
*Vice-Presidents responsible for Conciliation
and
Chair of the Conference of Committee Chairs*

ACTIVITY REPORT

on the Ordinary Legislative Procedure

4 JULY 2014 - 31 DECEMBER 2016
(8th parliamentary term)

presented by

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Foreword

As Vice-Presidents responsible for conciliation in the European Parliament and as Chair of the Conference of Committee Chairs, we are honoured to present this mid-term Activity Report on the Ordinary Legislative Procedure covering the first half of the 8th legislative term (4 July 2014 - 31 December 2016).

This 8th Parliament is the first of the post-Lisbon era, during which its co-legislative powers, now tried and tested across policy areas, are a truly acquired part of its every-day business, including in areas where Member States' resistance was originally strongest. Of course, not all issues have been resolved, and political and legal tensions inevitably persist, including differing interpretations of certain Treaty Articles. But, in parallel to its traditional legislative work, Parliament's activities are now also focussed on new challenges, with scrutiny of secondary legislation adopted by the Commission and the implementation of EU laws by Member States an increasingly significant part of committee work.

The 2.5 year period covered in this Activity Report is the first since the entry into force of the Treaty of Maastricht during which there have been no conciliation procedures. While this is perhaps one of the most distinctive legislative features of the current parliamentary term so far, it is not wholly unexpected, given the trend over recent years towards more early agreements between the co-legislators. In many ways, these are signs of a well-functioning legislative procedure, of a productive and ever-closer working relationship between the co-legislators, and, within each of the institutions, of procedural methods that establish the framework and the boundaries for generally efficient (if not always straightforward) negotiations.

An important interinstitutional achievement since the start of Parliament's 8th term was the conclusion of the Interinstitutional Agreement on Better Law-Making between Parliament, the Council and the Commission. The Agreement, which entered into force in April 2016, reaffirms the three institutions' commitment to sincere and transparent cooperation throughout the legislative cycle, and contains positive and forward-looking provisions on delegated and implementing acts, international agreements, and the transparency of legislative procedures.

Indeed, transparency remains a horizontal issue of high importance, both in-house and towards the public. Further changes to Parliament's Rules of Procedure, the interinstitutional discussions underway on a future joint database on the state of play on legislative files, and better communication throughout the legislative cycle are steps in the right direction, and on which efforts will continue during the remainder of this Parliament's mandate.

We trust you will find this Activity Report an important source of information concerning the various aspects of Parliament's legislative activities.

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Introduction

The **elections to the 8th European Parliament** (22-25 May 2014) were the first since the entry into force of the Lisbon Treaty (December 2009), and therefore the first following which the provisions of Article 17(7) TEU, according to which the European Council must take into account the elections to the European Parliament when proposing its candidate for President of the Commission, were applied. As such, five European political parties nominated their '**Spitzenkandidaten**' to lead their respective election campaigns¹, the expectation being that the candidate of the party to win the most seats would be the next Commission President.

As well as establishing a direct link between the EP elections and the head of the Commission, thereby injecting an "additional dose of democratic legitimacy into the European decision making process"², one of the consequences was a **strengthening of the ties between the Parliament and the Commission**³; this stemmed also from the exchanges of views held between the incoming Commission President and the heads of Parliament's political groups in view of the 'Political Guidelines' for the next Commission.

The new Commission is openly more political⁴, and it took office, on 1 November 2014, with the pledge that it would "*be doing less, but (...) more effectively*"⁵. As the overview of the ordinary legislative procedure in part 1 of this activity report explains, one immediate and very visible consequence was a **significant decrease in the number of legislative proposals submitted by the Commission**: in 2015, it adopted the lowest number of proposals under what is now the ordinary legislative procedure since 1999. The medium term impact on Parliament's legislative activity remains to be clearly determined, as this reduction was largely counter-balanced, during the first half of the current legislative term, by the relatively large number of files that were 'carried over' as unfinished business from the 7th Parliament.

The statistical analysis of Parliament's codecision-related activities during the 8th Parliament's first half term reveals other noteworthy features. For the first 2.5-year period since the introduction of codecision under the Maastricht Treaty, there have been **no conciliation procedures**. And, not surprisingly, the **trend towards early agreements (i.e. at first or early second reading) is as strong as ever**, representing 97% of files concluded so far under the current term. Due to the rather large number of Parliament first reading positions inherited from the preceding legislative term, the proportion of early second readings is particularly high.

A close look at the committee distribution of concluded procedures and pending legislative proposals also reveals that the **Commission's legislative focus has changed in recent years**, away

¹ Mr Jean-Claude Juncker for the European People's Party, Mr Martin Schulz for the Party of European Socialists, Mr Guy Verhofstadt for the Alliance of Liberals and Democrats for Europe Party, Ms Ska Keller and Mr José Bové for the European Green Party, and Mr Alexis Tsipras for the Party of the European Left.

² Commission President-elect Juncker's '[Political Guidelines](#)' (15 July 2014).

³ The incoming Commission President Juncker encouraged the "special working relationship" between "the two Community institutions *par excellence*" ('[Opening Statement](#)' to the European Parliament, 15 July 2014).

⁴ "The Commission is not a technical committee", Juncker told the Parliament; "The Commission is political. And I want it to be more political. Indeed, it will be highly political" ('[Opening Statement](#)' to the European Parliament, 15 July 2014).

⁵ Commission President-elect [Juncker's speech of 10 September 2014](#).

from traditional codecision areas, such as the environment, to economic affairs and, more recently, justice and home affairs. In parallel to this policy-shift, the **current Commission's overall approach to legislation is essentially different to that of its predecessors**, with more focused and targeted agenda-setting (part of which includes a greater emphasis on packages of proposals, such as to reform the Common European Asylum System, or on the Digital Single Market, or on the Energy Union), and, crucially, with 'better regulation' as one of its cross-cutting priorities, which includes strengthening the Regulatory Fitness and Performance Programme (REFIT) to assess existing EU legislation, look at "serious sources of inefficiency and unnecessary burden" and "quantify the costs and benefits of actions"⁶.

Indeed, 'better regulation' was at the heart of an important interinstitutional accomplishment during the first half-term. Between June and December 2015, Parliament, the Council and the Commission negotiated a **new Interinstitutional Agreement on Better Law-Making**⁷ (BLM Agreement), which was approved by Parliament on 9 March 2016 and entered into force on 13 April 2016. It sets out a series of initiatives and procedures through which the three institutions, reaffirming their "sincere and transparent cooperation" during the legislative cycle, commit themselves to deliver high quality, comprehensible and clear legislation. Of direct relevance for the topics covered in this activity report, they agreed, inter alia, to improve the **transparency of legislative procedures** (including via a dedicated joint database on the state of play of legislative files), **the interinstitutional framework for delegated and implementing acts** (including the establishment of a Delegated Acts Register, and a commitment to negotiate non-binding delineation criteria), and **practical arrangements for cooperation and information-sharing regarding the negotiation and conclusion of international agreements**. Each of these elements, which have the potential to strengthen democratic accountability, on the one hand, and the principles of sincere cooperation and of institutional balance, on the other, are explained at greater length in the relevant sections of this report.

Another high priority theme of the 8th Parliament so far was the **transparency of the legislative procedure**, which occupied centre stage in many parliamentary and interinstitutional discussions, as well as, more generally, in the public sphere. While transparency has been a matter of increased significance within the institutions for a number of years - and to which Parliament has repeatedly sought to respond, notably by increasing the publicity and openness of its internal legislative procedures and activities - the Ombudsman's inquiry into the transparency of trilogues, which was opened in May 2015, highlighted certain areas and stages of the legislative cycle that merit better communication and further reflection. These issues, together with a presentation of the state of play regarding trilogue negotiations and an explanation of Parliament's 2016 review of its Rules of Procedure, are among the topics covered in part 2 on **interinstitutional legislative negotiations**.

Delegated and implementing acts, described and analysed in part 3, continue to be a difficult feature of relations between the co-legislators, particularly during legislative negotiations. While commitments made by the three institutions in the BLM Agreement aim to facilitate relations on a

⁶ Commission press release of 19 May 2015 on '[Better Regulation Agenda: Enhancing transparency and scrutiny for better EU law-making](#)'.

⁷ Parliament was represented in the negotiations by Mr Verhofstadt, who acted on behalf of President Schulz and under the guidance of the Conference of Presidents. The new IIA replaces the 2003 interinstitutional agreement on better lawmaking.

number of contentious issues, it remains to be seen whether there will be improvements in practice. In parallel, the 8th term has seen Parliament's committees successfully strengthen their scrutiny activities in this area, as a response to the large number of delegated and implementing acts adopted by the Commission.

This mid-term activity report concludes with an examination of Parliament's prerogatives and powers in the field of **international agreements** in part 4, where Parliament is maximising its influence in the most effective manner possible, seeking to ensure democratic scrutiny throughout the process leading to the conclusion of an international agreement. Recent case-law has also clarified Parliament's rights in this area, and the other institutions' corresponding obligations.

1 The ordinary legislative procedure: overview and figures

1.1 Proposals tabled by the Commission and adopted by the co-legislators

Since the beginning of the 8th parliamentary term, the Commission has tabled 192 proposals under the ordinary legislative procedure. This marks a significant drop when compared with the first half-terms under previous Parliaments, namely the 7th and 6th, during which the Commission tabled 321 and 244 files, respectively⁸.

A closer look at the figures reveals that the number of codecision⁹ proposals adopted by the Commission tends to increase over the first half of a legislative term, as the years 2004-2006 and 2009-2011 in figure 1 show. Even when this is not precisely the case, such as the 1999-2001 period, the first full calendar year always sees an increase in the number of proposals tabled when compared with the preceding year¹⁰. 2015 therefore appears as something of an anomaly: the 49 legislative proposals adopted that year represented a drop compared to 2014, and was in fact the lowest number of codecision proposals tabled by the Commission since 1999.

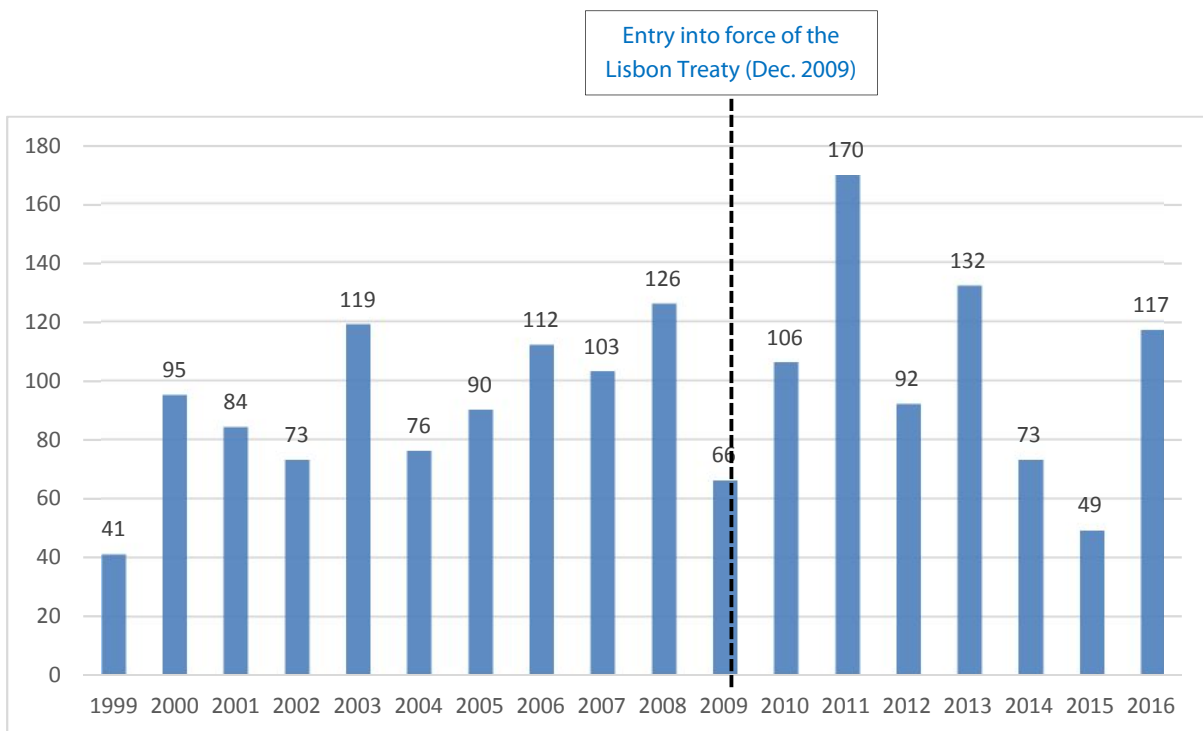


Figure 1: Number of codecision proposals adopted by the Commission per year since 1999¹¹

⁸ The peak during the 7th term is largely attributable to the extended scope of the ordinary legislative procedure under the Treaty of Lisbon, which almost doubled the number of legal bases.

⁹ The term codecision remains prevalent and, in this mid-term activity report, will be used interchangeably with the terminology of the Treaty of Lisbon.

¹⁰ This can be broadly explained by transitional periods between successive Commissions, or European Parliament election breaks.

¹¹ Source: [EUR-Lex](#).

Despite this fall in output by the Commission, the legislative activity under the 8th Parliament so far has not seen a corresponding drop. In total, since July 2014, the co-legislators have adopted 152 files under the ordinary legislative procedure¹². In fact, as figure 2 shows, the adoption rate during the first two full years of the current Parliament (mid-2014 to mid-2016) is relatively stable compared to the corresponding two-year periods of previous Parliaments: 124 codecision files were adopted under the 8th Parliament, 130 under the 7th Parliament (mid-2009 to mid-2011), 95 under the 6th Parliament (mid-2004 to mid-2006), and 115 under the 5th Parliament (mid-1999 to mid-2001). Legislative activity under the ordinary legislative procedure during the 8th parliamentary term remains therefore, at this stage, rather constant compared to the previous terms. It is worth bearing in mind that Parliament's legislative activity is always more intensive during its second half-terms, and the effects of the Commission's low legislative output in 2015 may be more keenly felt in the 2016-2017 period.

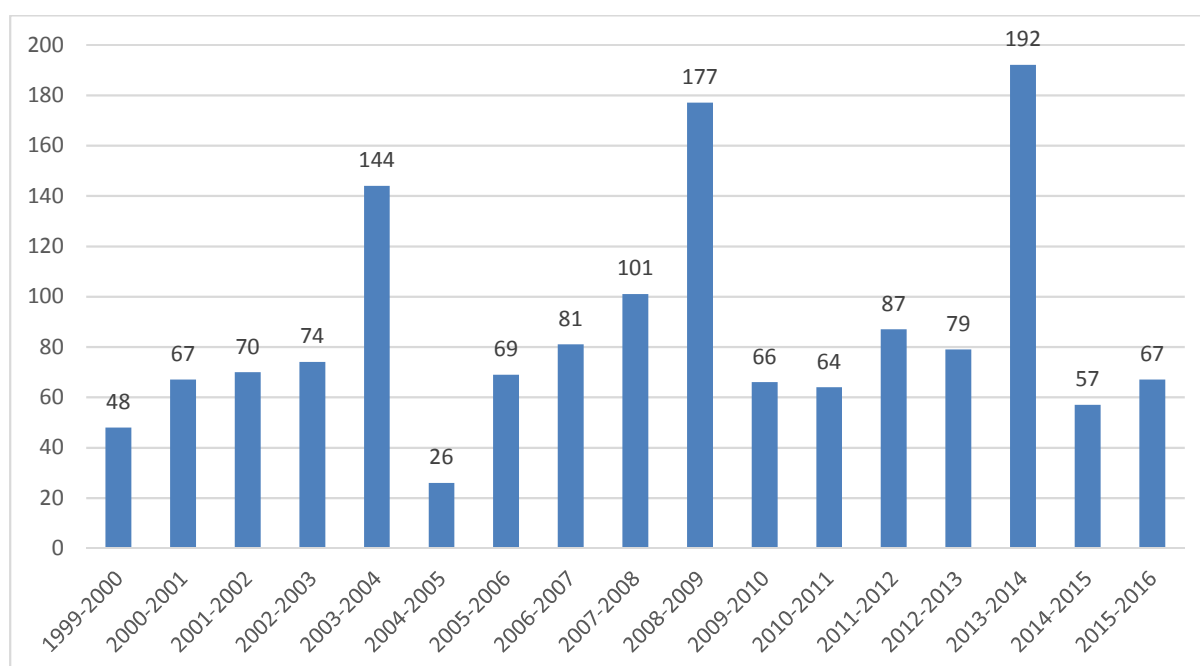


Figure 2: Number of codecision files adopted over the course of a legislative year in the period 1999-2016¹³

That the adoption rate by the co-legislators has remained constant despite the relative fall in number of Commission proposals can be partly explained by the number of files 'carried over' from the 7th to the 8th parliamentary terms.

¹² For the purposes of this report, all statistics related to files adopted by the co-legislators are based on the date of adoption. Files are adopted at first reading with the adoption of Council's first reading position, at early second reading with the adoption of Parliament's second reading position, and at second reading with the adoption of Council's second reading position.

¹³ 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. For the period 2014-2016: files adopted between 1 July of the first year and 30 June of the second year.

1.2 Unfinished business resumed under the 8th Parliament

At the start of the current legislative term, continuity was ensured as Parliament confirmed its intention to resume work on 129 files under the ordinary legislative procedure that had not been concluded under the 7th legislative term (compared to 23 codecision files that were carried over from the 6th to the 7th legislative terms). Broadly speaking, these 129 'unfinished' files, which the Conference of Presidents decided¹⁴, on the basis of reasoned requests from the responsible parliamentary committees, to resume the consideration of pursuant to Rule 229 of its Rules of Procedure¹⁵, concerned legislative procedures that fell into two categories:

- those at an early stage of the first reading, on which under the 8th term either the responsible committee started afresh or confirmed the previous term's negotiating mandate¹⁶ as a basis for first reading negotiations. By the end of 2016, 27 of the 47 files that comprised this category have been adopted.

- those on which Parliament had adopted first reading positions, which then constituted the mandates for any early second or second reading negotiations entered into under the 8th term. By the end of 2016, 38 of the 82 files that comprised this category have been adopted.

Of the remaining 64 files 'carried over', 19 have been withdrawn by the Commission, and a further three have been proposed for withdrawal in the Commission's Work Programme for 2017. Midway through the 8th Parliament, 41 files from the previous legislative term are therefore still pending adoption by the co-legislators, i.e. just over 30% of inherited files; political agreements have been reached on 8 of these.

¹⁴ At its meeting of 18 September 2014.

¹⁵ According to Rule 229 (unfinished business) of Parliament's Rules of Procedure, at the end of a parliamentary term, all unfinished business is deemed to have lapsed unless, at the beginning of the new term and based on the requests from parliamentary committees and other institutions, the Conference of Presidents decides to resume or continue unfinished matters.

¹⁶ Mandates that were approved at committee level or, when Rules 73 and 61(2) were combined, by the plenary.

Committee	Files at an early stage of 1st reading		Files on which EP adopted 1st reading		Withdrawn by the Commission ¹⁷
	Resumed at start of 8th EP	Adopted by end 2016	Resumed at start of 8th EP	Adopted by end 2016	
AGRI	4	2	3	2	1
AGRI/ENVI	1				
CONT			1		1
CONT/LIBE			1		
ECON	10	7	2	1	1
ECON/LIBE			2	2	
EMPL	3	3			
ENVI	6	5	10	4	2
FEMM			1		1
FEMM/JURI			1		
IMCO	4	2	7	5	
INTA	4	1	2	1	
ITRE			1	1	
JURI	4	2	12	6	4
LIBE	9	4	7	4	1
PECH	1	1	15	2	5
TRAN	1		17	10	3
Total	47	27	82	38	19

Table 1: Overview of files 'carried over' from the 7th to 8th parliamentary terms

¹⁷ Three further files from the 7th term have been included for withdrawal in the Commission's Work Programme for 2017: one LIBE, one AGRI and one JURI file.

1.3 Distribution of adopted codecision files by parliamentary committee

The distribution of 8th term parliamentary committee work on concluded¹⁸ codecision files is as depicted in figure 3.

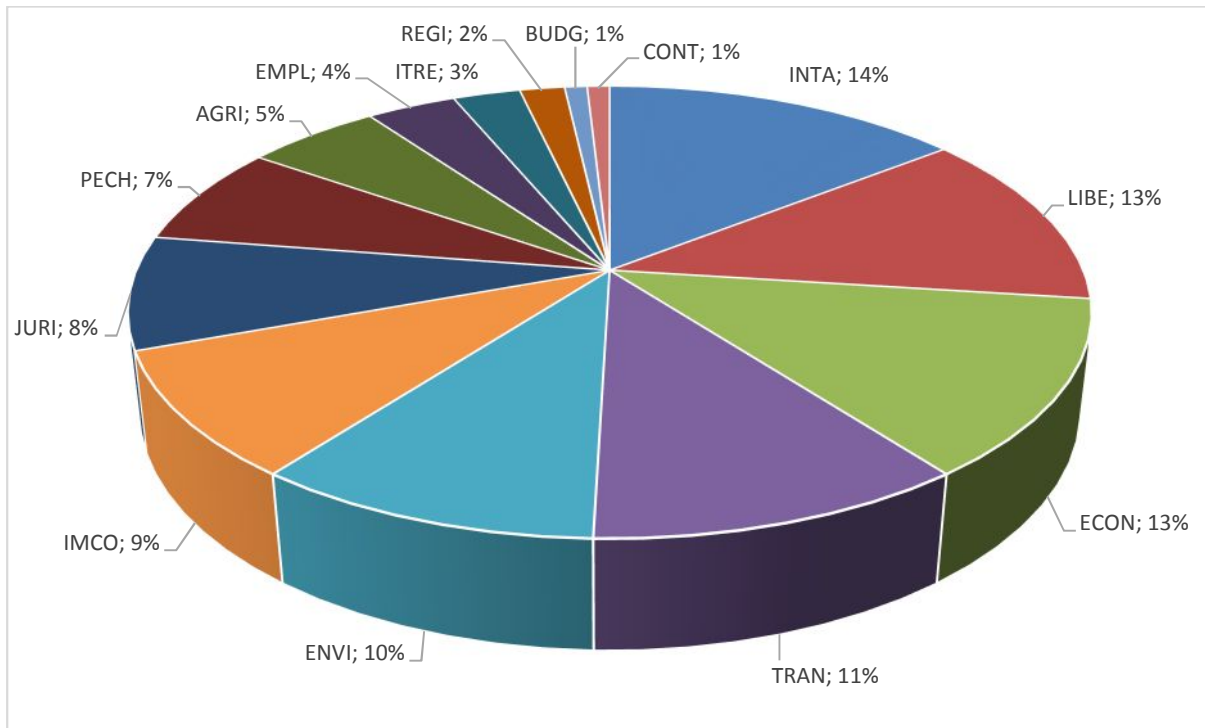


Figure 3: Distribution of adopted codecision files from July 2014 until December 2016 according to lead parliamentary committee¹⁹

According to this chart (which does not include the 17 files on which political agreements were reached under 7th Parliament²⁰, nor 22 codification acts for which the Committee on Legal Affairs (JURI) was responsible), the largest number of adopted codecision files were from the Committee on International Trade (INTA) (14%), followed by the Committees on Civil Liberties, Justice and Home Affairs (LIBE) and on Economic and Monetary Affairs (ECON) (both 13%), the Committee on Transport and Tourism (TRAN) (11%) and the Committee on the Environment, Public Health and Food Safety (ENVI) (10%). Together, these five committees were responsible for over 60% of all adopted codecision files on which parliamentary committees have been involved under the current term.

The progressive rise of the INTA Committee, which only truly assumed responsibility for codecision files after the Treaty of Lisbon (it dealt with 2 codecision files during the 6th Parliament but had an overall 10% share under the 7th Parliament), is perhaps the most remarkable feature of the past years.

¹⁸ i.e. 'adopted', in line with the explanation of footnote 12.

¹⁹ These figures do not include 3 joint committee files: ECON/LIBE (x2) and ECON/BUDG.

²⁰ That is to say, files that were politically concluded under the 7th term (i.e. provisional first reading agreements were reached) but that were formally adopted by the Council at first reading under the 8th term; of the 17 files, ECON was responsible for six, TRAN for four, and ITRE, INTA, AFCE, BUDG, JURI, AGRI and ENVI for one each.

With three traditionally busy legislative committees, the Committee on Economic and Monetary Affairs (ECON), the Committee on the Internal Market and Consumer Protection (IMCO) and the Committee on Agriculture and Rural Development (AGRI), remaining rather stable compared to the previous Parliament (with 12%, 8% and 6%, respectively, under the current term), the two other most significant changes compared to the 7th legislative term are the 4% rise in the share of files for the TRAN Committee and the 4% drop for the ENVI Committee. Indeed, for the first time since at least 1999, the ENVI Committee is no longer the committee with the largest share of codecision files (it had a 20% share during the 6th Parliament and a 14% share during the 7th Parliament). This is evidence of a gradual shift in focus of Parliament and Council's co-legislative activity as a result of changing Commission policy priorities, which coincides partly with the widening of the scope of the ordinary legislative procedure under the Treaty of Lisbon, but also, to some extent, with responses to the successive challenges the EU has faced, most notably the economic crisis and, more recently, the migration crisis.

1.4 Stage of adoption of codecision files

For the first two-and-a-half year period since the introduction of the codecision procedure under the Maastricht Treaty (1993), there have been no conciliations. Furthermore, the number of second reading agreements, which stands at four, is extremely low, representing a mere 3% of adopted codecision files.

With 97% of codecision files adopted either at first or early second reading - an increase on the combined figure of 93% under the previous Parliament - the trend towards early agreements is, therefore, very much confirmed during the first half of the current term (see figure 4)²¹. Nonetheless, the relatively high proportion of files concluded at the early second reading stage (22% of all adopted files, compared to 75% for first readings) is one of the more distinctive features of the current term. This is due to the relatively large number of Parliament first reading positions 'carried over' from the 7th term. In fact, all but one of the files adopted at early second reading or at second reading during the first half of the present legislative term were files on which first reading positions were adopted at the end of the previous Parliament.

²¹ It is important to point out that one third of the 152 codecision files adopted under the 8th Parliament so far - and just under 45% of files concluded at the first reading stage - were not negotiated.

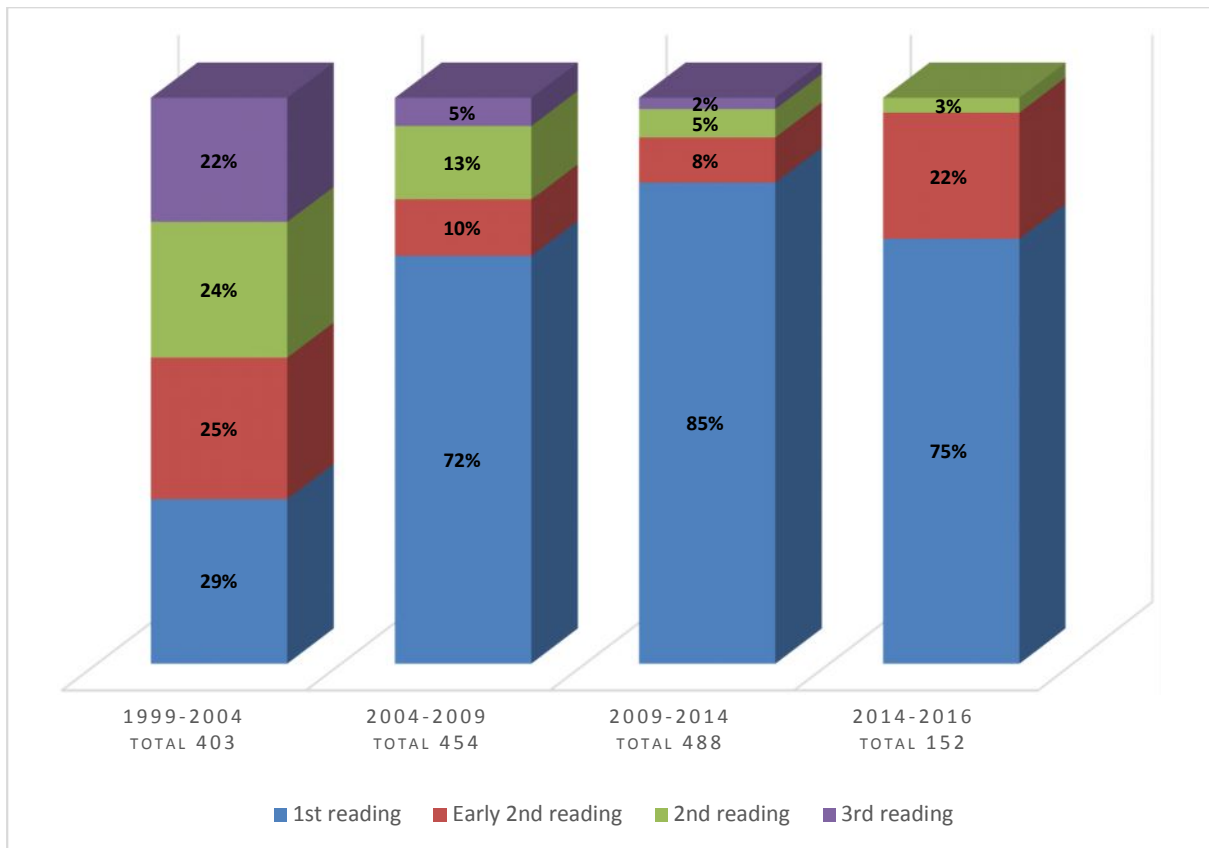


Figure 4: Percentage of codecision files adopted at first, early second, second and third reading per legislative term since 1999

Of the legislative committees with a substantial number of codecision files, the ECON and INTA Committees stand out as those with the largest proportion of files concluded at the first reading stage (figure 5). In fact, each had only one file that went beyond the first reading (both were adopted at early second reading), and both are files on which the committees adopted first reading positions at the end of the 7th term, and on the basis of which they negotiated under the current term.

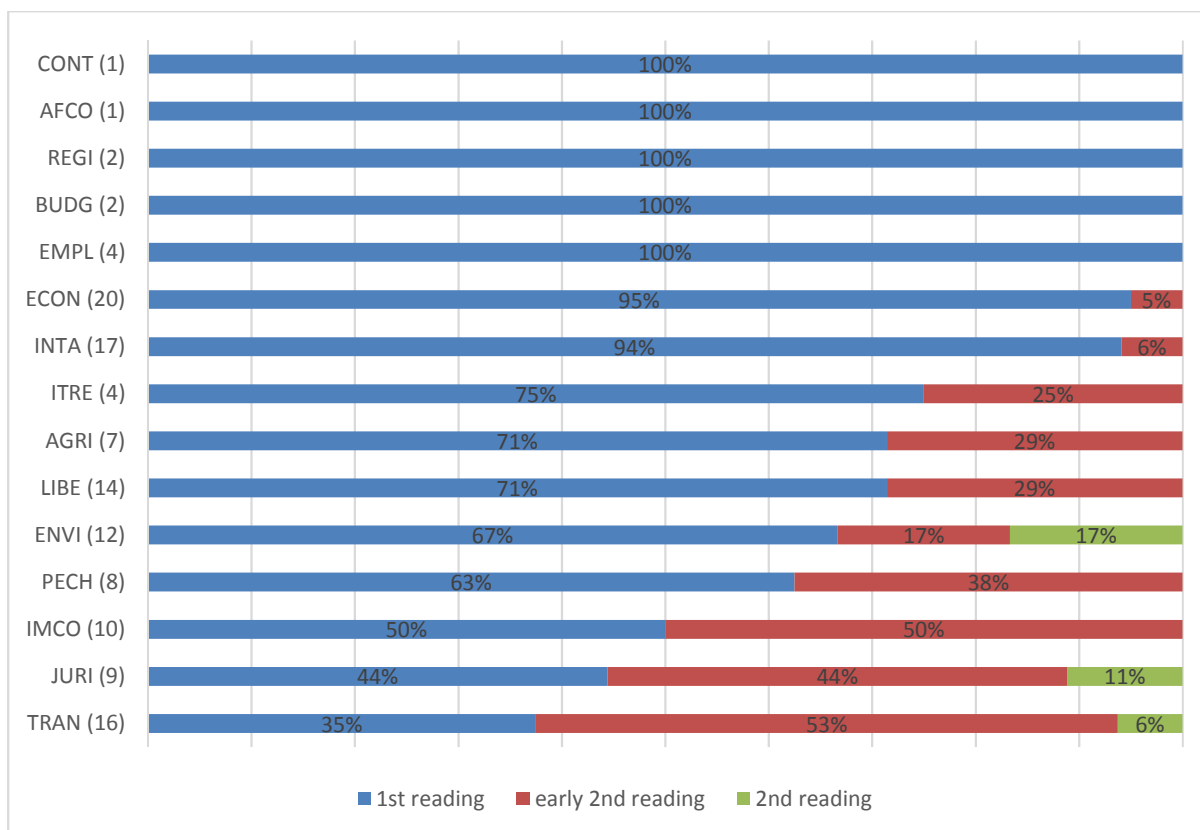


Figure 5: Percentage of concluded codecision files adopted at 1st, early 2nd and 2nd reading from July 2014 until December 2016²²

For both the ECON and the INTA Committees, the high percentage of first reading agreements can be partly explained by their practice of regularly adopting ‘plenary mandates’ (combining Rules 73 and 61(2)), prior to Parliament’s definitive first reading position, as an alternative to negotiating on the basis of a committee report and vote (see part 2.1). Indeed, 5 of the 10 ‘early stage’ ECON Committee files that were ‘carried over’ from the 7th term and agreed under the 8th term were negotiated on the basis of such ‘plenary mandates’ adopted under the previous Parliament and confirmed at the start of the current term. (At the end of the 7th term, Parliament first reading positions were generally adopted on files of most other committees where their work was sufficiently advanced.)

The very high percentage of files concluded at first reading in the INTA Committee stems also, for a large part, from the nature of its files, which are often urgent proposals (concerning, for example, common rules for imports, macro-financial assistance, or the temporary suspension of tariff preferences) with considerable budgetary and economic implications for third countries, and which are therefore frequently adopted without negotiations or amendments to the original Commission

²² Three files were handled under the procedure with joint committee meetings (Rule 55 of the Rules of Procedure): 2015/0009 COD (BUDG/ECON), concluded at first reading; 2013/0024 COD and 2013/0025 COD (ECON/LIBE), both concluded at early second reading. The figure does not include 22 codifications, which were dealt with by the JURI Committee.

proposal²³. This specificity is also reflected in the average time required to conclude the legislative procedure for INTA Committee files, which, at 12 months, is considerably shorter than the 18-30 month average for all other committees that deal with a relatively large number of codecision files.

At the other end of the scale, TRAN, JURI and IMCO are the only committees with a first reading rate equal to or lower than 50%. These three committees were those responsible for the largest number of adopted files on which Parliament first reading positions were inherited from the 7th parliamentary term.

1.5 Average length of the codecision procedure

There have been no significant changes in average procedure times compared to the previous terms. The average length of the procedure for files adopted at first reading remains relatively constant at 16 months (compared to 17 months under the previous Parliament). Compared to the 7th Parliament, the slight increase for second reading files²⁴ (and thus also for the total average length of all concluded codecision procedures) can probably be explained by the fact that, as alluded to above, almost all of these were 'carried over' from the previous term, which inevitably implied delays during the transition from one Parliament to the next.

	1999-2004	2004-2009	2009-2014	2014-2016
1st reading	11 months	16 months	17 months	16 months
2nd reading	24 months	29 months	32 months	37 months
3rd reading	31 months	43 months	29 months	/
Total average length	22 months	21 months	19 months	22 months

It is worth noting that once the co-legislators have reached a provisional agreement on a given file, several months elapse until it is ready for adoption, as it must first be translated into all official languages, then verified by the lawyer-linguists (these two steps take approximately 8 weeks)²⁵.

1.6 Recent trends under the Juncker Commission's mandate

The Juncker Commission pledged that it would be "*bigger and more ambitious on big things, and smaller and more modest on small things*"²⁶, or that it would "*be doing less, but (...) more effectively*"²⁷. As already noted at the beginning of this section, the comparatively low number of Commission proposals tabled during the first half of the current legislative term could be interpreted as a

²³ Agreements on proposals concerning macro-financial assistance to third countries (which are usually of an urgent nature and of which there were three during the first half of the 8th term, two of which were non-negotiated) are facilitated by the outcome in 2013 of the conciliation procedure on 'Further macro-financial assistance to Georgia' (2010/0390 COD), and specifically a joint statement of Parliament and the Council, in which the co-legislators set out considerations and principles (regarding, inter alia, the form and amount of the assistance, conditionality, and the procedure) that should serve as the basis for future individual decisions on granting the Union's macro-financial assistance.

²⁴ Which covers both early second and second reading files.

²⁵ Subsequently, after a file is formally adopted (by the Council at first and second reading; by the Parliament at early second reading), it must be signed (usually in the margins of Strasbourg plenary sessions) and, generally two to three weeks later, published in the Official Journal (although, in urgent cases, publication can take place in a matter of days after signature). Only then does the legal act enter into force.

²⁶ Incoming Commission President Juncker's '[Political Guidelines](#)'.

²⁷ Incoming Commission President [Juncker's speech of 10 September 2014](#).

reflection of this approach; indeed, this was particularly stark at the beginning of the Juncker mandate, as the 2015 dip (representing a 15-year low) would suggest. On the whole, however, the Commission's legislative business picked up in 2016, in part as a response to the various crises the EU has faced.

Since it took office on 1 November 2014, the Juncker College has tabled 171 proposals under the ordinary legislative procedure²⁸. Four of these have been straightforward codifications, while six have been mere technical exercises repealing obsolete acts. A further 13 have been recast proposals (some of which have, nevertheless, involved substantive policy discussions between the co-legislators). Of the remaining 148 proposals, 62 have been fully amending acts.

Withdrawals

As part of its Regulatory Fitness and Performance Programme (REFIT)²⁹, of which codifications, recasts and repeals are an integral part, the Juncker Commission has also placed renewed focus on withdrawing legislative proposals that "become obsolete due to scientific or technical advances or if they are no longer in line with new policy objectives"³⁰. As such, the Juncker Commission has withdrawn 41 legislative proposals³¹ (which is similar in number to the previous 2.5 year period). It is worth noting that 19 of these withdrawals concerned pending legislative proposals that the 8th Parliament had, at the start of its term, decided should be continued. A further 7 proposals have been proposed for withdrawal in the Commission Work Programme for 2017 (all on the grounds that they are obsolete)³². Recent case-law of the Court of Justice has, for the first time, confirmed the Commission's right to withdraw its legislative proposals, under specific conditions.

In its judgment of 14 April 2015, in case C-409/13³³, the Court of Justice for the first time analysed, and thereby clarified the scope of, the Commission's right to withdraw its legislative proposals, pursuant to Article 293(2) TFEU.

The Court recalled that the Commission's right to withdraw a proposal at any time during the legislative procedure as long as the Council has not acted (i.e. before Council's first reading position) stemmed directly from the Commission's right of initiative. However, it specified that this was not a 'right of veto', and was necessarily circumscribed by the prerogatives of the other

²⁸ Figures obtained from [EUR-Lex](#). This does not include the regulation of the European Parliament and of the Council on the transfer to the General Court of the European Union of jurisdiction at first instance in disputes between the Union and its servants (2015/0906), which was submitted to the co-legislators by the Court of Justice.

²⁹ Launched in 2012 (see the Commission Communication on 'EU Regulatory Fitness', COM(2012) 746 final), and, under the Juncker Commission, a part of the better regulation agenda, REFIT is defined as ensuring "that EU laws deliver their intended benefits for citizens, businesses and society while removing red tape and lowering costs [and making] EU laws simpler and easier to understand" (see the Commission's [REFIT overview](#)). REFIT is included in Commission Work Programmes since 2015 as a separate annex, covering e.g. legislative initiatives that simplify and reduce regulatory burden, repeals of legislation no longer needed, evaluations and Fitness Checks.

³⁰ See the Commission's [REFIT overview](#).

³¹ The substantial majority of these withdrawals were on 7 March 2015. Two were withdrawn on 6 August 2015.

³² See Annex IV to the Commission's 2017 Work Programme.

³³ C-409/13 Commission v Council, judgment of 14 April 2015, EU:C:2015/217. The case concerned the proposal for a regulation laying down general provisions for macro-financial assistance to third countries (2011/0176 COD).

institutions. Furthermore, and in any case, a withdrawal by the Commission had to be appropriately justified to the co-legislators and, if necessary, supported by cogent evidence or arguments.

The Court added that the Commission is entitled to withdraw a legislative proposal if a planned amendment by Parliament and Council distorts it in a manner which prevents the proposal's original objectives from being achieved, depriving it thus of its *raison d'être*, with due regard to the spirit of sincere cooperation between institutions.

Areas of legislative focus

In total, 27 different Commission Directorates-General (DGs) and services have taken the lead on the 171 legislative proposals tabled under Juncker. The distribution is as per figure 6 below.

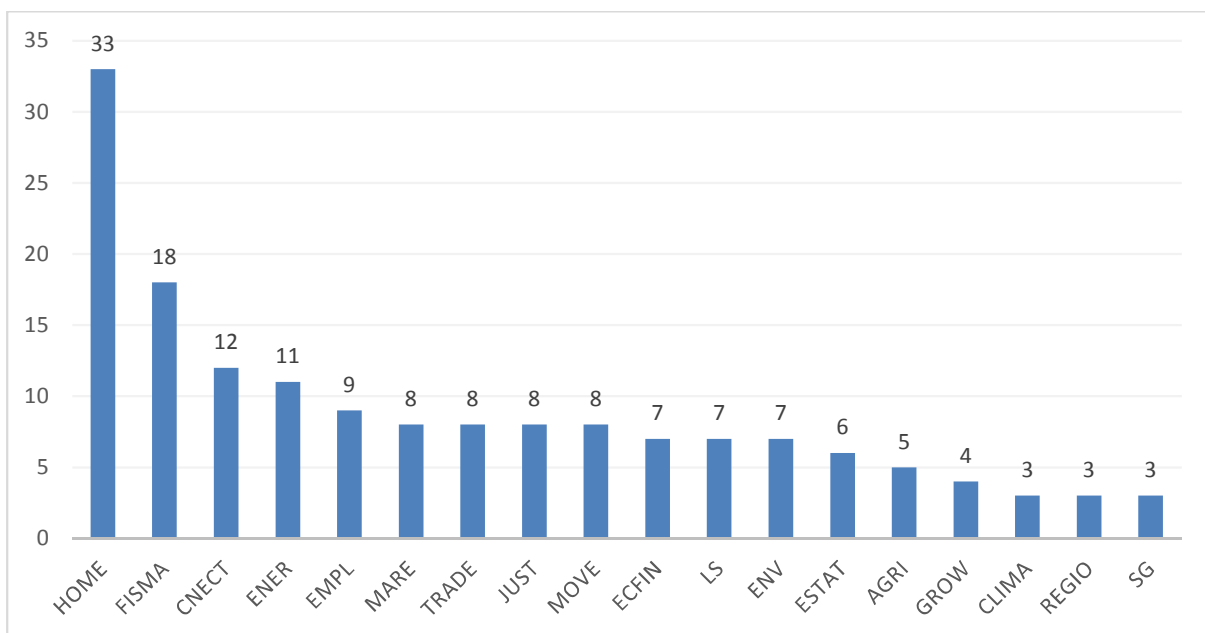


Figure 6: Number of Commission proposals from 1 November 2014 until 31 December 2016 according to lead Directorate-General / Service³⁴

DG HOME was responsible for the largest share of codecision proposals adopted by the Juncker Commission. With 33 proposals, it was the lead DG for just under 20% of all codecision files, which is considerably higher than the next most prominent DG (from a codecision perspective), namely DG FISMA, with 18 proposals, followed by DG CNECT, with 12 proposals, and DG ENER, with 11 proposals. Together, these four DGs were responsible for almost 45% of all codecision proposals adopted by the College since 1 November 2014.

³⁴ The chart does not include the following DGs/services: DEVCO and TAXUD, which were responsible for 2 proposals each; BUDG, EAC, FPI, NEAR, OLAF, RTD and SANTE which were responsible for 1 proposal each.
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Impact assessments

Impact assessments are one of the elements that underpin the Juncker Commission's approach to better regulation³⁵. According to the 'Working Methods of the European Commission 2014-2019', adopted on 11 November 2014, "all initiatives likely to have significant direct economic, social or environmental impacts should be accompanied by an impact assessment".

Of the 171 proposals tabled under the Juncker Commission, 68 were accompanied by impact assessments. Most strikingly, only 3 of the 33 codecision proposals for which DG HOME was in the lead were based on impact assessments (i.e. less than 10% of DG HOME proposals). In many cases, the justification provided by the Commission for bypassing its internal procedural rules centred on the urgency of the action proposed.

Justice and Home Affairs - the 8th Parliament's priority policy field

The shift in focus of legislative activity, away from traditional codecision areas, such as the environment, towards economic affairs in the first instance, and justice and home affairs more recently, is particularly striking when one considers the parliamentary committee attribution of Commission proposals tabled by the Juncker Commission, as demonstrated in figure 7 below.

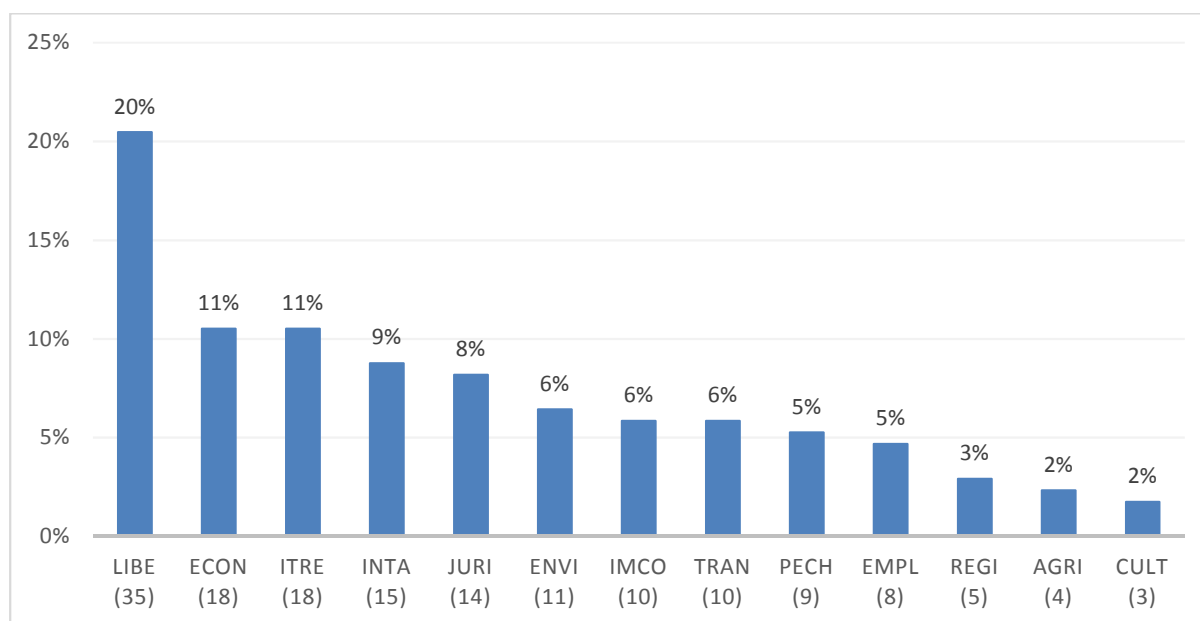


Figure 7: Distribution of Commission proposals from 1 November 2014 until 31 December 2016 according to lead parliamentary committee³⁶

³⁵ The Commission's guidelines describe better regulation as "designing EU policies and laws so that they achieve their objectives at minimum cost. (...) It is a way of working to ensure that political decisions are prepared in an open, transparent manner, informed by the best available evidence and backed by the comprehensive involvement of stakeholders". See the Commission Staff Working Document on Better Regulation Guidelines (SWD(2015) 111 final).

³⁶ The figure does not include committees with less than a 2% share: BUDG, CONT, and AFET, or procedures with joint committees (BUDG/ECON, BUDG/CONT, ECON/LIBE, IMCO/JURI, CULT/EMPL, and DEVE/AFET/BUDG). At the time of writing, the committee responsibility of certain files adopted by the Commission towards the end of 2016 may be contested, thus requiring confirmation by the Conference of Presidents.

From this perspective - and in a manner that also reflects the distribution of legislative responsibility across Commission DGs - the LIBE Committee is responsible, by quite some distance, for the largest number of codecision proposals, with the quantitative effects of the Commission's proposals addressing, in particular, the migration crisis certain to be felt beyond the mid-term of this 8th Parliament.

The Committee on Civil Liberties, Justice and Home Affairs, while not yet the legislative committee responsible for the largest number of adopted codecision files, is nonetheless, from a codecision perspective, the busiest of Parliament's committees at the mid-point of the current legislative term - and by a considerable margin.

It has already successfully worked on a range of key files, including the data protection package, EU PNR, the Europol Regulation, the Students and Researchers Directive, and the procedural rights in criminal proceedings package. Inevitably though, given the large share of proposals tabled during the 8th term for which it is responsible, it still has a significant amount of legislative business ahead, on proposals that are politically important and, in some cases, high profile. Indeed, of the 35 proposals tabled by the Juncker College for which the LIBE Committee is in the lead, only five have been adopted by the end of 2016 (the most notable one being the European Border and Coast Guard).

A whole raft of legislative proposals remain on the table, mostly at a relatively early stage of the legislative procedure. Many of the proposals are designed to address the migration crisis, including proposals to reform the Common European Asylum System, on the Smart Borders Package, on a permanent crisis relocation mechanism and for a European list of safe countries of origin.

1.7 Ongoing legislative procedures at mid-term

At the end of 2016, as Parliament prepares to embark on the second half of its 8th parliamentary term, there are 162 codecision legislative proposals pending³⁷: 109 were tabled by the Commission under President Juncker, 53 under President Barroso.

131 of these (i.e. just over 80%) are the responsibility of 9 committees: LIBE, ENVI, PECH, TRAN, ECON, INTA, IMCO, ITREA and JURI (see figure 8). With the exception of the ITRE Committee, these committees correspond to those that have already been most active on adopted codecision files during the first half of the current Parliament. An uncommonly large proportion (33 proposals, i.e. 20%) are in the hands of just one committee, namely LIBE.

³⁷ The figures for 'pending' proposals (not including 5 codification proposals) concern those adopted by the Commission *and* announced in plenary.

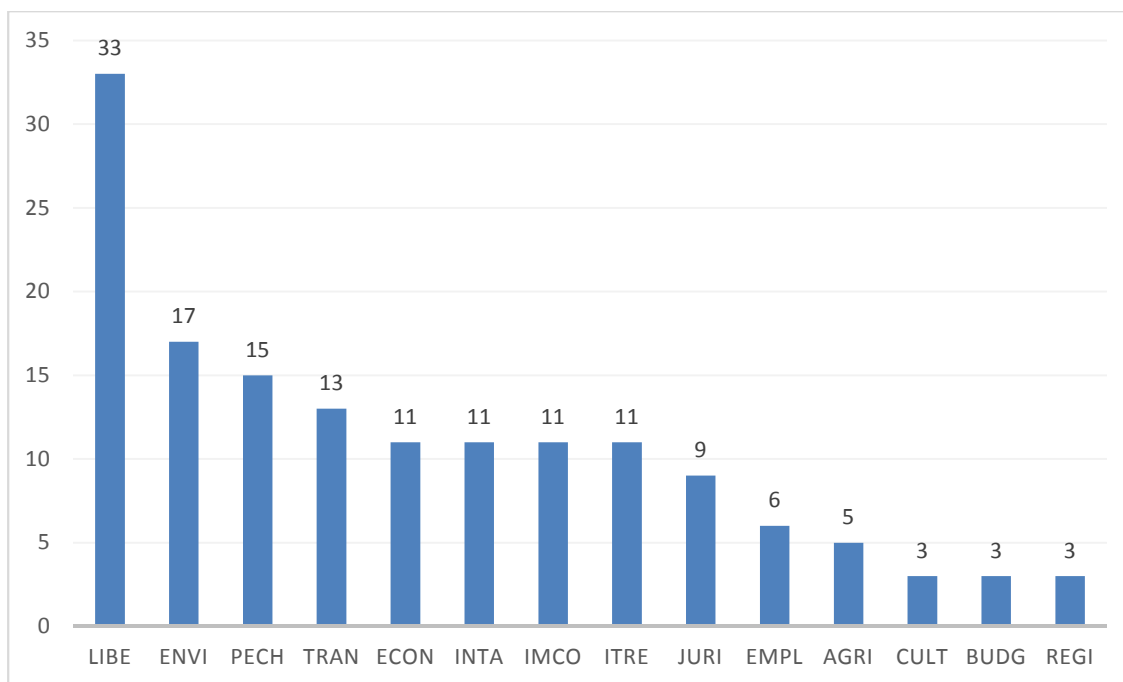


Figure 8: Distribution of ongoing codecision procedures on 31 December 2016 according to lead parliamentary committee³⁸

It is worth pointing out that, more so than in any other committee, a number of proposals for which the Committee on Fisheries is in the lead, tabled by the Commission between 2011 and early 2013 and on which Parliament has adopted first reading positions, have been blocked for some time in the Council. These concern alignment proposals and/or multi-annual plans (MAPs) for fisheries management. Difficulties on the latter followed the extension of the scope of the ordinary legislative procedure under the Treaty of Lisbon, and are largely due to Parliament's and Council's differing interpretations of Article 43(2) TFEU (ordinary legislative procedure) and Article 43(3) TFEU (Council acting on its own), and therefore on the precise delimitation of legislative competences. Recent judgments have clarified the scope of these Treaty articles, with the Court ruling that Article 43(2) is the legal basis for measures that are necessary for the pursuit of the objective of the policy concerned "with the result that they entail a policy decision that must be reserved to the EU legislature", and that amendments which "constitute provisions necessary for the pursuit of the objectives of the CFP" should be adopted under the ordinary legislative procedure. In contrast, Article 43(3) TFEU is the legal basis for measures that are "of a primarily technical nature and are intended to be taken in order to implement provisions adopted on the basis of Article 43(2) TFEU"³⁹.

³⁸ This figure does not include committees which have responsibility for only one legislative proposal: AFET, REGI and CONT. There are also eight ongoing procedures with joint committee meetings: BUDG/CONT, BUDG/ECON, CONT/LIBE, ECON/LIBE, FEMM/JURI, IMCO/JURI, CULT/EMPL, and DEVE/AFET/BUDG.

³⁹ See cases C-103/12 and C-165/12 *Parliament and Commission v Council* (judgment of 26 November 2014; EU:C:2014:2400), cases C124/13 and C-125/13 *Parliament and Commission v Council* (judgment of 1 December 2015; EU:C:2015:790) and case C-113/14 *Germany v Parliament and Council* (judgment of 7 September 2016, EU: C:2016:635).

Interestingly, at the end of 2016, there are a few files on which the Council has a mandate to negotiate but where Parliament is moving more slowly⁴⁰. This, while still rather uncommon, is a relatively new development. Traditionally - and as is still predominantly the case - files that stall tend to be blocked in the Council (as the fisheries interinstitutional dispute demonstrates).

Alongside its traditional legislative functions, Parliament is also increasingly turning its attention to scrutiny activities.

Committee scrutiny tools: the example of implementation reports

Under the 8th Parliament, committees have dedicated more time and effort to scrutinising the implementation of Union legislation in Member States. One increasingly used means of doing so is through implementation reports. Following newly introduced provisions (Annex 3 to Annex XVII of the Rules of Procedure), implementation reports contain two parts: (i) an explanatory statement summarising facts and findings on the state of implementation (under the responsibility of the rapporteur); (ii) a motion for a resolution indicating the main (political) conclusions and concrete recommendations.

Political interest in the use of implementation reports has increased considerably under the current Parliament (partly following a reform of their allocation method within committees, in order that they not 'compete' with other legislative and non-legislative reports): by the end of December 2016, committees had adopted or were working on a total of 34 Implementation Reports, compared to only 11 at the corresponding stage (and 23 for the duration) of the 7th legislative term. With these tools, committees are assessing the implementation of key EU Programmes, such as Erasmus+ and Horizon 2020, or investment initiatives such as the European Fund for Strategic Investments, as well as a number of important policy areas (including energy efficiency, corporate law, equal treatment, or postal services).

⁴⁰ Examples include the proposal for a regulation on structural measures improving the resilience of EU credit institutions (ECON Committee); or the proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) (LIBE Committee).

2 Interinstitutional legislative negotiations, including transparency

Negotiations between the co-legislators are a necessary feature of the EU decision making process for the majority of legal acts, as Parliament and the Council must, at some stage of the ordinary legislative procedure, agree the same amendments in order to adopt legislation in accordance with the Treaty provisions. Increasingly, legislative files are negotiated and agreed at early stages of the procedure (i.e. at first or early second reading) - a trend that has been confirmed under the current half-term.

Concerns about the openness of interinstitutional negotiations have regularly surfaced over the past years, also from within the institutions. As a response, Parliament already significantly revised its Rules of Procedure related to interinstitutional negotiations under the preceding legislative term. These changes increased the political accountability and the inclusiveness of interinstitutional negotiations, notably by enhancing the visibility of Parliament negotiating mandates and the transparency of proceedings in committee and of the trilogue negotiation process. Under the current term, the 2016 revision of Parliament's Rules of Procedure builds on those improvements, and further strengthens parliamentary accountability and scrutiny of legislative negotiations.

On an interinstitutional level, Parliament, the Council and the Commission have responded to the heightened public and institutional interest in transparency with a number of initiatives, several of which in the framework of the Interinstitutional Agreement on Better Law-Making (BLM Agreement).

2.1 Interinstitutional trilogue negotiations and Parliament's Rules of Procedure

Negotiations between the institutions on legislative proposals 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 stage⁴¹.

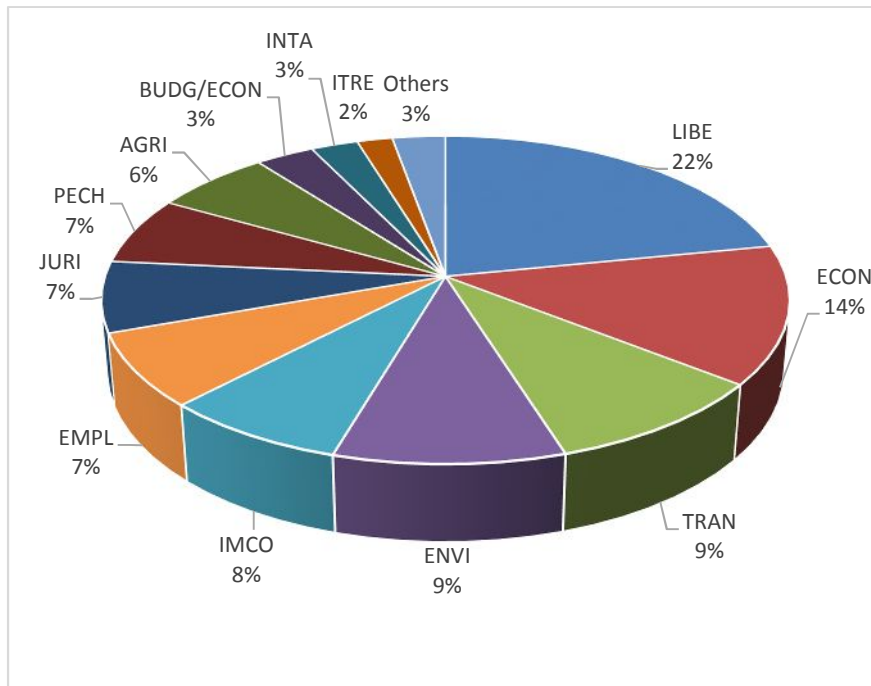
During the first half of the current Parliament, approximately 300 trilogues have taken place on the 86 negotiated files that were adopted by the end of 2016⁴². This is an average of just below 4 trilogues per negotiated file (not dissimilar to the average under the 7th term)⁴³.

The distribution of trilogues according to the responsible committee is indicated in figure 9 below.

⁴¹ Trilogues are not referred to in the Treaties. But they have been progressively institutionalised, firstly in the revised Joint Declaration on practical arrangements for the codecision procedure (points 7 and 8), subsequently with their explicit mention in Parliament's Rules of Procedure.

⁴² The figure does not include trilogues on files on which political agreements were reached under the 7th Parliament (but which were formally adopted under the current term), nor files on which, at the end 2016, negotiations were still ongoing or on which a political agreement only was reached.

⁴³ The number of trilogue meetings needed to reach agreement with the Council varied significantly. Under the 8th term, the largest number required was 14, for the General Data Protection Regulation (2012/0011 COD).



Committee	N° of files	N° of trilogues
LIBE	11	69
ECON	12	43
TRAN	11	30
ENVI	9	30
IMCO	9	24
EMPL	3	23
JURI	8	22
PECH	7	21
AGRI	4	20
BUDG/ ECON	1	10
INTA	4	8
ITRE	3	6
ECON/ LIBE	2	5
BUDG	1	3
CONT	1	1
Total	86	315

Figure 9: Distribution of trilogues on concluded codecision files according to the responsible parliamentary committee⁴⁴

49 codecision acts were therefore concluded without negotiations by the end of 2016. Of these, 22 were codifications and 3 were recast proposals. Not including codifications (for which the JURI Committee was in the lead), the INTA Committee was responsible for the largest share of non-negotiated files (12 acts under the ordinary legislative procedure).

The European Fund for Strategic Investments (EFSI) - a stand-out negotiated file

'EFSI' was one of the politically most high profile legislative files adopted during the first half of the 8th legislative term. Its main objective was to address the investment gap in the EU and promote growth and employment, mainly by mobilising private investment in strategic projects through a range of financial instruments (loans, guarantees, credit-enhancement products and equity-type products) offered by the European Investment Bank.

From a procedural point of view, EFSI stood out for several reasons. Firstly, it was one of the fastest legislative negotiations under the ordinary legislative procedure: the proposal was adopted by the Commission on 13 January 2015, and the legislative act was published in the Official Journal on 1 July 2015. Secondly, it required an extraordinary degree of intra-parliamentary coordination and cooperation: BUDG and ECON were the lead committees according to the procedure with joint committee meetings (Rule 55) (Rapporteurs FERNANDES (EPP) and BULLMANN (S&D)); the procedure with associated committees (Rule 54) was used with ITRE and TRAN, while CONT, EMPL,

⁴⁴ 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 trilogues (covering several files) are counted only once.
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ENVI, IMCO, REGI, AGRI, CULT and AFCE were committees for opinion under Rule 53+. Thirdly, the pace and duration of the negotiation process was rather exceptional: ten trilogues took place in the space of just over one month, between 23 April and 4 June 2015 (with, at one stage, three trilogues on successive days, one of which lasted until 8 a.m.).

As an illustration of the political sensitivity and urgency surrounding this file, the trilogues were regularly attended by more than one hundred people. Attendance was sometimes more akin to what one would expect at a conciliation committee meeting. And the trilogues even took place in Parliament's conciliation committee meeting room.

Parliament's mandates to enter into negotiations

Until the end of 2016, Rules 73 and 74 of Parliament's Rules of Procedure, as amended at the end of 2012, remained the framework for the adoption of decisions to enter into negotiations with the Council on legislative files.

During the first half of the current term, the standard procedure foreseen in Rule 73, namely negotiating on the basis of a committee report following an absolute majority decision to open negotiations, remained the most common approach to start negotiations at first reading (85%). The exceptional procedure pursuant to Rule 74 was applied on only one occasion⁴⁵. Under the 7th Parliament, a practice to obtain plenary backing for negotiations prior to Parliament's first reading position was developed; used by a number of committees during the first half of the 8th term (ECON, INTA, ENVI, PECH and TRAN), it combined the standard procedure (Rule 73) with a plenary vote on the amendments in order for Parliament to confirm - or amend - the position already adopted at committee level.

Early second reading negotiations or second reading negotiations were entered into with Parliament's first reading position as the mandate. For two second reading procedures the mandate to negotiate was the draft recommendation for second reading.

Parliament's Rules of Procedure for interinstitutional legislative negotiations

The 2016 review of the Rules of Procedure (Rapporteur CORBETT, AFCE Committee) provided an opportunity to reinforce the transparency of interinstitutional legislative negotiations. This latest reform, adopted by Parliament at its December 2016 plenary session (for entry into force in January 2017), builds on the provisions introduced at the end of 2012 (Rules 73 and 74) concerning the adoption of Parliament's negotiating mandate and the conduct of negotiations⁴⁶.

A first important change under the 8th term revision was the deletion of Rule 74, which, until then, enabled a committee, as an exceptional derogation to the standard procedure, to adopt its negotiating mandate prior to the adoption of a committee report, namely as a set of amendments or a set of clearly defined objectives, priorities or orientations for plenary's approval. Rule 74 was

⁴⁵ Rule 74 applied to negotiations that started prior to the adoption of a report in committee and involved the plenary. It was used for the proposal for a regulation amending Regulation (EU) No 1308/2013 and Regulation (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in the educational establishments (2014/0014 COD), for which the AGRI Committee was responsible.

⁴⁶ New Rules 69b to 69f, concerning interinstitutional negotiations during the ordinary legislative procedure, can be found in the Annex to this Activity Report.

very rarely used, and it was felt that the report format was a more transparent instrument, and more in line with established parliamentary activity.

The deletion of Rule 74 was accompanied by a reinforced oversight by the plenary of committee reports endorsed as negotiating mandates. Rule 73 was therefore entirely re-shaped to enable such scrutiny: it was split into several Rules, each one corresponding to a different stage of the ordinary legislative procedure (i.e. ahead of Parliament's first reading, ahead of Council's first reading, at second reading), thereby reflecting the specificity of Parliament's mandate (procedurally and on the content) at each stage of the procedure when negotiations can be entered into.

The new provisions set out a clear path for the adoption of a negotiating mandate by the committee responsible, addressing calls for increased transparency in first reading negotiations: the mandate, always a committee report adopted by a majority of the lead Committee's members, goes through a 'check' by plenary. Thus, according to the revised Rules, all committee decisions to enter into negotiations at first reading are announced on the first day of the plenary session following the committee vote⁴⁷. Any committee decision may be 'challenged' until the end of the following day by political groups or Members who together constitute one tenth of Parliament's Members requesting a plenary vote. If there is no such challenge, or if, following a challenge, the plenary confirms the committee decision, negotiations may start. Alternatively, if at a subsequent part-session the plenary adopts amendments to the Commission's legislative proposal, Parliament can either refer the file back to the committee for negotiations (on the basis of a 'plenary mandate') or decide to conclude its first reading.

Ahead of Council's position at first reading (i.e. in view of an early second reading agreement), the revised Rules state that Parliament can enter into negotiations only on the basis of a decision of the committee responsible adopted by a majority of its members and announced in plenary, with Parliament's first reading position as the mandate.

At second reading, Parliament's mandate is (as for early second reading negotiations) its position at first reading, but a certain degree of flexibility exists, allowing the committee responsible to approve negotiating guidelines for its negotiating team on any new elements raised in the Council's position at first reading. This flexibility stems from the need to be able to respond swiftly to changes introduced by the Council, particularly given the time pressure of the Treaty second reading deadlines.

The revised Rules clarify the provisions concerning the composition of the negotiating team, the conduct of negotiations, and the reporting back to committee on the outcome of each trilogue. The revised Rules also underline that any agreement, which has to be approved in committee before being put to vote in plenary, is 'provisional' in nature until it is adopted by the Parliament. Finally, according to the revised Rules, there are no limitations to the possibility to table amendments at plenary level to the provisional agreement, although the plenary may decide to give the latter preferential treatment, in the sense that it could be put to the vote first, ahead of any amendments.

⁴⁷ Usually the Monday of plenary sessions in Strasbourg, but announcements during mini-plenary sessions are also possible.

2.2 Transparency of the legislative decision making process

The challenge regarding the transparency of the legislative decision making process is to get the right balance between, on the one hand, making public at appropriate moments information or documents that enable citizens to follow and trace the development of deliberations within and between the institutions, and, on the other hand, the need for effective political processes that, inter alia, provide the co-legislators with 'space to think', where they can foster the trust required to negotiate compromises to Commission legislative proposals. This difficulty was partially reflected in Parliament's most recent resolution on access to documents, adopted in line with its annual reporting obligation pursuant to Article 17 of Regulation (EC) No 1049/2001 on public access to documents⁴⁸.

The transparency debate again rose in prominence during the first half of the 8th legislative term following two episodes, in particular: a request for access to trilogue documents on files that were not yet concluded that has since been brought to the Court of Justice⁴⁹, and the Ombudsman's own-initiative inquiry into the transparency of trilogues.

Public access to documents

In April 2015 Parliament received a request for access to the multi-column tables⁵⁰ used in interinstitutional negotiations on all ongoing legislative files; the so-called confirmatory request was limited to those legislative procedures based on Article 16 TFEU (data protection) or falling within the scope of Title V TFEU, namely the 'Area of Freedom, Security and Justice'⁵¹. Parliament carefully assessed each of the documents concerned on a case-by-case basis: it granted full access to five of them (which related to legislative procedures that had been concluded), but partial access to the remaining two⁵², arguing that the legislative procedure to which both related was on-going and that premature disclosure of the full content would have the concrete and foreseeable risk of

⁴⁸ Parliament resolution of 28 April 2016 covering the years 2014-2015 (2015/2287(INI)), based on a report from the LIBE Committee (Rapporteur FERRARA (EFDD/IT)) (see also Rule 116(7) of Parliament's Rules of Procedure). Parliament, while noting the need to maintain "adequate space to think for the co-legislators", called on the institutions to "ensure greater transparency of informal trilogues". To this end, it proposed a series of measures (such as making public lists of trilogue meetings, agendas or summaries of outcomes), some of which were also subsequently covered in the Ombudsman's decision of July 2016 concluding her inquiry into the transparency of trilogues.

⁴⁹ More generally, there has, under the 8th term, been a rise in the number of requests for access to documents used in trilogue negotiations under Regulation (EC) No 1049/2001.

⁵⁰ The main tool of work in interinstitutional negotiations is the so-called four-column document: the first three columns present each of the three institutions' respective positions and the last one is reserved for compromise proposals.

⁵¹ The request was made under Regulation (EC) No 1049/2001 on public access to European Parliament, Council and Commission documents. Parliament identified 40 codecision / ordinary legislative procedures (concerning 119 documents) that fell within the scope of the original request, and argued that processing the request would create an excessive administrative burden for Parliament, contrary to the principles of proportionality and good administration, as recognised by settled case law (judgment of the Court of Justice of 2 October 2014 in case C-127/13 P, *Strack v Commission*, judgment of 2 October 2014, EU: C:2014:2250). The 'confirmatory request' narrowed the scope to four procedures and seven documents.

⁵² Parliament refused access to the column reserved for compromise text that was being negotiated.

undermining the negotiations and Parliament's own decision-making process on this dossier; Parliament also explained that there was no overriding public interest that could justify disclosure⁵³.

The applicant brought the Parliament to Court⁵⁴, arguing that the Parliament had committed an error in law and misapplied the overriding public interest test. Furthermore, he argued, the Parliament had failed to state reasons as to (i) why full disclosure of the documents requested would effectively and specifically undermine the decision-making process in question, and (ii) why no overriding public interest existed in this case. The decision of the Court is expected in 2017.

Ombudsman inquiry into the transparency of trilogues

The Ombudsman's inquiry into the transparency of trilogues built on heightened public interest in and triggered renewed interinstitutional reflections on the manner in which relevant information regarding interinstitutional legislative deliberations are made public, as well as the appropriate form and timing. This is partly down to better communicating and facilitating in a user-friendly manner public access to the significant amount of information that is already available. This is particularly true from the Parliament perspective, where the process leading to (and including) the adoption of negotiating mandates, feedback during trilogue negotiations, and the immediate steps after a provisional agreement has been reached, take place in public, on the basis of documents that are generally public. However, the inquiry also highlighted certain areas and stages of the legislative cycle that merit better communication and further consideration, within and between the institutions.

The own-initiative inquiry into the transparency of trilogue was launched by the Ombudsman, Ms Emily O'Reilly, in May 2015⁵⁵. The inquiry was not based on any suspicion of maladministration⁵⁶ but rather on her concern "that trilogues be conducted in a manner which can be reconciled with the requirements as to the transparency of the legislative procedure, set out in Articles 15(2) and (3) TFEU"⁵⁷. In her letters to Parliament, the Council and the Commission opening her inquiry, the Ombudsman posed a series of questions concerning the organisation of trilogues and the handling of requests for access to trilogue documents (she also asked to inspect the documents of two closed codecision files).

While Parliament - and the two other institutions - believed that a large part of the Ombudsman's inquiry concerned the organisation of the legislative process, and therefore fell outside the scope of the Ombudsman's mandate, President Schulz, in his reply, underlined Parliament's commitment to

⁵³ Article 4(3) of Regulation (EC) No 1049/2001 states that "access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure".

⁵⁴ OJ C 398 from 30.11.2015, p. 57, Case T-540/15, *de Capitani v European Parliament*.

⁵⁵ European Ombudsman's own-initiative inquiry OI/8/2015/FOR concerning transparency of trilogues.

⁵⁶ According to Article 228(1) TFEU, the European Ombudsman "shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. He or she shall examine such complaints and report on them".

⁵⁷ Ombudsman letter to President Schulz, 26/05/2015 on the Own-initiative inquiry OI/8/2015/FOR concerning transparency of trilogues

transparency and accountability, and described the many measures that had already been taken in Parliament to ensure a high degree of transparency of the legislative process; these included the rules by which Parliament ensures that trilogue negotiations take place on the basis of public decisions that determine Parliament's negotiating position, its negotiating team and the opening of negotiations, and the requirements to report back to committee after each negotiation round and to submit to a vote of approval in committee the provisional agreement reached in trilogues. President Schulz also stressed that undue formalisation of the trilogue process could lead to negotiations taking place outside the established process (without, for example, all political groups being present or the orderly exchange of text proposals) and therefore could lead to less transparency rather than more.

The Ombudsman adopted her final decision in July 2016⁵⁸: it contains eight proposals to, inter alia, make public trilogue dates, agendas and lists of representatives, as well as four-column documents and other documents used in negotiations. She considered that a joint legislative database, as agreed in the BLM Agreement (see below), should make available all this information in a user-friendly way.

Parliament, the Council and the Commission will coordinate their follow-up to enhance transparency; some of the issues raised by the Ombudsman could be addressed in the short term, while most others at a later stage in the framework of the joint legislative database. Concerning the publication - while negotiations are ongoing - of documents used in trilogues, the outcome of Case T-540/15 (see above) will be decisive. Nevertheless, the Ombudsman acknowledged that early disclosure of documents used in trilogues could potentially damage the negotiation process and proposed that the institutions make available four-column documents once the negotiations have concluded.

Parliament's 'legislative footprint'

The 2014 resolution on Parliament's decision on the modification of the interinstitutional agreement on the Transparency Register (2014/2010 (ACI)) invited the Bureau to "develop a standardised form for rapporteurs to publish on a voluntary basis a 'legislative footprint', which is a form annexed to reports drafted by Members detailing all the lobbyists with whom rapporteurs in charge of a particular file have met in the process of drawing up the report, where this has led to a substantial impact on the report". More recently, Parliament's resolution on public access to documents for the years 2014-2015 (2015/2287(INI)) "calls on Parliament (...) to make available, to those MEPs who wish to report on their contacts with lobbyists, a template for rapporteurs that can be annexed to their reports".

As a result, at its meeting of 12 September 2016, and following an initial decision at its meeting of 4 July 2016, the Bureau adopted a model for a voluntary 'footprint' to be attached to legislative and non-legislative reports or opinions. This footprint can be drawn up by the rapporteur on a purely voluntary basis and under his/her exclusive responsibility. It serves to collect a list of organisations and individuals from whom the rapporteur has received input in drawing up the report or opinion.

⁵⁸ Before concluding the inquiry, the Ombudsman also organised a public online consultation, to which she received 51 replies, including five from national parliaments.

2.3 Interinstitutional Agreement on Better Law-Making

The BLM Agreement of 13 April 2016 contains a separate section on the transparency and coordination of the legislative process, where the institutions reaffirmed their commitment to the principles of “sincere cooperation, transparency, accountability and efficiency”. In paragraph 38, they explicitly agreed to “ensure the transparency of legislative procedures, on the basis of the relevant legislation and case-law, including an appropriate handling of trilateral negotiations”. They also aim to better communicate to the public during the whole legislative cycle and, in particular, to announce jointly the successful outcome of the legislative process. Finally, in paragraph 39, the institutions agreed that, before the end of 2016, they would look into ways of creating a “dedicated joint database on the state of play of legislative files”.

Whereas the conception phase on the joint database is underway, it is still too early to predict the final result. It will most likely focus, in the first instance, on files under the ordinary legislative procedure, covering the whole of the legislative cycle, from the Commission proposal to publication in the Official Journal. As such, the database could be built on information provided by existing tools that the institutions have created, in particular Parliament’s Legislative Observatory and the Commission’s EUR-Lex.

While Parliament’s mandate to negotiate should always be publicly available (as is the original legislative proposal, which the Commission, at least at the outset, is bound to defend during interinstitutional negotiations), the same is not true of Council negotiating mandates: while General Approaches, adopted by the Council, are made public, mandates adopted by the COREPER are not. An increasing number of Council negotiating mandates are adopted in the form of General Approaches but this is still far from systematic. As such, recent considerations in the Council are of particular relevance and interest.

Indeed, following the conclusion of the BLM Agreement, the General Affairs Council of 24 June 2016, on the basis of a note prepared by the Dutch Presidency, held an exchange of views on how the legislative process could be made more transparent and understandable for the public. Amongst other things, it considered whether the public could be better informed about the legislative process by “increasing the transparency of [Council] negotiation mandates”⁵⁹. One way of achieving this would be to routinely adopt them as a ‘General Approach’. However, no final decision has been taken on this issue and, at this stage, it is but one option that has been discussed among the Member States.

Setting in motion another of the commitments made by the institutions in the BLM Agreement, the Presidents of Parliament, the Council and the Commission signed together, in December 2016, the first Joint Declaration on annual interinstitutional programming, which identifies legislative items of major political importance to be dealt with as legislative priorities for the coming year, without prejudice to the powers conferred on the co-legislators by the Treaties.

⁵⁹ Note from the Presidency to the Committee of Permanent Representatives / Council on the Implementation of the Interinstitutional Agreement on Better Law-Making - Improving transparency, Brussels, 21 June 2016.

3 Delegated and implementing acts

Delegated and implementing acts, which replaced the pre-Lisbon 'comitology' procedures⁶⁰, continue to be a controversial feature of relations between Parliament, the Council and the Commission during negotiations on legislative proposals. Differing interpretations by the institutions of the respective Treaty provisions (Articles 290 and 291 TFEU) have led to recurrent problems during negotiations on legislative files⁶¹. Those difficulties were addressed in the Interinstitutional Agreement on Better Law-Making (BLM Agreement) concluded in spring 2016, by giving additional guarantees to the Council regarding the consultation of Member States' experts, in the expectation that this would pave the way for smoother legislative negotiations.

Introduction to the system of delegated and implementing acts

Delegated acts (Article 290 TFEU) are measures of general application to amend or supplement certain non-essential elements of the basic legislative act. Their introduction under the Treaty of Lisbon gave Parliament an unrestricted veto right over powers delegated to the Commission; furthermore, Parliament (or the Council) can revoke these powers at any moment. This represented a significant extension of Parliament's prerogatives compared to the former comitology procedures, and even to the Regulatory Procedure with Scrutiny (RPS)⁶². For implementing acts (Article 291 TFEU), Parliament's power is limited and it has no right of veto.

In 2010, a non-binding Common Understanding on delegated acts was agreed between Parliament, the Council and the Commission to streamline practices and clarify provisions, addressing 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. It was recently reviewed and the updated version was annexed to the BLM Agreement with revised standard clauses.

Interinstitutional Agreement on Better Law-Making

During the first half of the 8th legislative term, the Council has continued its reluctance to accept the use of delegated acts, even for provisions which according to Parliament and the Commission

⁶⁰ 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.

⁶¹ There have been a couple of court cases in an attempt to clarify this issue, but the Court of Justice in its decisions refrained from setting out general criteria for the delineation between delegated and implementing acts and rather limited itself to stating that the choice made by the co-legislators on the conferral of delegated or implementing powers on the Commission was, in the cases at hand, fully in line with the conditions laid down in Articles 290 and 291 TFEU and to reminding what cannot be done through an implementing act. (see the Biocides case (Case C- 427/12, *Commission v Parliament and Council*, EU: C:2014:170) and the Visa case (Case C-88/14, *Commission v Parliament and Council*, EU: C:2015:499)).

⁶² The Regulatory Procedure with Scrutiny (RPS) was a comitology procedure introduced in 2006 and gave Parliament (as co-legislator) a right of 'veto' over measures adopted by the Commission, subject to certain criteria (see 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.

clearly meet the Treaty criteria. One of the main problems, as expressed by the Council, was the reduced influence and the non-binding consultation of national experts during the preparatory phase of delegated acts. This differs from the procedure for implementing acts and the RPS procedure, where there is a mandatory vote on the draft measure, allowing the national experts to significantly influence a measure before it is adopted by the Commission.

As part of the BLM Agreement, and in order to facilitate future legislative procedures with the Parliament, the institutions agreed to address these concerns by including binding provisions for the consultation of experts. Parliament has since reiterated "that the systematic consultation of experts in the preparation of delegated acts should facilitate ongoing negotiations with Council in the framework of the ordinary legislative procedure and the future alignment of all existing legislation"⁶³. Nevertheless, the choice between delegated and implementing acts remains very contentious in a number of ongoing negotiations. The Conference of Presidents thus continues to monitor that agreements reached in legislative negotiations respect Parliament's institutional rights, based on a regular assessment by the Chair of the Conference of Committee Chairs⁶⁴.

The BLM Agreement further improves the transmission of information between the institutions during the drafting of delegated acts, facilitates access of EP experts to preparatory meetings on delegated acts (expert groups), and foresees the creation of a register of delegated acts, which will ensure greater transparency and traceability and which is due to be operational by the end of 2017.

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 166 delegated acts during the 7th Parliament, to 363 during the first half of the 8th Parliament. As figure 10 shows, Parliament continues to receive many RPS measures (1345 since 2007, 382 of which during the 8th term) because a large amount of legislative acts containing RPS provisions have not yet been aligned to the Treaty of Lisbon. The number of delegated acts received according to the responsible parliamentary committee is shown in figure 11.

⁶³ Letter from Parliament President Schulz to Commission President Juncker and the Slovak Minister of Foreign Affairs, Mr Lajčák, dated 6 July 2016.

⁶⁴ See decision of the Conference of Presidents of 19 April 2012.

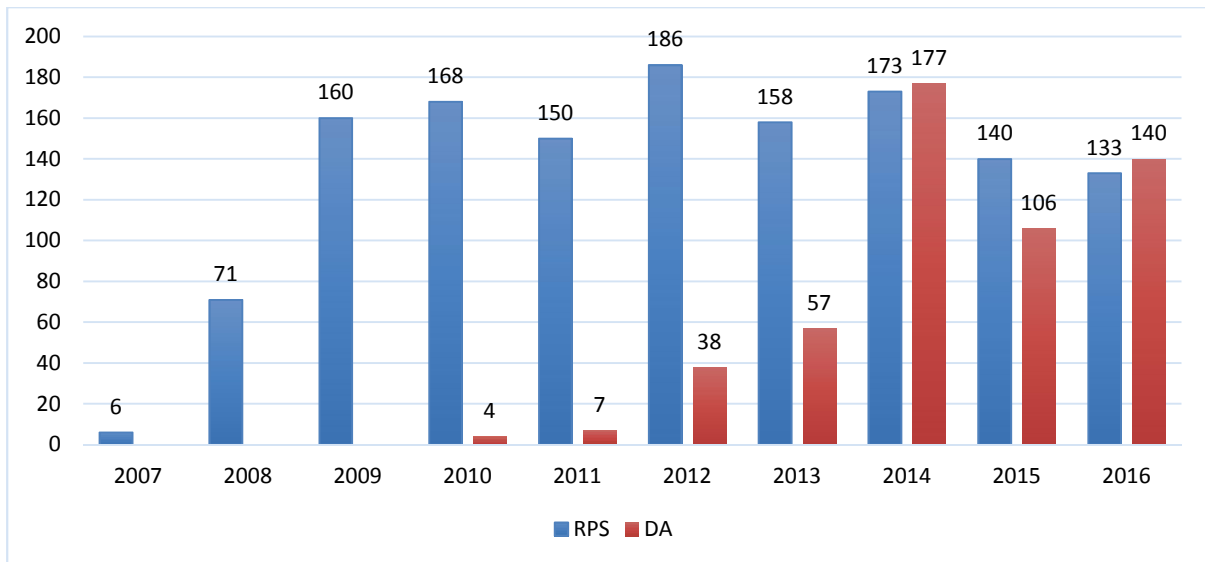


Figure 10: Final draft RPS measures and delegated acts (DA) submitted to Parliament per year

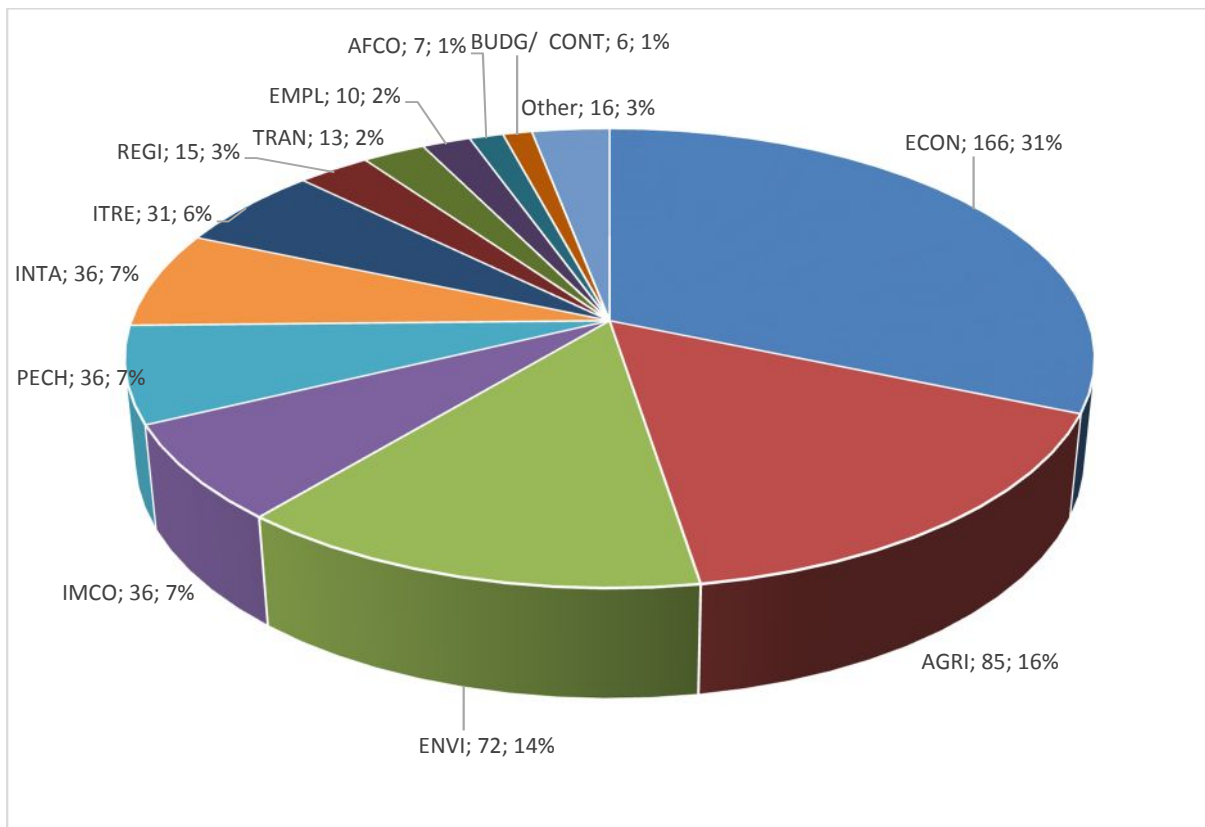


Figure 11: Number of delegated acts received by parliamentary committee since 2010

Since the entry into force of the Treaty of Lisbon, Parliament has objected to five delegated acts⁶⁵, four of which during the first half of the current term. In addition, Parliament has objected to 8 RPS measures, two of which during the 8th legislative term. With regard to implementing acts, Parliament adopted several resolutions in the first half of the 8th legislative term, stating that the

⁶⁵ Over the same period, Council has objected to two delegated acts.

implementing measure exceeded the powers conferred on the Commission, although Parliament's opinion is not binding on the Commission (i.e. it has no right of veto).

During the first half of the 8th Parliament, the scrutiny activities in Parliament's committees have been continuously strengthened. The Commission is regularly invited to discuss draft acts in the responsible committees ahead of their formal transmission, and Parliament has often decided not to object to a given delegated act after receiving further clarifications or a commitment by the Commission that the problems identified by the committee would be resolved. Parliament experts also regularly attend (as observers) meetings of national experts where draft acts are discussed.

Most legislative committees have endorsed internal rules for improved scrutiny during the drafting phase of delegated acts and actively examine the delegated acts during the scrutiny period. In addition, the Conference of Presidents requested that it be regularly informed about the scrutiny activities in committees, so that the political groups can, where appropriate, table a motion for resolution to plenary objecting a specific delegated act⁶⁶. In summer 2016, additional posts were allocated to the committees most concerned in order to further strengthen the capacity for parliamentary scrutiny of delegated acts.

Prospects for the second half of the 8th term

The issue of delineation criteria on delegated and implementing acts was not solved in the BLM Agreement. Instead, the three institutions included a commitment that they would start negotiations without undue delay on common criteria for the application of Articles 290 and 291 TFEU. Parliament's position for these negotiations, which are expected to begin in 2017, was adopted in its resolution of 25 February 2014 on delegated and implementing acts⁶⁷, providing a non-exhaustive list of criteria that should guide Parliament. The Conference of Presidents appointed Mr Szájer and Mr Corbett as the Parliament's negotiators in these negotiations.

Moreover, the alignment of existing RPS provisions in legislative acts adopted before the Treaty of Lisbon to the new Treaty requirements (notably to the introduction of delegated acts) will be subject to interinstitutional negotiations following new legislative proposals which were adopted by the Commission in December 2016⁶⁸.

⁶⁶ The 2016 revision of Parliament's Rules of Procedure align the objections to delegated acts and to RPS measures: as a result, motions for resolutions objecting to draft RPS measures can, from early 2017 onwards, also be tabled directly to plenary by political groups or 40 Members.

⁶⁷ 2012/2323(INI); Rapporteur József Szájer, JURI Committee.

⁶⁸ In 2013 the Commission adopted three alignment proposals: two omnibus proposals with an automatic alignment of the RPS provisions to delegated acts, and a third proposal that also aligned some to implementing acts. Parliament's first reading positions on these proposals were adopted on 25 February 2014 (Rapporteur: József Szájer, JURI Committee), but in view of the Council's opposition, the Commission withdrew its proposals in 2015.

4 International agreements

The Treaty of Lisbon extended Parliament's powers in the area of international agreements. Although the two procedures - namely consent and consultation - that lead to the conclusion of an international agreement remained the same, the scope of application of the consent procedure was extended significantly, rapidly overtaking consultation to become the standard procedure for international agreements. Under Article 218(6) TFEU, Parliament's consent is required for all international agreements in fields to which the ordinary legislative procedure applies. With the ordinary legislative procedure covering 85 legal bases since the entry into force of the Treaty of Lisbon, that means virtually all EU policy areas. This power of consent gives Parliament a *de facto* veto right over the vast majority of international agreements, which considerably strengthens its role in and influence over the Union's external dimension of internal policy areas⁶⁹.

During the first half of the current term, Parliament has scrutinised 131 international agreements at various stages of the procedure leading to their conclusion⁷⁰, 120 of which under the consent procedure, with the distribution across Parliament's committees as shown in figure 12.

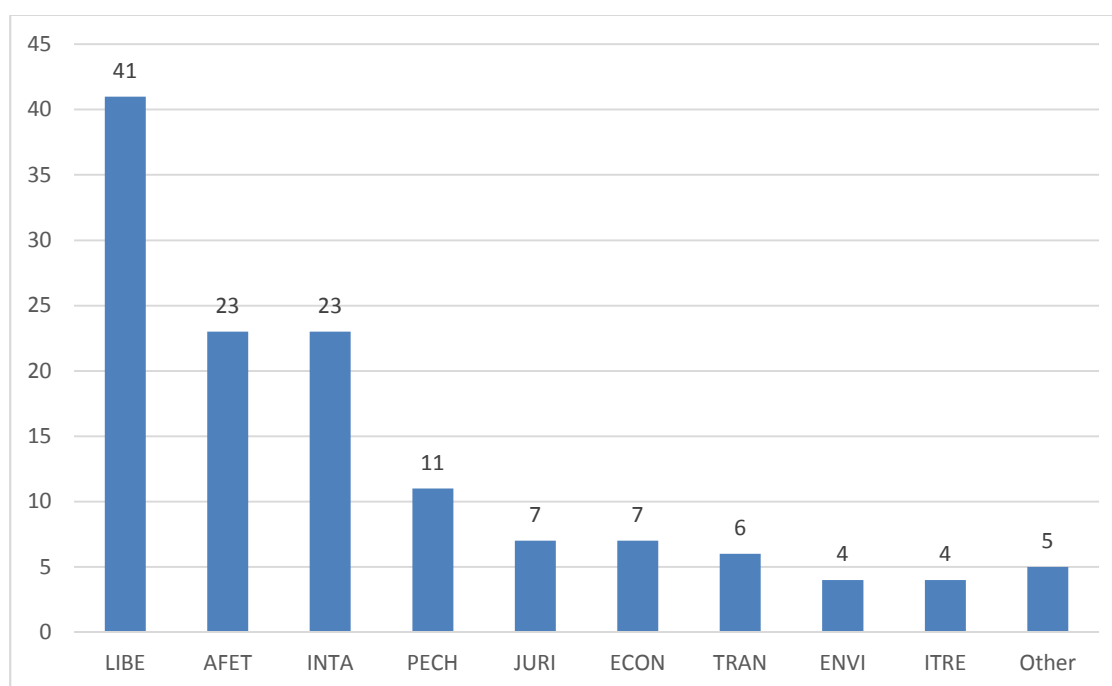


Figure 12: Distribution of international agreements scrutinised in Parliament according to the lead parliamentary committee⁷¹

⁶⁹ Article 218(6) provides for a list of cases in which consultation or consent procedures apply. Adoption by the Council of agreements which relate exclusively to the common foreign and security policy do not require consultation or consent of Parliament. Nevertheless, Parliament retains in this area its right to be informed pursuant to Article 218(10) TFEU.

⁷⁰ By the end of 2016, the procedure was completed for 54 files; the remaining procedures were either ongoing or at the preparatory phase.

⁷¹ Three of the AFET Committee files were carried over from the 7th parliamentary term.

Parliament exercising its democratic scrutiny: the case of consent

Parliament is formally involved only at the very end of the process, when the Council requests its consent to adopt a decision on the conclusion of an international agreement and, consequently, to conclude an agreement. This happens after the negotiations have been concluded and the agreement has been signed. Where the agreement is to be provisionally applied, Parliament's view is that its consent is required before this can happen. In accordance with Rule 99 of Parliament's Rules of Procedure, Parliament decides by means of a "single vote on consent" requiring, as a rule, simple majority and taking into account the responsible committee's recommendation to approve or reject the act proposing the conclusion of an international agreement. No amendments may be tabled to the text of an agreement submitted to Parliament's consent.

This formal involvement at the end of the process influences the way in which Parliament's democratic scrutiny of international agreements is exercised. In the 7th term Parliament used the primary tool at its disposal, namely its veto right, to assume its role and responsibilities in this field. As the Council cannot adopt a decision concluding an international agreement without having obtained Parliament's consent or overrule Parliament's decision to reject the proposed decision, Parliament's veto proved to be a powerful tool to advance Parliament's political priorities⁷².

As resorting to a veto at the conclusion stage is a blunt instrument, Parliament has developed internal mechanisms to scrutinise international agreements at the stages preceding the formal conclusion on the basis of its consent, thereby gaining influence on the negotiations. Where Parliament's consent is required for an envisaged international agreement, the committee responsible (which depends on the policy area) may, on the basis of Rule 99(3), 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. Parliament's Rules of Procedure also provide the responsible committee and plenary with an array of possibilities to draw up reports or otherwise monitor the procedure as of the moment there is an intention to open negotiations on the conclusion, renewal or amendment of an international agreement⁷³. This includes asking the Council not to authorise the opening of negotiations until Parliament has stated its position on the proposed negotiating mandate, verification of the legal basis, adoption of recommendations to be taken into account up until the conclusion of the agreement, and the possibility to seek the opinion of the Court of Justice on the compatibility of an international agreement with the Treaties. Parliament also makes use of oral and written questions to advance

⁷² The SWIFT agreement between the EU and US on the processing and transfer of Financial Messaging Data for the purposes of the Terrorist Finance Tracking Programme was the first demonstration of Parliament's post-Lisbon prerogatives in new policy areas; after Parliament withheld its consent on 11 February 2010, on the LIBE Committee's recommendation, the SWIFT agreement was renegotiated to include a number of safeguards and improved data protection standards, before Parliament gave its consent on 8 July 2010. Similarly, the EU-Morocco Fisheries Partnership Agreement was, after Parliament initially withheld its consent on 14 December 2011, in line with the PECH committee rapporteur's opinion (which was different from the PECH committee's recommendation), renegotiated to obtain Parliament's consent on 10 December 2013.

⁷³ See in particular Rule 108(4).

the cause of international agreements in specific policy areas⁷⁴ or simply to raise issues relating to interinstitutional cooperation⁷⁵.

Examples of EP scrutiny

In July 2015, Parliament adopted a resolution on the highly controversial EU-Transatlantic Trade and Investment Partnership (TTIP)⁷⁶, which sets out Parliament's recommendations to the negotiators.

On the Comprehensive Economic and Trade Agreement (CETA) and Strategic Partnership Agreement with Canada, Parliament provided its recommendations in the course of the previous term⁷⁷. It remains involved in the process during the 8th term. It supported actively the search for solutions to enable all Member States to sign CETA, which was presented by the Commission as a mixed agreement, thus requiring a full ratification process in Member States⁷⁸ alongside the consent procedure at EU level. Parliament will vote on its consent to the CETA agreement early in 2017.

Increasingly in the case of trade agreements, but also in other areas, Parliament's action in scrutinising international agreements is prompted by growing public interest. A good example is the Marrakesh Treaty⁷⁹, negotiated under the World Intellectual Property Organisation (WIPO), to which both Member States and the EU are parties: Parliament actively followed the course of negotiations and, in response to a number of petitions filed with the Parliament by EU citizens, adopted a resolution criticising the stalled ratification process at the Member States' level⁸⁰.

Interesting Court cases

Article 218(10) TFEU, which concerns Parliament's right to be informed immediately, fully and at each stage of the procedure leading to the conclusion of an international agreement, has become instrumental in the development of Parliament's scrutiny powers, as has the 2010 Framework Agreement on relations between Parliament and the Commission which contains a series of provisions on cooperation between those two institutions in this area. This right to be fully and

⁷⁴ Examples include the World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products. Provisions which do not fall under Title V of Part III of the TFEU.

⁷⁵ See oral question O-000029/2016 under Rule 128 on improving the current system for informing Parliament on the negotiation of international agreements by the Commission, and the plenary debate that followed.

⁷⁶ European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP). 14 committees delivered an opinion to the draft resolution by INTA.

⁷⁷ European Parliament resolution of 10 December 2013 containing the European Parliament's recommendation to the Council, the Commission and the European External Action Service on the negotiations for an EU-Canada Strategic Partnership Agreement and European Parliament resolution of 8 June 2011 on EU-Canada trade relations.

⁷⁸ Which also includes some regional parliaments.

⁷⁹ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted on 27 June 2013.

⁸⁰ European Parliament resolution of 3 February 2016 on the ratification of the Marrakesh Treaty, based on petitions from EU citizens with print disabilities, and particularly Petition 924/2011 by Dan Pescod (British), on behalf of the European Blind Union (EBU)/Royal National Institute of Blind People (RNIB), on access by blind people to books and other printed products.

immediately informed, and which obliges both the Council and the Commission to provide information to Parliament, was analysed in-depth by the Court of Justice in two recent judgments.

In 2011, Parliament brought a case against the Council seeking the annulment of the decision on the signing and conclusion of an agreement between the EU and Mauritius on the conditions of transfer of suspected pirates. One of the grounds for annulment was a failure by Council to keep Parliament properly informed, including a three-month delay in informing Parliament that the agreement was concluded. In a similar vein, in May 2014 Parliament took the Council to the Court concerning an agreement between the EU and Tanzania on the conditions of transfer of suspected pirates. Again, Parliament alleged that the Council, having informed Parliament of the opening of negotiations and then of the signature and conclusion of the agreement, failed to fully and immediately inform Parliament throughout the procedure, for example, by failing to forward the negotiating directives. The Court upheld Parliament's claim in both cases, emphasised the importance of Parliament's democratic scrutiny of international agreements, and clarified, to this end, the scope and nature of the other institutions' information obligations vis-à-vis Parliament. The jurisprudence in these two cases makes clear that Parliament's right to information is an essential procedural requirement, notably in order to enable Parliament to exercise democratic control over the Union's external action.

In the case of some trade agreements, and in particular CETA, TTIP or the EU Free Trade Agreement with Singapore, a recurring question on their nature emerged, i.e. whether or not they come under the EU's exclusive competence or are mixed agreements, which has a bearing on how they are approved as the latter would also need to be signed and ratified by the Member States in order to enter into force. In the case of the agreement with Singapore, the Commission requested the opinion of the Court of Justice on the competence of the EU to sign and conclude the agreement. The Commission asked which provisions of the agreement would fall under EU exclusive or shared competence and whether the agreement contained provisions that fall under the exclusive competence of Member States. The response of the Court, which is expected in 2017, will have implications for future trade agreements in determining whether Parliament and the Council have the last word on them or whether the Member States' parliaments would also have a say.

Interinstitutional Agreement on Better Law-Making

Extended competence in the area of international agreements, recent case-law and its own proactive attitude allowed Parliament to exercise its post-Lisbon powers to considerable effect and prompted the need for more and improved interinstitutional cooperation. Notably, in point 40 of the 2016 Interinstitutional Agreement on Better Law-Making (BLM Agreement), Parliament, the Council and the Commission acknowledged the importance of ensuring that each institution can exercise its rights and fulfil its obligations enshrined in the Treaties as interpreted by the Court of Justice regarding the negotiation and conclusion of international agreements. To that end, and in line with their commitment expressed further in that point of the BLM Agreement, the three

institutions, at the end of 2016, started negotiations on improved practical arrangements for cooperation and information-sharing, within the framework of the Treaties⁸¹.

Parliament is further developing its role on the scrutiny of international agreements, the importance of which continues to grow in its work. The future arrangements between the institutions for cooperation in this field, on which negotiations have already started, should facilitate the exercise of Parliament's rights and obligations and contribute to a more open and informed debate on international negotiations, and acceptance of their results. It can also be expected that Parliament will make greater use of implementation reports in order to monitor the practical application of concluded agreements.

⁸¹ On Parliament's side the mandate for negotiations was given by the Conference of Presidents on 9 June 2016 and is based on Parliament's resolution A7-0120/2014 of 13 March 2014 on the implementation of the Treaty of Lisbon with respect to the European Parliament (in particular paragraphs 39-59). Mr Elmar Brok and Mr Bernd Lange are Parliament's negotiators. The current framework for cooperation between the institutions in the area of international agreements consists, on the one hand, of interinstitutional agreements between Parliament and the Council on access to sensitive information in the field of CSDP and to classified information in the area of CFSP, and, on the other hand, of the 2010 Framework Agreement on relations between the European Parliament and the European Commission.

Conclusion

The 8th Parliament's legislative activity has, to date, not decreased significantly in comparison with the 7th Parliament - which, one must not forget, was bound to experience a surge in co-legislative business with the entry into force of the Treaty of Lisbon. While the first calendar year of the new Commission was perhaps most remarkable for its extremely cautious legislative output, 2016 has seen a significant change in approach, as the Juncker College starts to deliver on its legislative priorities (including with large legislative packages, for example in the field of energy), and responds, as only the Union can, to European and international commitments and crises (such as in the area of migration).

The figures (particularly regarding early reading agreements) suggest that this term's co-legislative activity has been conducted with relative calm and efficiency. But this would be to overlook the tremendous work put in by Parliament to meet, with the required diligence and, when appropriate, urgency, the significant legislative challenges the co-legislators have faced, as they deliver high-quality and much-needed policies for Europe's citizens.

Nonetheless, interinstitutional tensions persist, for example in certain policy areas, such as fisheries and agriculture (where the co-legislators' interpretations of Articles 42(2) and 43(3) TFEU continue to differ), and on certain cross-cutting institutional issues that sometimes put a strain on the principles of sincere and loyal cooperation, such as on delegated and implementing acts. While case-law has clarified some of these matters - if not resolved them politically - others have been addressed in the Interinstitutional Agreement on Better Law-Making. This is the case for delegated and implementing acts, where the expectation was that Parliament's acceptance to give a more prominent role to national experts in the preparation of delegated acts should, if commitments are respected, lead to smoother legislative negotiations between Parliament and the Council; it is also true in the field of international agreements, where Parliament's rights have not always been properly respected.

As such, one can hope that interinstitutional work and discussions during the second half of this current parliamentary term will bring considerable improvements in both areas, addressing Parliament's legitimate expectations, notably with regard to a Delegated Acts Register, delineation criteria, and outstanding alignment acts (to align legislative acts containing RPS provisions to the Treaty of Lisbon), on the one hand, and a future agreement on improved practical arrangements for cooperation and information-sharing for international agreements, on the other.

The joint database on the state of play on legislative files could, for its part, go some way to addressing a number of transparency concerns that have resurfaced again, with greater vigour and increased visibility, during the current term. The institutions have recognised the need to communicate better at the various stages of the ordinary legislative procedure, including following successful outcomes of trilogue negotiations, and to make information more readily accessible in a user-friendly manner. In addition to the steps already undertaken, particularly in Parliament, to further improve the publicity of the institutions' internal procedures and practices prior to, during and after legislative negotiations, they will also reflect further on how they can, independently and together, adequately deliver on citizens' legitimate information needs, without undermining the

fruitful working environment and conditions that have enabled Parliament, the Council and the Commission to respectfully and responsibly legislate over the years.

Furthermore, until such a time as the imbalance in relations between the institutions is properly resolved (notably regarding Parliament access to Council working party and COREPER documents and meetings), a joint database could also serve to ensure Parliament's rights to information and equal treatment, in accordance with the fundamental principle of sincere and transparent cooperation between the institutions throughout the legislative cycle, as again reaffirmed in the BLM Agreement. In this respect, citizens and Parliament alike would benefit from, amongst other things, all Council negotiating mandates being made public, and Member States' reflections in this area can only be welcomed.

Looking ahead, the second half of the current Parliament will also be extremely busy from a legislative point of view, as the Juncker Commission starts to deliver a larger number of legislative proposals, many of which in packages. In addition, important talks on the post-2020 MFF are likely to get underway, with proposals expected ahead of the next EP elections in 2019. Of course, discussions on the MFF - as in so many other areas - will be strongly influenced by the course of negotiations regarding Brexit. Once the United Kingdom has notified the European Council of its intention to withdraw from the Union, Parliament will adopt a resolution in view of the European Council's guidelines, and it expects to be closely involved throughout the ensuing withdrawal negotiation process, particularly given its right of consent over any future withdrawal agreement.

Glossary

Frequently used acronyms

CFP	Common Fisheries Policy
COREPER	Committee of Permanent Representatives
MFF	Multiannual Financial Framework
RPS	Regulatory Procedure with Scrutiny
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the 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 - Extract from Parliament's Rules of Procedure
Rules 69b to 69f on interinstitutional negotiations during the ordinary
legislative procedure (applicable as of 16 January 2017)

Rule 69b: General provisions

Negotiations with the other institutions aimed at reaching an agreement in the course of a legislative procedure may only be entered into following a decision taken in accordance with the Rules 69c to 69e or following a referral back by Parliament for interinstitutional negotiations. Such negotiations shall be conducted having regard to the Code of Conduct laid down by the Conference of Presidents.

Rule 69c: Negotiations ahead of Parliament's first reading

1. Where a committee has adopted a legislative report pursuant to Rule 49, it may decide, by a majority of its members, to enter into negotiations on the basis of that report.
2. Decisions to enter into negotiations shall be announced at the beginning of the part-session following their adoption in committee. By the end of the day following the announcement in Parliament, Members or political group(s) reaching at least the medium threshold may request in writing that a committee decision to enter into negotiations be put to the vote. Parliament shall vote on such requests during the same part-session.

If no such request is received by the expiry of the deadline laid down in subparagraph 1, the President shall inform the Parliament that this is the case. If a request is made, the President may, immediately prior to the vote, give the floor to one speaker in favour and to one speaker against. Each speaker may make a statement lasting no more than two minutes.

3. If Parliament rejects the committee's decision to enter into negotiations, the draft legislative act and the report of the committee responsible shall be placed on the agenda of the following part-session, and the President shall set a deadline for amendments. Rule 59(4) shall apply.
4. Negotiations may start at any time after the deadline laid down in the first subparagraph of paragraph 2 has expired without a request for a vote in Parliament on the decision to enter into negotiations being made. If such a request has been made, negotiations may start at any time after the committee decision to enter into negotiations has been approved in Parliament.

Rule 69d: Negotiations ahead of Council's first reading

Where the Parliament has adopted its position at first reading, this shall constitute the mandate for any negotiations with other institutions. The committee responsible may decide, by a majority of its members, to enter into negotiations at any time thereafter. Such decisions shall be announced in Parliament during the part-session following the vote in committee and reference to them shall be included in the minutes.

Rule 69e: Negotiations ahead of Parliament's second reading

Where the Council position at first reading has been referred to the committee responsible, Parliament's position at first reading shall, subject to Rule 69, constitute the mandate for any

negotiations with other institutions. The committee responsible may decide to enter into negotiations at any time after.

Where the Council position contains elements not covered by the draft legislative act or by the Parliament's position at first reading, the committee may adopt guidelines, including in the form of amendments to the Council position, for the negotiating team.

Rule 69f: Conduct of negotiations

1. Parliament's negotiating team shall be led by the rapporteur and shall be 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 that wishes to participate.
2. Any document intended to be discussed at a meeting with the Council and the Commission ("trilogue") shall be circulated to the negotiating team at least 48 hours or, in cases of urgency, at least 24 hours in advance of that trilogue.
3. After each trilogue, the Chair of the negotiating team and the Rapporteur, on behalf of the negotiating team, shall report back to the next meeting of the committee responsible.

Where it is not feasible to convene a meeting of the committee in a timely manner, the Chair of the negotiating team and the Rapporteur, on behalf of the negotiating team, shall report back to a meeting of the committee coordinators.

4. If negotiations lead to a provisional agreement, the committee responsible shall be informed without delay. Documents reflecting the outcome of the concluding trilogue shall be made available to the committee and shall be published. The provisional agreement shall be submitted to the committee responsible, which shall decide by way of a single vote by a majority of the votes cast. If approved, it shall be tabled for consideration by Parliament, in a presentation which clearly indicates the modifications to the draft legislative act.
5. In the event of disagreement between the committees concerned under Rules 54 and 55, the detailed rules 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.