exempt domestic regular services from the application of the Regulation for a period of no longer than four years, renewable once.

Assistance to all passengers:

In the event of an accident, a cancellation or a delayed departure for more than two hours, passengers shall have the right, if necessary, to hotel accommodation for a total cost of EUR 80 and for a maximum of two nights. In the event of disrupted services due to severe weather conditions or major natural disasters, certain provisions of the Regulation shall not apply.

Assistance to disabled persons and persons of reduced mobility:

Bus and coach companies are required to provide assistance to any person who is disabled or has reduced mobility, provided the passenger informs the company of his/her needs 36 hours before departure at the latest. If the operator is unable to provide suitable assistance, the passenger with reduced mobility may be accompanied at no extra cost by a companion of their choice. Any loss of or damage to wheelchairs or other assistance equipment must be compensated by the company or the management body of the station responsible.

The plenary approved the conciliation agreement reached on the "Passengers' rights" (buses and coaches) by an overwhelming majority in February 2011. The text was published in the Official Journal of 28 February 2011.¹⁰²

2.1.5. Conciliation on Telecoms¹⁰³ (2009)

Negotiating team: Alejo Vidal-Quadras, Vice-President and Chair of the EP Delegation, Catherine Trautmann, rapporteur, and Herbert Reul, ITRE Chair

At the part-session of 6 May 2009, Parliament voted on the three proposals of the telecom package¹⁰⁴ on which agreement was reached with the Council at second reading. However, one amendment (the so-called amendment 138), which was not part of the agreement, was also adopted. This amendment required national regulatory authorities to promote the interests of EU citizens by, inter alia, "applying the principle that no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by the judicial authorities, notably in

¹⁰² http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2011.055.01.0001.01.ENG.

¹⁰³ Electronic communications: common regulatory framework for networks and services, access, inter-connection and authorisation (2007/0247 COD), rapporteur Catherine Trautmann.

¹⁰⁴ Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services. The proposed directive is part of a legislative package known as the Telecom Package'. Parliament and Council reached agreement on two other legislative proposals in the package in May 2009 (see COD/2007/0248 and COD/2007/0249).

accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threatened in which case the ruling may be subsequent". The Council did not accept the amendment as the "prior ruling by the judicial authorities" would create problems for Member States which do not have such a requirement before acting against an individual (for example, in cases involving dissemination of child pornography material through the Internet).

The Conciliation Committee on "Telecom"¹⁰⁵ met in the Parliament in the evening of 4 November 2009. After several hours of negotiations, the EP delegation finally approved a compromise text (by unanimity).

The Conciliation Committee also agreed as an A-point (without debate) to conclude the conciliation procedure on another legislative proposal (Regulation on statistics on plant protection products (COD 2006/0258, Rapporteur: Bart Staes)).

Procedure

Before the formal opening of the Conciliation Committee, three trilogues (29 September, 13 October, 22 October) and three EP delegation meetings (28 September, 7 October, 20 October) took place.

Main elements of the compromise reached

In addition to the agreement which was reached with the Council in second reading, Parliament adopted amendment 138, which required a "*prior ruling by the judicial authorities*" before restrictions on an EU internet user's fundamental rights may be imposed. Neither the Commission proposal nor the Council common position included such safeguards.

There were doubts on the legal validity of Parliament's amendment 138, as it seemed to exceed Community competences in this particular area. An alternative formulation was found.

Parliament insisted on laying down a high level of guarantees for internet users. The text agreed states that restrictions on a user's internet access may "*only be imposed if they are appropriate, proportionate and necessary within a democratic society*". Such measures may be taken only "*with due respect for the principle of presumption of innocence and the right to privacy*" and as a result of "*a prior, fair and impartial procedure*" guaranteeing "*the right to be heard (...) and the right to an effective and timely judicial review*".

The plenary approved the joint text on 24 November 2009. The text was published in the Official Journal on 18 December 2009.

¹⁰⁵ The Committee was chaired by Vidal-Quadras, Vice-President of the European Parliament and Åsa Torstensson, Swedish Minister for Communications. The delegation of the European Parliament was represented by Herbert Reul, Chair of ITRE; Catherine Trautmann, rapporteur; Rodi Kratsa-Tsagaropoulou, Ivo Belet, Bendt Bendtsen, Pilar del Castillo Vera, Gunnar Hökmark, Arturs Krišjānis Kariņš, Matthias Groote, Stavros Lambrinidis, Teresa Riera Madurell, Patrizia Toia, Marita Ulvskog, Lena Ek, Silvana Koch-Mehrin, Christian Engström, Philippe Lamberts, Malcolm Harbour, Jaroslav Paška, Lambert van Nistelrooij, Paul Rübig, Sabine Verheyen and Corinne Lepage. The Commission was represented by Viviane Reading, Commissioner.

2.1.6. Conciliation on pesticide statistics¹⁰⁶ (2009)

Negotiating team: Rodi Kratsa-Tsagaropoulou, Vice-President and chair of the EP Delegation, Bart Staes, rapporteur, and Jo Leinen, ENVI Chair

The aim of the proposal was to create a legal framework and define harmonised rules for the collection and dissemination of statistics on the sale and use of pesticides and, in particular, to define rules for data collection frequency, data collection methods and the format and periodicity of reporting obligations.

The proposed Regulation was part of a legislative package that included also the proposal for a Directive establishing a framework for Community action to achieve a sustainable use of pesticides and the proposal for a Regulation concerning the placing of plant protection products on the market. On both proposals an agreement between the co-legislators was reached in January 2009.

Procedure and main elements of the compromise reached

Negotiations between Parliament and the Council before Parliament's second reading led to a well-balanced agreement that was supported by the overwhelming majority of political groups. This agreement consisted of a set of 40 amendments, which mainly focused on:

- Replacement throughout the Regulation of the term 'plant protection products' with the term 'pesticides', which is also the definition included in the Directive on sustainable use, in order to ensure clarity and consistency of the whole legislative package.
- Inclusion of the concept of 'biocidal products', with the possibility in the future to extend the scope of the Regulation on Pesticide Statistics to cover the use of relevant 'biocides', in accordance with the results of an impact study.
- Better information and greater transparency concerning pesticides by publishing the relevant data on the Internet.
- Inclusion of a clear reference to the general legislative framework on statistics concerning the way statistics should be used (including the requirement of confidentiality).
- Comitology: introduction of the regulatory procedure with scrutiny concerning the requirements of the quality reports on data collection by the Member States.

However, due to a very low attendance of the plenary on the day of the second reading vote, the agreed set of amendments - though supported by the overwhelming majority of the Members present - did not obtain the necessary majority of all Members of Parliament, with the exception of one single amendment. Therefore, after a round of informal consultations between Parliament's negotiators and the Czech and subsequently the Swedish Presidencies, and based on a letter in which the rapporteur and a majority of the groups (EPP, S&D, ALDE, the Greens/EFA and the GUE/NGL group) reiterated their support for the provisional agreement reached in second reading, the Council agreed to reject the single amendment adopted and, consequently, to go to conciliation in order to adopt the set of amendments agreed.

¹⁰⁶ Regulation on statistics on plant protection products (COD 2006/0258), rapporteur: Bart Staes.

Parliament constituted its delegation to the Conciliation Committee by written procedure on 9 October 2009 and mandated its Chair, Kratsa-Tsagaropoulou, to address a letter to the Council reiterating Parliament's support for the provisional agreement reached in second reading. At the Coreper meeting on 14 October the Council confirmed its support for the draft joint text consisting of the common position modified in line with the set of amendments agreed at the informal negotiations in second reading. The EP delegation confirmed the draft joint text unanimously by written procedure.¹⁰⁷

On this basis the Conciliation Committee formally adopted the draft joint text as an 'A' point at its meeting on 4 November, at which the principal item on the agenda was the 'Telecom' conciliation. The plenary approved the conciliation agreement reached on "Pesticide statistics" by an overwhelming majority in November 2009. The text was published in the Official Journal on 10 December 2009.¹⁰⁸

2.2. Developments regarding conciliation

Several factors have had a considerable impact on the role of conciliation and its working methods. Key among these during the 7th parliamentary term was the continued trend towards early agreements. Furthermore, a number of the conciliations concerned (in part, at least) Parliament's newly acquired post-Lisbon competences (delimitation between delegated acts and implementing acts and the choice of committee procedure). It is striking that committees with newly acquired codecision powers under the Treaty of Lisbon defended these rights through to conciliation, in the face of opposition from the Council (Coreper II).¹⁰⁹

The reduction in the number of conciliations led to a further change in the working methods, which had already been initiated under previous legislatures. More work was done during the trilogue meetings and the full Conciliation Committee was only convened once there was a realistic chance of concluding the procedure. The trilogues that took place were mostly 'high level' trilogues, i.e. involving Ministers and Commissioners. It was particularly important that difficult decisions were taken at an appropriately high political level, as the presence of Ministers and Coreper Ambassadors

¹⁰⁷ Members of EP delegation voting: Rodi Kratsa-Tsagaropoulou, Chair and Vice-President; Jo Leinen, Chair of the Committee on the Environment and Public Health and Food Safety; Bart Staes, rapporteur; Pilar Ayuso, Françoise Grossetête, Christa Kläß, Esther de Lange, Horst Schnellhardt, Richard Seeber, Marianne Thyssen, Anja Weisgerber, Dan Jørgensen, Linda McAvan, Andres Perello Rodriguez, Daciana Octavia Sârbu, Åsa Westlund, Chris Davies, Corinne Lepage, Frédérique Ries, Satu Hassi, Martin Callanan, Julie Girling, Kartika Tamara Liotard, Anna Rosbach, Kriton Arsenis

¹⁰⁸ Regulation (EC) No 1185/2009 of the European Parliament and of the Council of 25 November 2009 concerning statistics on pesticides, OJ L 324, 10/12/2009.

¹⁰⁹ Coreper II, which is composed of the Member States' respective Permanent Representatives to the EU, prepares the work of Council configurations dealing with Economic and Financial Affairs, Foreign Affairs, General Affairs and Justice and Home Affairs. Coreper I, which is composed of the Member States' respective Deputy Permanent Representatives to the EU, prepares the work of Council configurations dealing with Competitiveness, Education, Youth, Culture and Sport, Employment, Social Policy, Health and Consumers, Environment, Transport, Telecommunications and Energy and Agriculture and Fisheries (only financial issues or technical measures on veterinary, phytosanitary or food legislation).

and of the Parliament delegation allowed positions to change in the course of conciliations and agreements to be reached.

In general terms, the conciliation procedures concluded have again demonstrated that the dynamics of a conciliation evening allow the conclusion of even very difficult negotiations, with good results for Parliament. Especially in policy areas new to codecision and where there is less experience of the procedure (external relations area), conciliations have proved their worth, with repercussions for future similar files.

It is also worth noting that conciliations were no longer dominated by the Deputy Permanent Representatives (Coreper I), who are used to intensive technical work since the early days of codecision, but that the Permanent Representatives of Coreper II have entered the fray, bringing with them different dynamics. The conciliation on the external financing instruments was particularly interesting, with a negotiating team from three different parliamentary committees and Coreper II Ambassadors trying to solve one single institutional issue related to Parliament's new competences (use of delegated acts) and its involvement in strategic decision-making in this post-Lisbon area. The Commission promised to take into account the outcome of this conciliation when presenting the new MFF proposals on the external financing instruments (2014-2020), although, for Parliament, these fell short of expectations, with delegated acts again featuring prominently in negotiations.

Finally, the other 'institutional' conciliation - the MFA Georgia file - contributed to a better delimitation of the use of the examination and advisory procedures within implementing acts, which had an effect on subsequent files in the same field.

3. Conclusions and recommendations

3.1 Conclusions

The key event of the 7th legislative term was the entry into force of the Treaty of Lisbon, which, with the introduction of the ordinary legislative procedure, considerably strengthened Parliament's role as legislative authority. While the full extent and potential of the Treaty of Lisbon will only be apparent with more experience of its implementation, and after certain legal interpretations are definitively addressed and disputes resolved (in the fields of agriculture or fisheries, for example), it is already clear now that Parliament has significantly consolidated its standing as a fully-fledged and responsible co-legislator. Parliament's powers and prerogatives matured and developed further, also as a result of the institution's ability to adapt to the new and evolving institutional framework and dynamics.

The term co-decision accurately signifies the joint and equal legislative role played by Parliament and the Council. The symbol of an era, and of Parliament's legitimate push for parity, it will, quite rightly, continue to be employed widely within and outside the institutions. Yet the new denomination – **the ordinary legislative procedure** – marks a veritable coming of age of the EU's legislative architecture. As demonstrated in this Activity Report, this is confirmed by the figures: while the number of codecision proposals adopted by the Commission has risen progressively from one legislature to the next (to 562 under the 7th legislative term), the most remarkable evolution, under the Treaty of Lisbon, has been the **proportional increase of codecision proposals** in comparison to other legislative procedures (in particular consultation), from under 50% in the 6th parliamentary term to almost 90% in the 7th parliamentary term. This of course coincided with the **significant extension of the scope of the ordinary legislative procedure** (which approximately doubled, from over 40 to 85 legal bases) and a sharp drop in the number of consultation proposals adopted by the Commission compared to the previous legislature. In fact, the 7th parliamentary term was also notable for the **considerable decrease in the total number of legislative proposals**, from 1041 in 2004-2009 to 635 in 2009-2014 (codecision and consultation combined).

The **impact on Parliament's committees has been significant**, particularly those which, pre-Lisbon, had only limited legislative powers. This is well-reflected in the more even distribution across committees of the workload on codecision files, which are no longer concentrated in the hands of a few. A closer look at the nature of the codecision files negotiated by the co-legislators reveals that there were far fewer Commission proposals in 'traditional' codecision policy areas, and that new codecision legal bases were quickly employed. The Committee on International Trade, which was responsible for 10% of codecision files under the 7th parliamentary term, is a notable example.

Without any doubt, however, in a continuation of a trend already observed under the preceding parliamentary terms, the most striking codecision-feature of the 7th legislative term remains the **extremely high proportion of files adopted at early stages of the legislative procedure**: 85% at first reading and a further 8% at early second reading. A mere 5% of files were concluded after a 'complete' second reading (i.e. following adoption by the Council), while fewer still went to conciliation (just under 2%, or 9 files). First readings have become standard practice, while conciliations - the stage of the procedure from which many of the inter-institutional practices are in reality derived - have become limited to very difficult files that are often politically or institutionally

sensitive. Several factors can explain the continued rise of such early reading agreements: the cultural 'rapprochement' of the institutions, their increasing familiarity with the codecision procedure, better interinstitutional cooperation at the strategic and agenda-setting levels, the willingness to work quickly, the more flexible procedural arrangements at first reading (where there are no time limits and Parliament votes by simple majority), the 'Coreper-isation' of the procedure in the Council, or the rotating Council Presidency 'scoreboard' mentality.

Evidently, the first-reading success-rate would not be possible without the **institutionalisation of the trilogue system**. With over 1,500 trilogues on approximately 350 codecision files under the 7th legislative term, tripartite interinstitutional negotiations have become the drivers of the codecision procedure. This has had important repercussions within Parliament, but also on interinstitutional relations and on the publicity of the EU legislative procedure more generally. While regular (and more structured) informal contacts and discussions between Parliament, the Council and the Commission have become commonplace on a majority of legislative files (thus improving the working methods and relations between them), there was an increasing awareness in Parliament of the need to clarify its **internal procedures related to the opening and conduct of interinstitutional negotiations on codecision files**. This was partly to improve and ensure greater consistency of practices across committees (based largely on the non-binding Code of Conduct), but also to clarify the roles of the various EP actors involved in trilogue negotiations (e.g. committee Chairs, rapporteurs, shadows) and a greater visibility and transparency, for Members and the public, of Parliament's negotiating mandates.

The Treaty of Lisbon also brought about other important changes to the EU institutional framework and dynamics. Firstly, with **Parliament's power of consent on international agreements** aligned with the scope of the ordinary legislative procedure, its role in and influence over the external dimension of internal policy areas have been considerably strengthened: Parliament acquired not only a veto right but also a means of leverage to ensure it is fully and promptly informed at all stages and more prominently involved during the negotiations. While it must continue to adapt to this new reality, for which practical arrangements and working methods will need to be fine-tuned (especially related to access to information), the first indications are that Parliament has the means at its disposal (and has demonstrated a willingness and ability to use them) to become a key and effective actor for the negotiation and conclusion of international agreements.

Secondly, the introduction of delegated acts in the Treaty of Lisbon extended the scope of **Parliament's power to scrutinise certain non-legislative acts**, over which it has an unrestricted veto right (contrary to the former Regulatory Procedure with Scrutiny, for which Parliament's veto was subject to certain conditions). In practice, however, the distinction between delegated and implementing acts proved difficult to implement: as the 7th legislature progressed, the institutions' divergent interpretations of Articles 290 and 291 TFEU became recurrent obstacles in negotiations on codecision files and, increasingly, a source of tension between Parliament, the Council and the Commission. The Regulatory Procedure with Scrutiny, introduced in 2007, had been easier for the Council to accept (Member States have expressed concern that their national experts are not consulted in a satisfactory way in the preparation of delegated acts, as is the case under the pre-Lisbon 'comitology' procedures).

Thirdly, with the extension of the scope of the codecision procedure, **negotiations on the multiannual financial framework legislative programmes** proved to be an extremely challenging exercise due to the considerable internal coordination and information exchange necessary, both at political and administrative level, and as a result of the heavy workload placed upon the committees. The lessons learned under the 7th legislative term should better prepare Parliament for any similar challenges under the next legislatures.

3.2 Recommendations

Against this background, we, as Vice-Presidents responsible for conciliation, would like to submit a series of recommendations to our successors, and to the next Parliament more generally. While **interinstitutional cooperation** has improved considerably over the years, certain experiences and lessons learned during the 7th legislative term point to areas where further improvements or clarifications would be welcome or necessary. In addition, although Parliament has sought to improve the consistency and visibility of its internal working methods related to interinstitutional negotiations (as described above and in a separate section of this Activity Report), the time is yet again ripe to reflect on how the institutions together can address certain understandable concerns about the **transparency of the decision making process**, particularly given the now wide-spread recourse to informal negotiations between the co-legislators and the Commission. Finally, two more specific but inter-related challenges await the next Parliament, notably on delegated and implementing acts and, more broadly, on scrutiny.

Interinstitutional relations

It remains difficult for Parliament to access the documents of Council working party and Coreper meetings - and impossible for it to attend them. This is an unjustifiable imbalance in relations between the institutions for two reasons: on the one hand, the Council (the rotating Presidency, the Member States, the General Secretariat) have mostly free access to, and are generally encouraged to attend and even contribute to, Parliament's equivalent meetings; on the other hand, the Commission is a key and prominent participant and interlocutor in Council meetings at all levels. As explained in this Activity Report, the implications are two-fold: the strengthening of the Council's negotiating hand in interinstitutional legislative negotiations with Parliament and a frequent perception that the Commission's Treaty-role of honest broker is compromised.

Under the 8th parliamentary term, the Council should take serious steps towards improving the transparency of its proceedings in order to ensure that the Treaty principle of legislative parity between the co-legislators is applied uniformly. Parliament should push for full access to Council documents (including preparatory documents at working group and Coreper levels), in the first instance, and subsequently reflect on its possible attendance at various Council bodies. Parliament should also request assurances from the Commission that the latter remains committed to playing its Treaty role of 'honest broker' when defending or negotiating its legislative proposals during all stages of the process, in line with the principle of equal treatment for Parliament and the Council.

Negotiations on the MFF revealed that the European Council can have a considerable influence on the legislative work and relations between Parliament and the Council. The Treaty is clear: the European Council has no legislative functions (Article 15(1) TEU); yet its strategic interventions in the

Council's 'negotiating box' affected Parliament's co-legislative role, creating unhelpful political tensions during the negotiations.

Parliament must do its utmost to ensure that the Commission always treats it as the equal institutional player that it is, and that the European Council refrains from becoming involved in the co-legislative work of Parliament and the Council.

Transparency of the codecision procedure

Inevitably, concerns about the transparency of the codecision procedure remained high on the political agenda. Under the 7th parliamentary term, Parliament sought to lead by example, again fine-tuning its Rules of Procedure and increasing further the openness and accountability of the decisions it takes (and mandates it adopts) prior to entering into interinstitutional negotiations with the Council.

As discussions during Parliament's Conference on '20 Years of Codecision' (see section 1.2.1. on 'interinstitutional relations') revealed, there is a general feeling among codecision practitioners that the procedure is efficient and effective, delivering important and quality legislation for citizens. Nonetheless, there is also a recognition that, while 100% openness of negotiations is neither possible nor necessary, certain practical measures could be envisaged in order to improve the transparency and publicity of the negotiations and adopted files.

For instance, at the Conference, Commission Vice-President Šefčovič proposed that the institutions consider establishing a public register on trilogues, which could make available to the public, *inter alia*, information on files under negotiation and the composition of negotiating teams, and, once agreement on a given file is reached, all relevant documentation. This is an idea that the institutions might reflect upon further together.

Delegated and implementing acts and scrutiny of MFF legislative instruments

Delegated and implementing acts (DIAs) were a key innovation of the Treaty of Lisbon. But as the 7th legislative term draws to a close, the extremely difficult negotiations on the issue of DIAs between the co-legislators and with the Commission in almost every file are still fresh in the minds. The next Parliament should engage with the Council and the Commission to resolve this issue, including through common criteria for the application of Articles 290 and 291 TFEU. Parliament's position for the negotiations is set out in its resolution of 25 February 2014 (Rapporteur József Szájer, JURI Committee). The political objective must be to find a solution that fully preserves and respects Parliament's prerogatives under the Treaty of Lisbon, while preventing the co-legislators and the Commission from becoming embroiled in repetitive time- and energy-consuming discussions that slow (and occasionally threaten) the adoption of important legislative acts.

In the agreements on the MFF financial instruments, Parliament successfully negotiated detailed provisions in the basic acts in order to ensure its prerogatives as co-legislator and to exercise ex-ante democratic control by limiting the Commission's margin of political discretion when it implements the multiannual and annual financial programming documents. Parliament will have to develop and apply a range of scrutiny procedures to verify whether the Commission adequately implements the agreements endorsed in the basic acts adopted during the 7th legislature.

Glossary

Frequently used acronyms

CAP	Common Agricultural Policy
CCC	Conference of Committee Chairs
CFP	Common Fisheries Policy
COP	Conference of Presidents
COREPER	Committee of Permanent Representatives
DA	Delegated Acts
ECJ	European Court of Justice
MFA	Macro-Financial Assistance
MFF	Multiannual Financial Framework
RPS	Regulatory Procedure with Scrutiny
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on European Union

Standing parliamentary committees

AFET	Committee on Foreign Affairs
DEVE	Committee on Development
INTA	Committee on International Trade
BUDG	Committee on Budgets
CONT	Committee on Budgetary Control
ECON	Committee on Economic and Monetary Affairs
EMPL	Committee on Employment and Social Affairs
ENVI	Committee on Environment, Public Health and Food Safety
ITRE	Committee on Industry, Research and Energy
IMCO	Committee on Internal Market and Consumer Protection
TRAN	Committee on Transport and Tourism
REGI	Committee on Regional Development
AGRI	Committee on Agriculture and Rural Development
PECH	Committee on Fisheries
CULT	Committee on Culture and Education
JURI	Committee on Legal Affairs
LIBE	Committee on Civil Liberties, Justice and Home Affairs
AFCO	Committee on Constitutional Affairs
FEMM	Committee on Women's Rights and Gender Equality
PETI	Committee on Petitions

Annex I

List of legal bases providing for the ordinary legislative procedures in the Treaty of Lisbon¹¹⁰

This annex lists the legal bases to which the ordinary legislative procedure established by the Treaty of Lisbon applies.

The subject areas underlined are those for which the legal basis is completely new under the Treaty of Lisbon, or where there has been a change in procedure so that the relevant measures are now subject to the "codecision"/ordinary legislative procedure.

The numbers of the articles in the TEU and TFEU are those in the consolidated version of the Treaties (in accordance with the table annexed to the Treaty of Lisbon).

The previous Treaty articles are indicated in italics and, in cases where the Treaty of Lisbon modified the procedure, an indication is also given of the procedure that applied.

1. Services of general economic interest (Article 14 TFEU) (*Article 16 TEC*)
2. Procedures for the right of access to documents (Article 15, paragraph 3, TFEU) (*Article 255, paragraph 2*)
3. Data protection (Article 16, paragraph 2, TFEU) (*Article 286, paragraph 2*)
4. Measures to combat discrimination on grounds of nationality (Article 18 TFEU) (*Article 12 TEC*)
5. Basic principles for anti-discrimination incentive measures (Article 19, paragraph 2, TFEU) (*Article 13.2 TEC*)
6. Measures to facilitate the exercise of the right of every citizen of the Union to move and reside freely in the territory of Member States (Article 21, paragraph 2, TFEU) (*Article 18, paragraph 2, TEC*)
7. Citizens' initiative (Article 24 TFEU)
8. Customs cooperation (Article 33 TFEU) (*Article 135 TEC*)
9. Application of competition rules to the common agricultural policy (Art. 42, which refers to Article 43, paragraph 2, TFEU) (*Article 36 TEC: qualified majority in Council and simple consultation of EP*)
10. Legislation concerning the common agricultural policy (Article 43, paragraph 2, TFEU) (*Article 37, paragraph 2: qualified majority in Council and simple consultation of EP*)
11. Free movement of workers (Article 46 TFEU) (*Article 40 TEC*)
12. Internal market – social security measures for Community migrant workers¹¹¹ (Article 48 TFEU) (*Article 42 TEC: codecision – unanimity in the Council*)
13. Right of establishment (Article 50, paragraph 1, TFEU) (*Article 44 TEC*)
14. Exclusion in a Member State of certain activities from the application of provisions on the right of establishment (Article 51, second paragraph, TFEU) (*Article 45, second paragraph, TEC: qualified majority in the Council without participation of EP*)

¹¹⁰ Reproduced from A6-0013/2008, Report on the Treaty of Lisbon 2007/2286 (INI).

¹¹¹ With an 'emergency brake' mechanism: where a Member State considers that the measures concerned 'would affect fundamental aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system', it may request that the matter be referred to the European Council (thus automatically suspending the legislative procedure). The European Council must then within a period of four months either refer the matter back to the Council, thus enabling the procedure to continue, or ask the Commission to submit a new proposal.

15. Coordination of the provisions laid down by law, regulation or administrative action in Member States providing for special treatment for foreign nationals with regard to the right of establishment (Article 52, paragraph 2, TFEU) (*Article 46, paragraph 2, TEC*)
16. Coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons and the mutual recognition of qualifications (Article 53, paragraph 1, TFEU) (*Article 47 TEC: codecision – unanimity in the Council when this involved a change in Member State legislation*)
17. Extending provisions on freedom to provide services to service providers who are nationals of a third State and who are established within the Union. (Article 56, second paragraph, TFEU) (*Article 49, second paragraph, TEC: qualified majority in the Council without participation of EP*)
18. Liberalisation of services in specific sectors (Article 59, paragraph 1, TFEU) (*Article 52, paragraph 1, TEC: qualified majority in Council and simple consultation of EP*)
19. Services (Article 62 TFEU) (*Article 55 TEC*)
20. Adoption of other measures on the movement of capital to and from third countries (Article 64, paragraph 2, TFEU) (*Article 57, paragraph 2, first sentence, TEC: qualified majority in the Council without participation of EP*)
21. Administrative measures relating to capital movements in connection with preventing and combating crime and terrorism (Article 75 TFEU) (*Article 60 TEC*)
22. Visas, border checks, free movement of nationals of non-member countries, management of external frontiers, absence of controls at internal frontiers (Article 77, paragraph 2, TFEU) (*Article 62 TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP*)
23. Asylum, temporary protection or subsidiary protection for nationals of third countries (Article 78, paragraph 2, TFEU) (*Article 63, paragraphs 1 and 2, and Article 64, paragraph 2, TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP*)
24. Immigration and combating trafficking in persons (Article 79, paragraph 2, TFEU) (*Article 63, paragraphs 3 and 4, TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP*)
25. Incentive measures for the integration of nationals of third countries (Article 79, paragraph 4, TFEU)
26. Judicial cooperation in civil matters (excluding family law)¹¹² (Article 81, paragraph 2, TFEU) (*Article 65 TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP*)
27. Judicial cooperation in criminal matters – procedures, cooperation, training, settlement of conflicts, minimum rules for recognition of judgments (Article 82, paragraphs 1 and 2, TFEU)¹¹³ (*Article 31 TEU: unanimity in Council and simple consultation of EP*)

¹¹² Points (e), (g) and (h) of paragraph 2 of this article contain new legal bases; the other points were already covered by Article 65 TEC. Paragraph 3 of the same Article 81 TFEU also allows the Council to adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure.

¹¹³ An 'emergency brake' mechanism is provided for in paragraph 3 of this article: if a Member State considers that the measures concerned would affect fundamental aspects of its criminal justice system, it may request that the matter be referred to the European Council. In that case, the legislative procedure is suspended. If consensus is reached after discussion in the European Council within four months, the draft is referred back to the Council and the suspension is terminated. In case no agreement is reached, at least nine Member States may request that enhanced cooperation be established on the basis of the draft proposal.

28. Minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension (Article 83, paragraphs 1 and, possibly, 2, TFEU)¹¹⁴ (*Article 31 TEU: procedure laid down in Articles 34, paragraph 2, and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP*)
29. Measures to support crime prevention (Article 84 TFEU)
30. Eurojust (Article 85, paragraph 1, second subparagraph, TFEU) (*Article 31 TEU: procedure laid down in Articles 34, paragraph 2, and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP*)
31. Arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities (Article 85, paragraph 1, third subparagraph, TFEU)
32. Police cooperation (certain aspects) (Article 87, paragraph 2 TFEU) (*Article 30 TEU: procedure laid down in Articles 34, paragraph 2 and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP*)
33. Europol (Article 88, paragraph 2, first subparagraph, TFEU) (*Article 30 TEU: procedure laid down in Articles 34, paragraph 2 and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP*)
34. Procedures for scrutiny of Europol's activities by EP and national parliaments (Article 88 paragraph 2, second subparagraph, TFEU)
35. Implementation of the common transport policy (Article 91, paragraph 1, TFEU) (*Article 71 TEC*)
36. Sea and air transport (Article 100, paragraph 2, TFEU) (*Article 80, paragraph 2, TEC*)
37. Measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market to promote the objectives of Article 26 (Article 114, paragraph 1, TFEU) (*Article 95, paragraph 1, TEC*)
38. Measures to eliminate distortions in the internal market (Article 116 TFEU) (*Article 96 TEC: qualified majority in the Council without participation of EP*)
39. Intellectual property except language arrangements for the European intellectual property rights (Article 118, first paragraph, TFEU)¹¹⁵
40. Multilateral surveillance (Article 121, paragraph 6, TFEU) (*Article 99, paragraph 5, TEC: cooperation procedure*)
41. Modification of the Protocol on the Statutes of the ESCB and ECB (Article 129 paragraph 3, TFEU) (*Article 107, paragraph 5, TEC: unanimity in the Council or, depending on the case, qualified majority after assent of EP*)
42. Measures necessary for the use of the euro (Article 133, TFEU) (*Article 123, paragraph 4, TEC*)
43. Incentive measures for employment (Article 149 TFEU) (*Article 129 TEC*)
44. Social policy (Article 153, paragraphs 1, except points (c), (d), (f) and (g), and 2¹¹⁶, first, second and last subparagraphs, TFEU) (*Article 137, paragraphs 1 and 2 TEC*)
45. Social policy (equal opportunities, equal treatment and equal pay) (Article 157, paragraph 3, TFEU) (*Article 141, paragraph 3, TEC*)
46. European Social Fund (Article 164 TFEU) (*Article 148 TEC*)
47. Education (excluding recommendations) (Article 165, paragraph 4, point (a), TFEU) (*Article 149, paragraph 4, TEC*)
48. Sport (Article 165, paragraphs 2, point (g), and 4, TFEU)
49. Professional training (Article 166, paragraph 4, TFEU) (*Article 150, paragraph 4, TCE*)

¹¹⁴ An 'emergency break' mechanism is provided for in paragraph 3 of this article. See footnote 113.

¹¹⁵ In the absence of a specific legal basis, the Union previously took action in this area on the basis of Article 308 TEC (now Article 352 TFEU): *Unanimity in the Council and simple consultation of EP*.

¹¹⁶ In the areas covered by these points, the legislation is adopted by the Council unanimously, after consulting the EP. However, the second subparagraph of paragraph 2 contains a bridging clause whereby the Council may decide, unanimously, that the ordinary legislative procedure will be applied to points (d), (f) and (g) of paragraph 1.

50. Culture (excluding recommendations) (Article 167, paragraph 5, first indent, TFEU) (*Article 151 TEC: codecision – unanimity in the Council*)
51. Public health – measures to tackle common safety concerns in the health sphere¹¹⁷ (Article 168, paragraph 4, TFEU) (*Article 152, paragraph 4, TEC*)
52. Public health – incentive measures to protect human health and in particular to combat the major cross-border health scourges, and measures to tackle tobacco and alcohol abuse (Article 168, paragraph 5, TFEU¹¹⁸)
53. Consumer protection (Article 169, paragraph 3, TFEU) (*Article 153, paragraph 4, TEC*)
54. Trans-European networks (Article 172 TFEU) (*Article 156 TEC*)
55. Industry (Article 173, paragraph 3, TFEU) (*Article 157, paragraph 3, TEC*)
56. Measures in the area of economic and social cohesion (Article 175, third paragraph, TFEU) (*Article 159 TEC*)
57. Structural Funds (Article 177, first paragraph, TFEU) (*Article 161 TEC: unanimity in the Council and assent of EP*)
58. Cohesion Fund (Article 177, second paragraph TFEU) (*Article 161 TEC: qualified majority in the Council and assent of EP*)
59. European Regional Development Fund (Article 178 TFEU) (*Article 162 TEC*)
60. Framework Programme for Research (Article 182, paragraph 1, TFEU) (*Article 166, paragraph 1, TEC*).
61. Implementation of European research area (Article 182, paragraph 5, TFEU)
62. Implementation of the Framework Programme for Research: rules for the participation of undertakings and dissemination of research results (Articles 183 and 188, second paragraph, TFEU) (*Article 167 TEC*)
63. Supplementary research programmes for some Member States (Articles 184 and 188, second paragraph, TFEU) (*Article 168 TEC*)
64. Participation in research programmes undertaken by several Member States (Articles 185 and 188, second paragraph, TFEU) (*Article 169 TEC*)
65. Space policy (Article 189 TFEU)
66. Environment (Community measures to achieve environmental objectives except measures of a fiscal nature) (Article 192, paragraph 1, TFEU) (*Article 175, paragraph 1, TEC*)
67. Environment Action Programme (Article 192, paragraph 3, TFEU) (*Article 175, paragraph 3, TEC*)
68. Energy, excluding measures of a fiscal nature (Article 194, second paragraph, TFEU)¹¹⁹
69. Tourism - measures to complement the action of the Member States in the tourism sector (Article 195, second paragraph, TFEU)
70. Civil protection against natural and man-made disasters¹²⁰ (Article 196, second paragraph, TFEU)
71. Administrative cooperation in implementing Union law by Member States (Article 197, second paragraph, TFEU)
72. Commercial policy - implementing measures (Article 207, second paragraph, TFEU) (*Article 133 TEC: qualified majority in the Council without consultation of EP*)
73. Development cooperation (Article 209, paragraph 1, TFEU) (*Article 179 TEC*)
74. Economic, financial and technical cooperation with third countries (Article 212, second paragraph, TFEU) (*Article 181 A TEC: qualified majority in the Council and simple consultation of EP*)
75. General framework for humanitarian operations (Article 214, paragraph 3, TFEU)

¹¹⁷ The measures provided for in points (a) and (b) of paragraph 4 of this article were already provided for in Article 152 TEC. The measures provided for in points (c) and (d) are new.

¹¹⁸ All the legal bases provided for in this paragraph are new, with the exception of that for incentive measures for the protection of human health, which was already covered by Article 152 TEC.

¹¹⁹ In the absence of a specific legal basis, the Union previously took action in this area on the basis of Article 308 TEC (now Article 352 TFEU): *unanimity in the Council and simple consultation of EP*.

¹²⁰ See footnote 119.

76. European Voluntary Humanitarian Aid Corps (Article 214, paragraph 5, TFEU)
77. Regulations governing political parties and their funding (Article 224 TFEU) (*Article 191 TEC*)
78. Creation of specialised courts (Article 257 TFEU) (*Article 225A TEC: unanimity in the Council and simple consultation of EP*)
79. Modification of Statute of Court of Justice, except Title I and Article 64 (Article 281 TFEU) (*Article 245 TEC: unanimity in the Council and simple consultation of EP*)
80. Procedures for monitoring the exercise of implementing powers (Article 291, paragraph 3, TFEU) (*Article 202 TEC: unanimity in the Council and simple consultation of EP*)
81. European Administration (Article 298, second paragraph, TFEU)
82. Adoption of financial rules (Article 322, paragraph 1, TFEU) (*Article 279, paragraph 1, TEC: qualified majority in the Council*)
83. Fight against fraud affecting the Union's financial interests (Article 325, paragraph 4, TFEU) (*Article 280, paragraph 4, TEC*)
84. Staff Regulations of officials and Conditions of Employment of Other Servants of the Union (Article 336 TFEU) (*Article 283 TEC: qualified majority in the Council and simple consultation of EP*)
85. Statistics (Article 338, paragraph 1, TFEU) (*Article 285, paragraph 1, TEC*)

Annex II

List of concluded MFF instruments by committee

Committee on Foreign Affairs (AFET)

External financing instruments package (7 files)¹²¹ OJ L77 15.03.2014

- [European Neighbourhood Instrument](#) (ENI),
- [Financing instrument for the promotion of democracy and human rights worldwide](#) (EIDHR),
- [Instrument for Pre-accession Assistance](#) (IPA II),
- [Instrument for Stability](#),
- [Partnership instrument for cooperation with third countries](#) (PI),
- [Instruments for external action: common rules and procedures for the implementation](#)

Committee on Development (DEVE)

- [Financing instrument for development cooperation](#) (DCI) (part of the External Financing Instruments package - see above)
- [EU Aid volunteers](#) OJ L122 24.04.2014
- [EU/Greenland/Denmark partnership](#) (consultation procedure) OJ L76 15.03.2014

Committee on Budgets (BUDG)

- [European Investment Bank \(EIB\) loans, external mandate](#) OJ L135 08.05.2014

Committee on Budgetary Control (CONT)

- [Hercule III](#) OJ L84 20.03.2014

Committee on Economic and Monetary Affairs (ECON)

- [Fiscalis](#) OJ L347 20.12.2013
- [European Statistical programme 2013-2017: financial envelope for 2014-2017](#) OJ L354 28.12.2013
- [European statistical programme: financial envelope for 2013](#) OJ L39 09.02.2013
- [Financial reporting and auditing](#) OJ L105 08.04.2014

Committee on Employment and Social Affairs (EMPL)

- [Programme for Employment and Social Innovation \(EaSI\)](#) OJ L347 20.12.2013
- [European Globalisation Adjustment Fund \(EGF\)](#) OJ L347 20.12.2013
- [European Social Fund \(ESF\)](#) OJ L347 20.12.2013
- [Fund for European Aid to the most deprived](#) OJ L72 12.03.2014

Committee on Environment, Public Health and Food Safety (ENVI)

- [LIFE](#) OJ L347 20.12.2013
- [Union Civil Protection Mechanism](#) OJ L347 20.12.2013
- [3rd programme for the Union's action in the field of health](#) OJ L86 21.03.2014

Committee on Industry, Research and Energy (ITRE)

Horizon 2020 package (6 files) OJ L347 20.12.2013

- [Framework for Research and Innovation \(2014-2020\): rules for participation and dissemination,](#)

¹²¹ The External Financing Instruments package also included the financing instrument for development cooperation (DCI), which was under the responsibility of the DEVE committee.

- [Framework Programme for Research and Innovation 2014-2020](#),
- [European Institute of Innovation and Technology \(EIT\)](#),
- [European Institute of Innovation and Technology \(EIT\): strategic innovation agenda](#),
- [Specific programme implementing Horizon 2020](#) (consultation procedure),
- [Research and Training Programme of the European Atomic Energy Community \(2014-2018\)](#) (Euratom, consultation procedure)
- [Trans-European energy infrastructure guidelines](#) OJ L115 25.04.2013
- [Galileo](#) OJ L347 20.12.2013
- [Programme for the competitiveness of enterprises and SMEs, COSME 2014-2020](#) OJ L347 20.12.2013
- [Connecting Europe Facility \(CEF\)](#) (joint ITRE/TRAN file - Rule 55) OJ L348 20.12.2013
- [Instrument for nuclear safety co-operation](#) (Euratom, consultation procedure) OJ L77 15.03.2014
- [Trans-European telecommunications networks: guidelines](#) OJ L86 21.03.2014
- [Copernicus Programme](#) 2014-2020 OJ L122 24.04.2014
- Supplementary research programme / ITER (Euratom)
- [Nuclear decommissioning assistance programme in Lithuania](#) (Euratom, consultation procedure) OJ L346 20.12.2013
- [Nuclear decommissioning assistance programme in Bulgaria and Slovakia](#) (Euratom, consultation procedure) OJ L346 20.12.2013

Committee on Transport and Tourism (TRAN)

- [Connecting Europe Facility \(CEF\)](#) (joint TRAN/ITRE file - Rule 55) OJ L348 20.12.2013
- [Trans-European transport network guidelines](#) OJ L348 20.12.2013
- European Maritime Safety Agency (EMSA) - response to pollution caused by ships and to marine pollution caused by oil and gas installations

Committee on Internal Market and Consumer Protection (IMCO)

- [Customs programme](#) OJ L347 20.12.2013
- [Consumer programme](#) OJ L84 20.03.2014

Committee on Regional Development (REGI)

Cohesion Policy package (5 files) OJ L347 20.12.2013

- [Common Provisions Regulation \(CPR\)](#),
- [Cohesion Fund](#),
- [European territorial cooperation goal \(ETC\)](#),
- [European Regional Development Fund \(ERDF\)](#),
- [European grouping of territorial cooperation \(EGTC\)](#)
- EU Solidarity Fund: technical adjustments

Committee on Agriculture and Rural Development (AGRI)

CAP reform package (4 files) OJ L347 20.12.2013

- [Direct payments to farmers](#),
- [Single CMO](#),
- [European Agricultural Fund for Rural Development \(EAFRD\)](#),
- [CAP: financing, management and monitoring](#)
- Expenditure relating to the food chain, animal health, animal welfare and plant health

- Agricultural products: information provision and promotion measures

Committee on Fisheries (PECH)

- [European Maritime and Fisheries Fund](#) OJ L149 20.05.2014

Committee on Culture and Education (CULT)

- [Creative Europe](#) OJ L347 20.12.2013
- [Erasmus+](#) OJ L347 20.12.2013
- [Europe for Citizens](#) (consent procedure) OJ L115 17.04.2014

Committee on Legal Affairs (JURI)

- [Justice programme](#) (joint JURI/LIBE file - Rule 55) OJ L354 28.12.2013

Committee on Civil Liberties, Justice and Home Affairs (LIBE)

- [General provisions, Asylum and Migration Fund and Internal Security Fund](#) OJ L150 20.05.2014
- [Rights and Citizenship programme](#) OJ L354 28.12.2013
- [Justice programme](#) (joint LIBE/JURI file - Rule 55) OJ L354 28.12.2013
- [Pericles 2020](#) OJ L103 05.04.2014
- [Asylum and Migration Fund](#) OJ L150 20.05.2014
- [Internal Security Fund, external borders and visas](#) OJ L150 20.05.2014
- [Internal Security Fund, police cooperation](#) OJ L150 20.05.2014
- Pericles 2020, non-participating Member States (consent procedure)

Annex III

Rules 73 & 74 on interinstitutional negotiations in legislative procedures: decision on the opening of negotiations

Rule 73: Interinstitutional negotiations in legislative procedures

1. Negotiations with the other institutions aimed at reaching an agreement in the course of a legislative procedure shall be conducted having regard to the Code of Conduct laid down by the Conference of Presidents¹.

2. Such negotiations shall not be entered into prior to the adoption by the committee responsible, on a case-by-case basis for every legislative procedure concerned and by a majority of its members, of a decision on the opening of negotiations. That decision shall determine the mandate and the composition of the negotiating team. Such decisions shall be notified to the President, who shall keep the Conference of Presidents informed on a regular basis.

The mandate shall consist of a report adopted in committee and tabled for later consideration by Parliament. By way of exception, where the committee responsible considers it duly justified to enter into negotiations prior to the adoption of a report in committee, the mandate may consist of a set of amendments or a set of clearly defined objectives, priorities or orientations.

3. The negotiating team shall be led by the rapporteur and presided over by the Chair of the committee responsible or by a Vice-Chair designated by the Chair. It shall comprise at least the shadow rapporteurs from each political group.

4. Any document intended to be discussed in a meeting with the Council and the Commission ("trilogue") shall take the form of a document indicating the respective positions of the institutions involved and possible compromise solutions and shall be circulated to the negotiating team at least 48 hours, or in cases of urgency at least 24 hours, in advance of the trilogue in question.

After each trilogue the negotiating team shall report back to the following meeting of the committee responsible. Documents reflecting the outcome of the last trilogue shall be made available to the committee.

Where it is not feasible to convene a meeting of the committee in a timely manner, the negotiating team shall report back to the Chair, the shadow rapporteurs and the coordinators of the committee, as appropriate.

The committee responsible may update the mandate in the light of the progress of the negotiations.

5. If the negotiations lead to a compromise, the committee responsible shall be informed without delay. The agreed text shall be submitted to the committee responsible for consideration. If

¹ See Annex XX of the Rules of Procedure.

approved by a vote in committee, the agreed text shall be tabled for consideration by Parliament in the appropriate form, including compromise amendments. It may be presented as a consolidated text provided that it clearly displays the modifications to the proposal for a legislative act under consideration.

6. Where the procedure involves associated committees or joint committee meetings, Rules 54 and 55 shall apply to the decision on the opening of negotiations and to the conduct of such negotiations.

In the event of disagreement between the committees concerned, the modalities for the opening of negotiations and the conduct of such negotiations shall be determined by the Chair of the Conference of Committee Chairs in accordance with the principles set out in those Rules.

Rule 74: Approval of a decision on the opening of interinstitutional negotiations prior to the adoption of a report in committee

1. Any decision by a committee on the opening of negotiations prior to the adoption of a report in committee shall be translated into all the official languages, distributed to all Members of Parliament and submitted to the Conference of Presidents.

At the request of a political group, the Conference of Presidents may decide to include the item, for consideration with a debate and vote, in the draft agenda of the part-session following the distribution, in which case the President shall set a deadline for the tabling of amendments.

In the absence of a decision by the Conference of Presidents to include the item in the draft agenda of that part-session, the decision on the opening of negotiations shall be announced by the President at the opening of that part-session.

2. The item shall be included in the draft agenda of the part-session following the announcement, for consideration with a debate and vote, and the President shall set a deadline for the tabling of amendments where a political group or at least 40 Members so request within 48 hours after the announcement.

Otherwise, the decision on the opening of the negotiations shall be deemed to be approved.

