

# MID-TERM ACTIVITY REPORT

## Developments and Trends of the Ordinary Legislative Procedure

1 July 2019 - 31 December 2021 (9<sup>th</sup> parliamentary term)



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# Foreword

The first half of the ninth parliamentary term turned out to be challenging and had serious ramifications for Parliament's way of working. Shortly after the elections, Parliament needed to react swiftly to Brexit, to continue work on the multiannual financial framework (MFF) 2021-2027 that the previous Parliament had begun, and, on top of all this, to react to the COVID-19 pandemic.

Despite these challenges, it has been surprising, but also reassuring, to realise that Parliament has succeeded in continuing to fulfil its role as co-legislator and proven itself to be a reliable and flexible institution. The co-legislators were able to adopt measures aimed at protecting the health of our citizens within a short time frame. Parliament's response to the crisis can be considered comprehensive and up to the challenge.

One striking aspect is that the data shows that the number of legislative acts passed in the ordinary legislative procedure (OLP) is even higher than the number of adopted OLP acts in previous parliamentary terms. The increase in the use of the urgent and simplified procedures that we can observe in this period is linked to the exceptional circumstances described above. The relatively high number of 'early' second reading agreements primarily reflects the finalisation of the negotiations on the sectoral programmes under the MFF.

Overall, we feel very proud to be part of this institution which has shown its flexibility and resilience in dealing with such challenging situations. We would like to take this opportunity to thank all Members and staff for their tireless efforts to ensure that Parliament's prerogatives are respected in these difficult times.

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## LIST OF ABBREVIATIONS

AFCO	Committee on Constitutional Affairs
AFET	Committee on Foreign Affairs
AGRI	Committee on Agriculture and Rural Development
BUDG	Committee on Budgets
CAP	Common agricultural policy
CCC	Conference of Committee Chairs
CONT	Committee on Budgetary Control
CoP	Conference of Presidents
CULT	Committee on Culture and Education
DA	Delegated acts
DEVE	Committee on Development
ECON	Committee on Economic and Monetary Affairs
EMPL	Committee on Employment and Social Affairs
ENO	Early non-objection
ENVI	Committee on the Environment, Public Health and Food Safety
EU	European Union
FEAD	Fund for European Aid to the Most Deprived
FEMM	Committee on Women's Rights and Gender Equality
IJA on BLM	Interinstitutional Agreement on Better Law-Making
IMCO	Committee on the Internal Market and Consumer Protection
INTA	Committee on International Trade
IPA III	Instrument for Pre-Accession Assistance
ITRE	Committee on Industry, Research and Energy
JURI	Committee on Legal Affairs
LIBE	Committee on Civil Liberties, Justice and Home Affairs
MFF	Multiannual financial framework 2021-2027
NDICI	Neighbourhood, Development and International Cooperation Instrument
NGEU	Next Generation EU
OLP	Ordinary legislative procedure
OR	Own resources
PECH	Committee on Fisheries
REGI	Committee on Regional Development
RoP	Rules of Procedure
RPS	Regulatory Provisions of Scrutiny
TRAN	Committee on Transport and Tourism
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom

## Key messages

The first half of the ninth parliamentary term is likely to be remembered as being challenging and transforming for the European Parliament. The outbreak of the COVID-19 pandemic brought about an almost overnight change in the institution's way of working, also with a considerable impact on its legislative work.

In mid-March 2020, as the first wave of the pandemic reached Europe, all interinstitutional negotiations were brought to an immediate halt. The three institutions quickly started building their technical capacity to adapt to the situation and by mid-May, negotiations had slowly resumed, mostly in a semi-remote format.

The pandemic directly influenced how Members participated in interinstitutional negotiations. Most Members accepted the use of remote technology, and work picked up pace quickly. However, it is clear that communication and transparency required greater efforts in comparison to the normal way of working. The lack of meetings in person changed the dynamics between the negotiating teams from the three institutions (Parliament, the Commission and the Council) and the atmosphere of trust engendered by face-to-face discussions was different in remote negotiations.

Remarkably, despite the challenges, the legislative output of Parliament during the first half of the ninth parliamentary term was even higher than the equivalent period in the eighth term. Parliament adopted 176 acts under the ordinary legislative procedure (OLP) between the elections in 2019 and the end of 2021, 24 more than the number adopted during the first half of the eighth parliamentary term.

This increase may be attributed to the 41 sectoral proposals under the multiannual financial framework (MFF) 2021-2027, and the legislation necessary to react urgently to the pandemic and to adapt to Brexit. With regard to the latter, the first half of the ninth parliamentary term saw in total 51 simplified and urgent procedures, which were less in use in previous terms. The unusually high number of these procedures also contributed to the notably low average duration for legislative procedures in first reading, which was only 12 months during the first half of this term.

Overall, Parliament's swift adaptation to the situation caused by the pandemic showed a considerable degree of flexibility and resilience on the part of the institution. It also demonstrated the commitment of Members and staff of Parliament, together with the other EU institutions and Member States, to deliver during these difficult times.

The trend that we observed during the eighth parliamentary term of the Commission tabling fewer proposals continued during the first part of this term. Moreover, the proposals presented have been more and more cross-policy in nature. This requires intensive cooperation between the parliamentary committees.

Until now, committee mandates have represented the majority of Parliament's negotiating mandates during the ninth term, although an increase in plenary mandates can be observed. In three cases, a decision by a committee to start negotiations was put to the vote in plenary before it was granted.

The trend towards early agreements that we had already observed under previous terms continued. During the first half of this parliamentary term, 70 % of all OLP procedures were concluded at first reading. We also observed an increase in the number of so-called early second reading agreements<sup>1</sup>. For the most part, this was due to the fact that many of the legislative proposals from 2018 had been presented under the MFF, for which Parliament had agreed on its first reading position during the eighth term, and which were then concluded in early second reading during the ninth term.

The adoption of the MFF Regulation and the sectoral programmes, and the adoption of urgent COVID-19-related legislation were probably the biggest achievements of the first half of the ninth term. It should be noted that on this occasion, the negotiations on the MFF 2021-2027 were different from previous rounds because of the 2019 elections to the European Parliament, the appointment of the new Commission and Brexit. In addition, the COVID-19 pandemic necessitated a new financial package accompanied by new legislative proposals and some amending proposals. Parliament faced rare circumstances requiring cross-committee cooperation and innovative solutions, including from the standpoint of the Rules of Procedure. For Parliament, the governance of the programmes (the use of delegated acts for annual and multiannual work programmes) was one of the most prominent horizontal issues.

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<sup>1</sup> An early second reading agreement is a second reading that ends when Parliament approves the Council's position at first reading without amendments, thereby concluding the procedure. By contrast, in a full second reading the Council would still adopt its position at second reading, approving Parliament's second reading without amendments.



# 1. The COVID-19 pandemic and its effects on Parliament's legislative work

At the beginning of 2020, the COVID-19 pandemic spread quickly across Europe and the globe, leading to EU Member States gradually closing their borders, introducing travel bans and ordering lockdowns to protect their populations. The restrictions on free movement, as well as the severe health risks related to the pandemic, severely affected the legislative work and functioning of the European Parliament.

Starting on 2 March 2020, and based on Rule 22(5)<sup>2</sup> of Parliament's Rules of Procedure (RoP)<sup>3</sup> and Parliament's business continuity policy<sup>4</sup>, Parliament's President published regular decisions on health and safety measures, contingency planning and the continuity of Parliament's business.

The President's decisions concerned access to Parliament's buildings, the organisation of in person, semi-remote and remote meetings<sup>5</sup>, the procedures in plenary, and the work of Parliament's governing bodies, parliamentary committees and the political groups. During the first phase, the length of the meeting days during plenary sessions was reduced, allowing only debates and remote voting on urgent items, for example those related to the adoption of measures to curb the pandemic.

For most of the time, the governing bodies of Parliament, the committees and the political groups were able to keep on meeting (the participation of external parties and the media was excluded), although, at the beginning, they could only do so remotely. From summer 2020 onwards, meetings in a semi-remote format, with sometimes only the Chair present in the room, were made possible. Meeting rooms in Parliament had to be technically upgraded to facilitate these semi-remote and/or remote committee and plenary meetings, allowing for the provision of interpretation and secure connections. Members and staff had to be prepared and equipped for remote working methods in line with the measures to suppress the pandemic. In particular, voting in Parliament had to be revised to fully remote and/or written procedures.

Based on these decisions, albeit under new and difficult circumstances, Parliament was able to continue its legislative activities fairly smoothly.

In December 2020, Parliament adopted amendments to its RoP under a new Title 'XIIIa Extraordinary Circumstances'<sup>6</sup>. These new rules codify how the President, with approval by the CoP, is to guide Parliament through an exceptional period, such as a pandemic, with regard to the organisation of part-sessions.

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<sup>2</sup> Rule 22(5) endows the President with responsibility 'for the security and the inviolability of the premises of the European Parliament'.

<sup>3</sup> Where reference is made in this document to the RoP, this pertains to the Rules as they were in force in September 2021.

<sup>4</sup> See the European Parliament's business continuity policy, public version – July 2017.

<sup>5</sup> For the purpose of this report, the qualification 'remote' will be used for trilogue meetings where the main actors from the Council (presidency representatives), the Commission (Commissioner or high-level staff members) and Parliament (Committee Chair, rapporteur) were not present in the room. The qualification 'semi-remote' will be used for trilogues in which the main negotiators were present in the room, while other participants, such as staff or shadow rapporteurs, were connected remotely; the qualification 'in person' refers to trilogue meetings where no remote connection was available.

<sup>6</sup> Rules 237 a-d RoP.

## 2. The OLP and interinstitutional negotiations: overview and figures

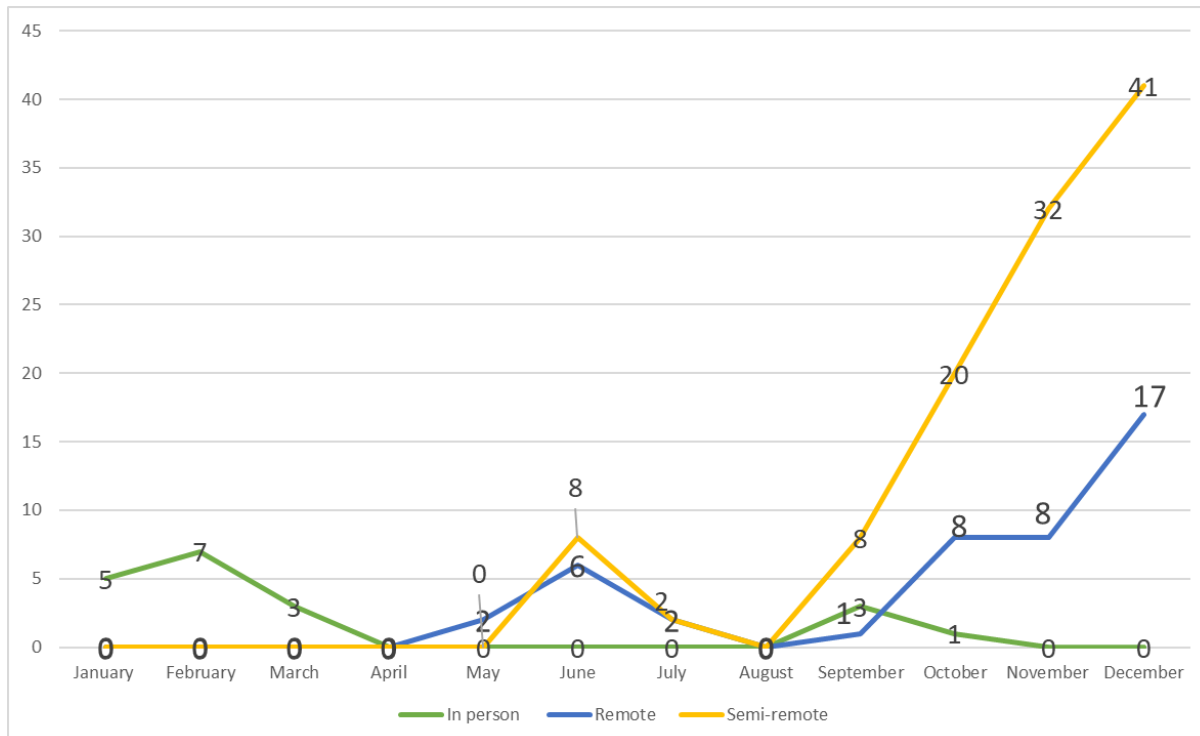
### 2.1 COVID-19 and its impact on the interinstitutional negotiations and the OLP

As set out in the previous chapter, the ninth parliamentary term had barely started when it was overshadowed by the outbreak of the COVID-19 pandemic in March 2020. This chapter analyses how the changes in working methods and social interaction, as described above, affected the rhythm and the way in which legislative procedures and, in particular, interinstitutional negotiations were handled.

Trilogue meetings are hosted by the two co-legislators and take place either in Parliament or in the Council. This applies equally to in person, semi-remote and remote meetings. During the first half of the ninth parliamentary term, a total of 378 trilogue meetings took place. 134 of these took place on the Council's premises, while 244 trilogues were hosted by Parliament.

Looking at the figures, it becomes clear that interinstitutional negotiations, after an initial short and complete stop between the beginning of March and mid-May 2020, regained their rhythm fairly quickly.

**Chart 1: Meeting mode and number of trilogues held in 2020**



By the end of 2020, legislative activity had returned to a working rhythm in keeping with the workload of other busy years. Provisional arrangements had been put in place that allowed negotiations to continue under the exceptional conditions of the pandemic. Until the end of 2021, the semi-remote option for trilogues predominated. The

presence of the main negotiators from Parliament, the Council and the Commission in one room with the provision of interpretation appeared to be essential to establishing trust between the actors in the procedure, as well as contributing to successful negotiations. The 'semi-remote' format encompassed different working arrangements with, in addition to the main negotiators, the most essential support staff preferably in the room and the other participants connected remotely. Meeting rooms then had to comply with specific infrastructure requirements with regard to physical distancing, the interpreters' booths available or IT applications.

Fully remote meetings remained the exception: they were used only at the beginning of the pandemic in spring 2020, at the end of 2020 and at the beginning of 2021 (coinciding with the peak in negotiations on the MFF sectoral programmes).

For all meetings, additional staff were needed, not only to provide technical support, but also to assist with administrative preparation and guiding participants during the meetings. The semi-remote and remote settings therefore added a further layer of administrative and/or organisational complexity, as well as technical uncertainty to trilogue meetings.

### *Conclusions*

Overall, however, it can be concluded that the swift adaptation of Parliament to the situation caused by the pandemic shows a remarkable degree of resilience and flexibility on the part of the institution, its representatives and in its working methods. It demonstrates the commitment not only by Members, but also by the other EU institutions and Member States to deliver during these difficult times. To achieve this, there was a general willingness to make use of modern technology.

Nevertheless, further efforts were needed to ensure communication and transparency. At the same time, however, an increase in the participation of Members, facilitated by the remote tools, could also be observed. Parliament's negotiating teams are complex, consisting of Members and staff from the political groups plus the administrative services. During the 'lockdown' periods, travelling to Brussels was practically impossible. Rapporteurs and shadow rapporteurs in their respective Member States were not able to meet among themselves in person. They were also unable to meet their staff or members of the administrative support services who were often based in Brussels. This made the internal preparation of the interinstitutional negotiations more cumbersome. In addition, during trilogues, Chairs and rapporteurs usually need to consult with their shadow rapporteurs. While preparations can be made to plan time slots and 'breakout rooms', i.e. virtual venues for such consultations, negotiations frequently follow their own rhythm and do not fit into a pre-prepared timetable. They may require spontaneous meeting breaks for internal consultations at unforeseen moments, in particular when negotiators are working on the more political issues. At such moments, a negotiating team that is physically present in the meeting room allows for much greater flexibility, more efficient discussions and clearer outcomes.

## 2.2 General trends in the OLP and negotiations between July 2019 and December 2021: differences and similarities compared to previous years

In addition to the pandemic, the wider political context also needs to be taken into account.

First, it is important to keep in mind that the most recent elections had led to structural changes in Parliament. While, as in previous terms, no political group had a majority in Parliament, this term it was not even possible for two political groups to achieve a majority, whether ad hoc or through a broader agreement. It now took at least three political groups (out of seven during the first half of this legislative term) to build a majority, including for the adoption of legislative acts. In particular for a second reading, for which an absolute majority in plenary is needed to amend or to reject the Council's first reading position, more negotiating efforts, compromises and, possibly, time would be needed to oppose the Council in the event of disagreements on a legislative proposal.

Politically, the finalisation of the MFF and the corresponding sectoral programmes were the focus of Parliament's legislative and budgetary work during the first half of the ninth term. This is a major difference compared to the beginning of the previous term (2014-2019), when it was possible to conclude all MFF-related files prior to the 2014 elections (for more details, please see Chapter 4 on the MFF negotiations below).

### *Commission proposals since the 2019 elections*

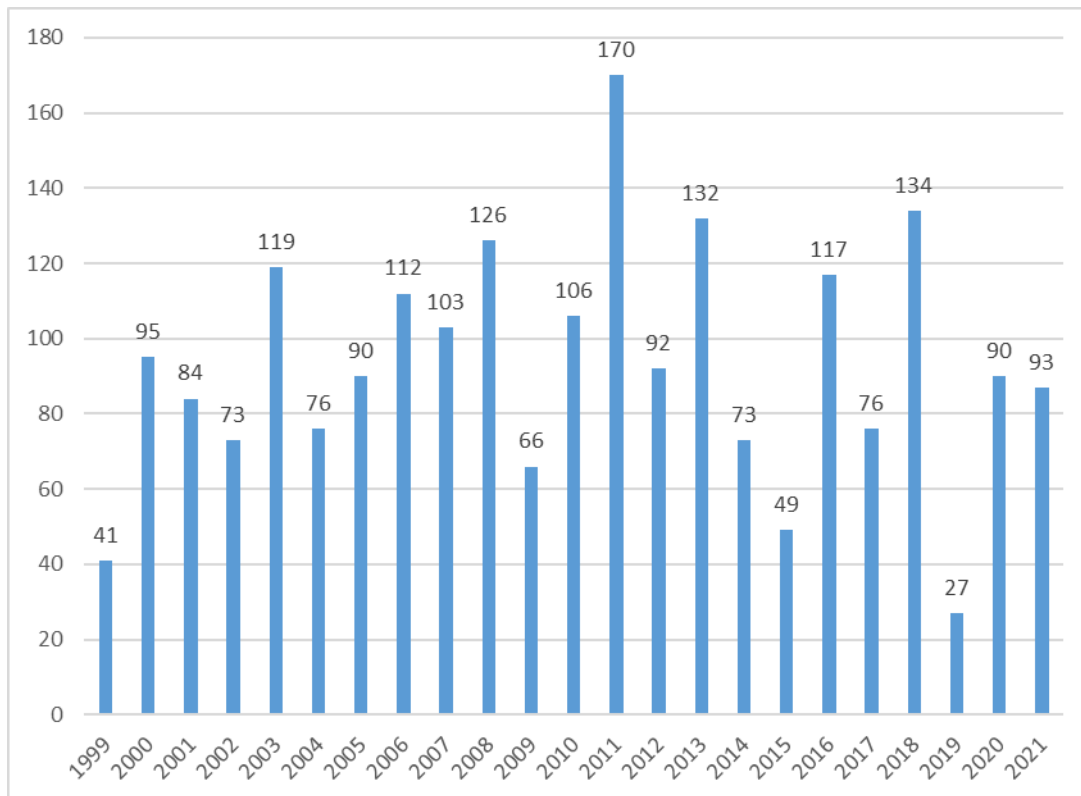
Obviously, a high number of legislative files had their origin in the fight against the COVID-19 pandemic (35 files under the OLP<sup>7</sup>), which also left its mark on the number and content of the OLP proposals. Many of these COVID-19-related proposals were of an urgent character (for more information, please see Chapter 3 specifically on this issue). Moreover, some legislative proposals were related to the withdrawal of the United Kingdom (UK) from the EU, most of them also treated as urgent files (for more details, please see Sub-Chapter 6.2 on Brexit).

In July 2021, the Commission presented its 'Fit for 55 package' with 13 legislative proposals and one more added in September 2021. These revisions and new initiatives are linked to the European Green Deal's climate actions and, in particular, the 55 % target for the net reduction in greenhouse gas emissions. The work on these files will certainly become one of the key points in Parliament's work for the second half of the legislative term.

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<sup>7</sup> This figure does not include two COVID-19-related files that were withdrawn.  
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**Chart 2: Commission OLP proposals per year since 1999**

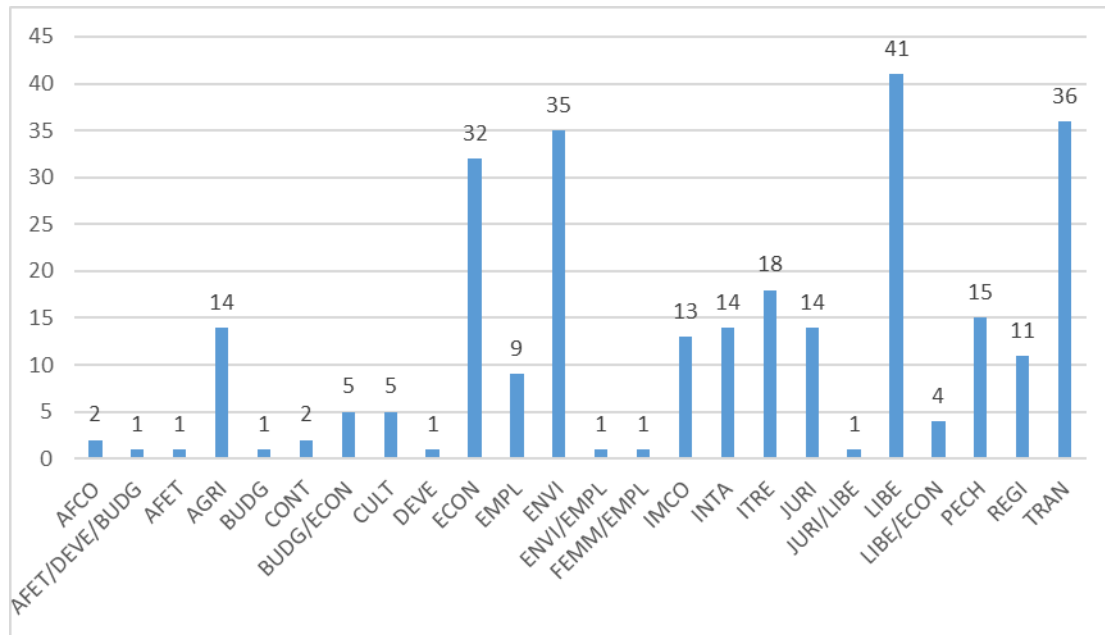


Since the beginning of the ninth parliamentary term, the Commission has tabled 197 proposals (by 31 December 2021, excluding corrigenda)<sup>8</sup> under the OLP. This number seems to be in line with the trend already observed at the beginning of the previous term, which represented a significant drop to 192 files when compared with the same periods of the sixth and seventh terms, during which the Commission had tabled 321 and 244 proposals respectively<sup>9</sup>. The COVID-19 pandemic does not seem to have had an effect on the Commission's capacity to present proposals. On the other hand, in 2020, the pandemic created a need for proposals to curb the devastating impact of COVID-19.

<sup>8</sup> Based on the Register of Commission Documents: <https://ec.europa.eu/transparency/documents-register/>.

<sup>9</sup> See Activity Report on the Ordinary Legislative Procedure 4 July 2014 - 31 December 2016, p. 4.

**Chart 3: Commission proposals according to lead committee**



As had already been observed during the previous term, a relatively high number of Commission proposals were broad and cross-policy in nature, which touched upon the competences of several committees. As a result, in such cases Parliament responded with the associated committee procedure (Rule 57 RoP) or the joint committee procedure (Rule 58 RoP). Until December 2021, the latter was applied to 13 proposals tabled by the von der Leyen Commission since 2019, compared to 25 during the whole of the eighth parliamentary term. The associated committee procedure has so far been used 25 times during this term.

Looking at the proposals tabled by the von der Leyen Commission, their distribution confirms the trend of particularly active legislation within the remits of the LIBE, TRAN, ENVI and ECON committees<sup>10</sup>.

<sup>10</sup> Committee on Civil Liberties, Justice and Home Affairs (LIBE), Committee on Transport and Tourism (TRAN), Committee on the Environment, Public Health and Food Safety (ENVI), Committee on Economic and Monetary Affairs (ECON).

### *'Unfinished business' resumed under the ninth Parliament*

In addition to the Commission proposals presented since 2019, the newly elected Parliament had to decide whether it intended to resume work on 121 OLP files that had not been concluded prior to the elections. In accordance with Rule 240 RoP, the CoP took the relevant decision on 16 October 2019 based on reasoned requests from parliamentary committees and other institutions.

Of these 121 files, Parliament had not yet adopted its first reading position on 37, and the CoP decided to resume work from where it had been left off at the end of the eighth parliamentary term for 34 files, while for three files the decision was to start from scratch. For the remaining 84 OLP files, the first reading had already been concluded during the previous term and it was confirmed that these first readings constituted Parliament's mandates in the upcoming negotiations with the Council.

By the end of 2021, 67 of the 121 'unfinished business' files had been concluded and 17 proposals had been withdrawn by the Commission, including MFF files, leaving 37 files still ongoing. Many of these pertain to the work of the TRAN and LIBE committees.

The overall number of 121 unfinished files is similar to the 129 files carried over at the beginning of the previous term (and much higher than the 23 files carried over from the sixth to the seventh legislative term). If the sheer number of files meant that Parliament could not afford a slow start, this situation was exacerbated by the pressing need to conclude its work in particular on the legislative files related to the new 2021-2027 MFF, as the previous MFF period was coming to an end in December 2020.

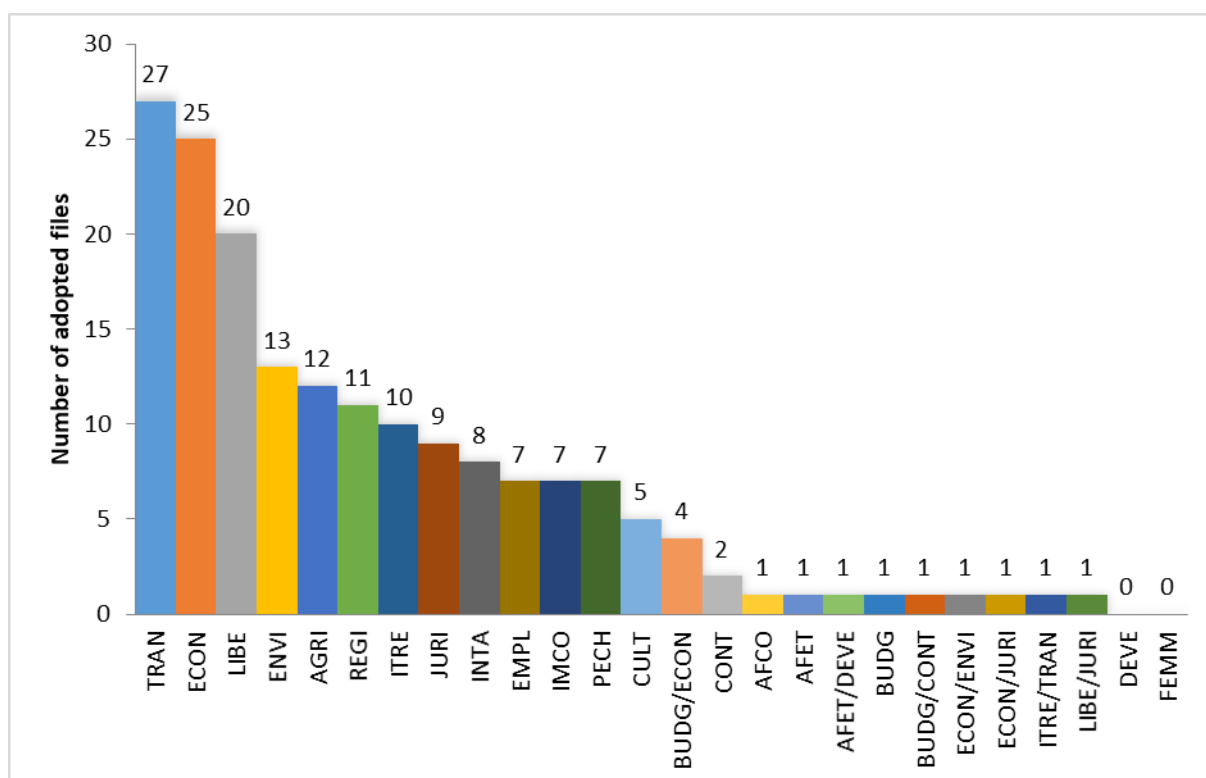
Furthermore, the decision of the CoP also included a request to the Commission to withdraw 12 additional files, including 10 OLP files. Of these, the Commission had withdrawn eight by the end of 2021, apart from the LIBE file 2011/0073(COD) on public access to European Parliament, Council and Commission documents and the ENVI file 2015/0093(COD) on the possibility for the Member States to restrict or prohibit the use of genetically modified food and feed on their territory.

**Chart 4: Overview of files ‘carried over’  
from the eighth to the ninth parliamentary term  
and their state of play at the halfway point**

Committee	Parliament’s first reading not adopted before the start of the ninth term		Parliament’s first reading adopted by the beginning of the ninth term		Withdrawn by the Commission
	Resumed at the start of the ninth term	Adopted by the end of 2021	Resumed at the start of the ninth term	Adopted by the end of 2021	
AFET			1	1	
AFET/DEVE			1	1	
AGRI	3	3			
BUDG/ECON	2		1		2
BUDG/CONT			1	1	
CONT			2	2	
CULT			3	3	
ECON	3	2	5	4	1
ECON/ENVI			1	1	
ECON/JURI			1	1	
EMPL	1		2	2	
ENVI	2		5	4	1
ENVI/AGRI			1		1
IMCO	2	2	6	3	4
INTA	4	1			1
ITRE			7	7	
ITRE/TRAN			1	1	
JURI	1		6	3	
JURI/FEMM			1		
JURI/LIBE			1	1	
LIBE	18	5	11	8	4
PECH	1		7	1	6
REGI			5	4	
TRAN			14	6	1
<b>Total</b>	<b>37</b>	<b>13</b>	<b>84</b>	<b>54</b>	<b>21</b>



**Chart 5: Adopted OLP files per committee**

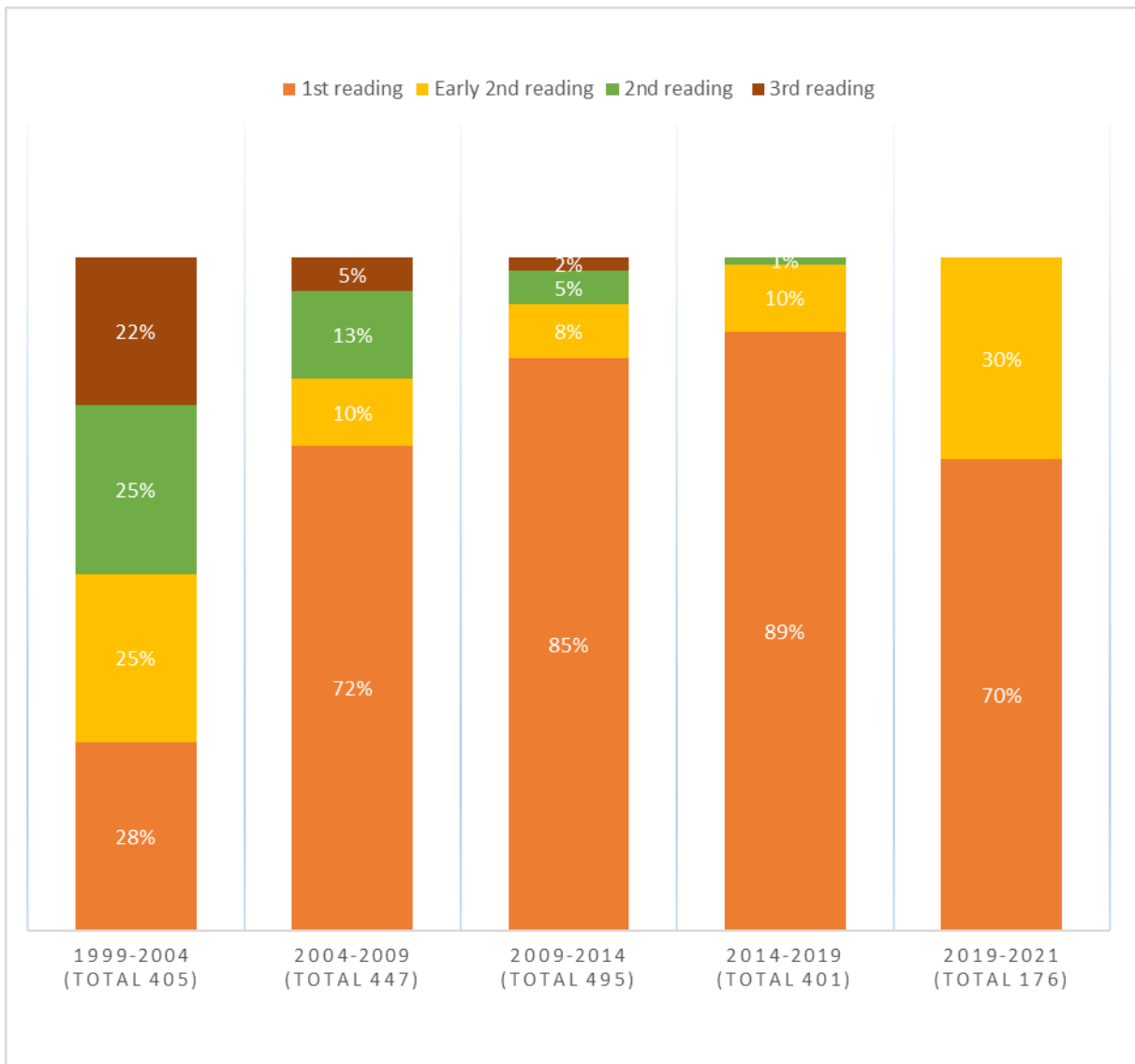


Compared to the previous mid-term at the end of 2016, the number of adopted files had increased to 176 files by 31 December 2021, compared to 152 files at the end of 2016, revealing the intense legislative activity during the ninth parliamentary term. The drop in output of legislative proposals by the Commission, which is often observed at the beginning of a new Commission, was not matched by an equal drop in Parliament’s legislative work. This is clearly linked to the high number of sectoral programmes of the MFF 2021-2027, the measures to combat the pandemic and adapting to Brexit. On the other hand, it also shows that the COVID-19 pandemic does not seem to have had a significant impact on the quantity of legislative files dealt with by Parliament.

*Stage of adoption of OLP files*

The overall trend of reaching agreements and concluding a file at the earliest possible stage in the OLP has continued at the beginning of this parliamentary term and more than two thirds of all files were concluded in first reading. However, there is also a relatively high number of so-called early second reading agreements compared to the average of previous parliamentary terms. These early second readings almost exclusively concern files on which the outgoing Parliament had adopted its first reading position prior to the 2019 elections. The first reading retained what had been achieved by Parliament or the co-legislators during the eighth term, with a view to continuing and concluding the work during this term at the next possible stage, the early second reading. We can assume that the proportion of first reading agreements will have increased by the end of this term.

**Chart 6: Stage of adoption of OLP files since the fifth term**



During the first half of this term, there have not been any second reading agreements, while the third reading agreements had already disappeared before 2014.

*Negotiating mandates*

Parliament had already reacted to this trend in 2017 when it adopted new rules on its first reading agreements. These changes increased political oversight and accountability for the negotiating mandates adopted at this stage of the procedure. Since then, all committee decisions to start negotiations based on a report (**‘committee mandate’**, Rule 71) have to be announced in plenary with a possibility for the political groups or a number of individual Members reaching a certain threshold to challenge them. Furthermore, the political groups or a number of individual Members have the possibility to amend the content of the committee mandate by adopting amendments to the Commission proposal during a plenary vote (i.e. a **‘plenary mandate’**, Rules 59(4) and 60) before requesting a referral back to the committee for negotiations or reconsideration, or to conclude the first reading altogether.

So far during this term, committee mandates have made up the majority of Parliament’s negotiation mandates for first readings: 48. Nevertheless, in 27 cases,

plenary adopted an amended mandate before referring the file back for negotiations to the responsible committee. In three cases, a decision by a committee to start negotiations was put to the vote in plenary before it was granted.

Comparing these figures to the ones from the previous term, there seems to be a shift towards a higher proportion – 36 % – of ‘plenary mandates’. In the previous term, more than three quarters of all mandates had been committee mandates. A possible explanation for this development may be that plenary mandates help to coordinate complex legislative proposals in cases of a conflict of competences. Moreover, it is interesting to note that fewer committee decisions to enter into negotiations have been challenged than in the past.

Finally, it should be noted that 51 OLP acts (i.e. around 30 %) were concluded by the co-legislators without trilogue negotiations<sup>11</sup>. These acts fall into several categories, such as: codifications (2), the transposition of legally binding commitments, urgent files on which no or few (technical) amendments to the Commission proposals were considered necessary and therefore no trilogues took place.

#### *Duration of the OLP during the first half of this term*

When looking at the duration, the total average length of all OLP procedures was 19 months<sup>12</sup> during the first half of the ninth parliamentary term, compared to 22 months in the first half of the eighth term. To identify the reasons why the co-legislators have been able to conclude OLP files on average within a shorter time frame than five years ago, the procedures need to be analysed in greater detail.

For files agreed at first reading, the figures reveal a remarkable average of only 12 months. This very low figure – five years ago, a first reading procedure took 16 months – has to be seen within the context of an unusually high number of Commission proposals, for which Parliament applied the urgent or the simplified procedure (please see Chapter 3 on special procedures for more details). When excluding the urgent procedure from the calculation, the average length of a first reading was 16 months, and the average duration of all OLP files was 24 months.

To explain the eight-month discrepancy between the average duration of first readings and the average duration of all OLP files without the urgent procedure, the duration of early second readings needs to be taken into account. For the latter, the average duration was 36 months during the first half of this term, which is similar to previous terms. The fact that early second readings took about a year longer than first reading agreements is, on the one hand, due to the additional procedural step, but is also partly because many of them had already started in the previous parliamentary term, including many MFF proposals, and were only concluded after the 2019 elections, including an election break of about six months. Moreover, Parliament had also stopped negotiations on MFF files for some time, and, as a result of the pandemic, the Commission had come up with amended proposals that also extended the duration of the OLP procedure (for more information, please see Chapter 4 on the MFF and Sub-Chapter 3.3. on the amended Commission proposals).

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<sup>11</sup> This figure does not include proposal 2021/0323(COD), as it was not concluded in 2021, see also footnote 12.

<sup>12</sup> Calculated from the date of proposal by the Commission to the signing of the adopted act by Parliament's President and a representative of the Presidency of the Council (so-called LEX signature).

## 2.3 Post-COVID-19 Parliament

In April 2021, President Sassoli launched a reflection process and invited both Members and Parliament's staff 'to draw lessons from the crisis and prepare for a new political and institutional reality', 'with the aim of moving towards a more resilient and effective institution'<sup>13</sup>. Parliament's legislative powers were also included in the reflection process in order to strengthen its prerogatives. One aspect looked at in this context was how to strike the right balance between transparency and efficiency in legislative proceedings.

In his letter to Members, dated 31 March 2021, the President communicated his decision to set up a number of Focus Groups, charged with the task of reflecting on parliamentary democracy for a stronger European Parliament after COVID-19.

As a result, five Focus Groups were established to develop a number of proposals focusing on plenary reform, strengthening parliamentary prerogatives, enhancing parliamentary diplomacy, relations with citizens and communication, and facilitating Parliament's internal organisation. These groups are composed of representatives from across the political spectrum.

The recommendations emerging from the Focus Groups will be examined and tested by Parliament's governing bodies. One of the proposals, about voting straight after a debate in plenary on controversial legislative files, was already tested for the first time during the November II plenary session in 2021.

The results of this process should be available in the second half of the ninth term.

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<sup>13</sup> Rethinking parliamentary democracy – A stronger European Parliament after COVID-19.  
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### 3. Special procedures

The COVID-19 pandemic had an impact on the use of special procedures. This is reflected in the use of, in particular, the 'urgent procedure' (Rule 163). The same applies to the number of 'amended Commission proposals'.

#### 3.1. The urgent procedure (Rule 163)

For many years, the 'urgent procedure' did not play any role in Parliament's decision-making process. Then, as a result of the UK's withdrawal from the EU and the need for contingency and preparedness acts prior to the expected departure date at the end of March 2019, Parliament applied the urgent procedure to the adoption of three Brexit-related files. At the beginning of the ninth parliamentary term, the urgent procedure continued to be linked to measures taken in relation to the UK's withdrawal from the EU (11 files), but from 2020 onwards the procedure was mainly used to mitigate the effects of the COVID-19 pandemic (24 files). Since the beginning of the ninth term, Parliament has decided to apply the urgent procedure to 35 files in total. For both Brexit and the pandemic, the need for urgent reaction by the EU was beyond doubt and supported across the political spectrum, by the Member States and between the institutions. The legislative proposals put forward by the Commission were targeted responses of limited scope, for example to establish temporary measures<sup>14</sup>. Compared to previous objections against this procedure, it was also clear that this time, swift decision-making by the co-legislators did not come from a need to make up for lost time as a result of delays on the part of the Commission when preparing the proposals.

A request to apply the urgent procedure can be made in plenary by the President, a committee, a political group, Members reaching at least the low threshold (5 %), the Commission or the Council. Once the request has been granted, the procedure can be concluded during the same plenary part-session.

According to Rule 163, it is plenary that takes the decision to add a file as an urgent procedure to the plenary agenda. In the cases mentioned, if no changes to the Commission proposal were considered necessary, the committees often did not appoint a rapporteur. In the event of differing viewpoints between the institutions, the changes to the text were usually negotiated with the Council before the agreed texts were tabled in plenary under the urgent procedure.

#### 3.2. The simplified procedure (Rule 52)

Another way to shorten the typical way of dealing with a legislative file in Parliament is to use the 'simplified procedure' (Rule 52). This procedure allows a committee to adopt its position faster, without the in-depth discussion usually linked to the adoption of a report. A committee can opt for this path if it is supported by a substantial majority of its Members, or, to put it in the terms of the RoP, unless a tenth of its Members objects to it. It usually involves a procedure to adopt a Commission proposal unchanged or with very few amendments. By December 2021, the committees had decided to apply the simplified procedure to a total of 16 of the 176 concluded OLP files. As was the

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<sup>14</sup> Specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak (2020/0054(COD)); Empowering France to negotiate an agreement supplementing its existing bilateral Treaty with the United Kingdom concerning the construction and operation by private concessionaires of a Channel Fixed Link (2020/0160(COD)).

case with the urgent procedure, trilogue negotiations with the Council did not take place (with the exception mentioned below).

Together with the use of the urgent procedure, a total of 51 out of 197 (30 %) Commission proposals were adopted using these special procedures in cases where it was important to speed up the decision-making process. Some examples are enabling funding for regions, the Fund for European Aid to the Most Deprived (FEAD), the distribution of medical equipment, or the rapid entry into force of the EU Digital COVID Certificate.

### **The EU Digital COVID Certificate**

For the two regulations creating the EU Digital COVID Certificate, the urgent procedure under Rule 163 was combined with amendments tabled by the LIBE committee in plenary. The adopted text was then referred back to committee for negotiations in accordance with Rule 59(4). The entire procedure was concluded within a mere three months.

### **3.3. Proposals amending Commission proposals**

Finally, the Commission presented amendments to its own proposals that had not yet been agreed by the co-legislators more often than it had done in previous years. These amended proposals were incorporated into the legislative process before the conclusion of the first reading, including during the ongoing negotiation process. In 2020, the Commission came forward with 10 such amended proposals, compared to four in 2018, one in 2017 and two in 2016<sup>15</sup>. The 2020 proposals concerned, among other issues, asylum and migration and MFF-related files.

The reasons for the Commission presenting amendments to its own proposals vary. In some cases, it was to adjust proposals to take account of new realities, or to preserve the work already done, which would have been lost if the existing proposal had been withdrawn and a new proposal tabled. For Parliament, these amended proposals sometimes caused additional procedural complexities and technical difficulties. In all cases, the competent committees accepted the approach by the Commission and did not restart the procedure from scratch based on Rule 61.

### **3.4. Conclusion**

If an initial conclusion can be drawn at this stage, it may be that Parliament is more ready than it has been in the past to make use of the inherent flexibility of its internal procedures in order to adapt its decision-making process where urgency requires swift results or where an adapted legislative process would visibly lead to better results. The statistics on the duration of procedures demonstrate that the application of the simplified and the urgent procedure served the purpose of shortening the duration of the legislative procedure for first readings in exceptional circumstances.

The Commission's approach of presenting amended proposals in the middle of the OLP was followed with the aim of responding to new developments in a legislative proposal or to giving new impetus where the negotiations on a particular file had stalled.

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<sup>15</sup> Based on an EUR-Lex search.  
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With regard to the amended Commission proposals, Parliament will need to adapt its procedures to facilitate work on such proposals, as this may occur again in the future.

## 4. MFF programmes

The negotiations on the MFF 2021-2027 and the corresponding funding programmes was the main legislative and budgetary activity during the first half of the ninth term.

In line with Article 312 of the Treaty on the Functioning of the European Union (TFEU), the MFF determines, over a period of at least five years, the expenditure of the EU's major activities. The MFF exercise comprises two important dimensions: the budgetary dimension, i.e. the MFF as such (the MFF Regulation and the accompanying Interinstitutional Agreement, own resources (OR) and Next Generation EU (NGEU)), and the policy dimension, which consists of the legal bases for the multiannual programmes and instruments for activities. This chapter focuses on the policy dimension of the MFF: the negotiations on the MFF-related programmes that were conducted under the OLP.

### 4.1. Background information

Since the entry into force of the Treaty of Lisbon, the MFF has been a Treaty-based legally binding act (the MFF Regulation) adopted unanimously by the Council after obtaining the consent of Parliament. Parliament exercises co-legislative powers on almost all the related financial programmes, allowing it to shape the different policy areas and to ensure democratic and political scrutiny of the implementation of these programmes. The Committee on Budgets (BUDG) is responsible for the MFF and OR, as set out in [Annex VI](#) of Parliament's Rules of Procedure. Sectoral committees (and among them also the BUDG committee for some files) work in parallel on the revision or setting up of new expenditure programmes, mostly under the OLP. However, the finalisation of the negotiations on the individual programmes is conditional upon the adoption of an MFF Regulation, which sets out, in particular, the expenditure ceilings and other horizontal provisions.

#### *The Council's negotiating boxes*

Since the first MFF in 1988, the Council has further interlinked the negotiations on the MFF Regulation and the sectoral programmes by establishing 'negotiating boxes' which have been used by the European Council as a toolkit to achieve consensus among the Member States on the MFF and OR. A negotiating box contains budgetary provisions such as ceilings for EU expenditure, maximum headings for policy areas and national envelopes. In addition, it includes detailed provisions on the sectoral programmes, mainly in the fields of agriculture and cohesion policy, and touches upon 'sensitive areas' in other policy fields, as well as horizontal and/or cross-cutting provisions. In practice, during the negotiations on the 2021-2027 MFF sectoral files, the Council refused to negotiate any elements that it had put into the negotiating boxes (so-called bracketed provisions) before a compromise position had been adopted by the European Council. Once the negotiating box had become European Council conclusions, the Council completed its negotiating mandates but continued to regard these elements as 'non-negotiable', arguing that it was because they had been the result of a delicate agreement at the highest political level.



## 4.2. Negotiations on the Multiannual Financial Framework programmes

The negotiations on the MFF started before the elections and the negotiations under the eighth term are also covered at the beginning of this chapter in order to allow for a better understanding of the whole process. From the very outset, the process was marked by the fact that the MFF proposals were tabled far later than planned – in May and June 2018. According to the Commission, this delay resulted from the uncertainty over Brexit. This left less than one year for work to be completed on these proposals before Parliament’s final plenary sessions of the eighth term<sup>16</sup>. Their late presentation made concluding the legislative process on the proposals in full before the end of the eighth term a difficult task, in spite of the political will on all sides to advance quickly. Furthermore, it should be noted that the Commission had significantly reduced the number of proposed programmes (in a supposed bid for simplification) compared to the previous seven-year funding period from close to 70 under the 2014-2020 period to approximately 35 proposals in 2018, leading to many ‘merged’ (and therefore broader, less detailed and cross-sectoral) proposals.

In Parliament, the Conference of Committee Chairs (CCC) and the CoP agreed on the complex distribution of committee competences for the various proposals in record time (by mid-July 2018), enabling the committees to formally begin their work shortly before or immediately after the 2018 summer recess. Given the cross-policy nature of the Commission proposals, there were a large number (eight) of joint committee procedures (Rule 58), which created additional challenges for internal and interinstitutional coordination.

With only a short time available to advance on the proposals before the end of the term, Parliament’s committees adopted different procedural approaches to the various sectoral programmes. On some files, committees sought to progress as quickly as possible, in order to determine Parliament’s position (the CoP had recommended that all Parliament negotiating positions should take the form of plenary mandates<sup>17</sup>) and launch negotiations with the Council. For other proposals, committees felt it more appropriate to use the time that remained until the final plenary sessions of the term to work internally on Parliament’s position, with the intention of only entering into negotiations with the Council during the next legislative term. Broadly speaking, each file was assessed individually (although certain committees demonstrated a preference for one or the other approach).

Throughout the process, the BUDG committee, in a strategy endorsed by the CoP and Parliament as a whole in its interim report, worked intensively with the committees responsible for the sectoral programmes in order to ensure a comprehensive and coherent approach to the overall financial allocations. This made it possible for all responsible committees to adopt full negotiating mandates, including a more proactive stance on figures (left blank during the previous negotiations).

The CoP decided in December 2018 that Parliament should adopt first reading positions on the MFF sectoral programs during the April I plenary session. This

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<sup>16</sup> For the purposes of comparison: during the seventh term, the sectoral MFF proposals for the 2014-2020 period were tabled in the second half of 2011 (i.e. more than two full years before the end of the term).

<sup>17</sup> See Chapter 2.2.

decision pertained to all MFF sectoral files, regardless of the decision of the individual committees on whether or not to enter into negotiations on them.

Under the eighth term, Parliament and the Council negotiated 12 of the sectoral proposals, on 11 of which they reached ‘partial provisional agreements’ – or ‘common understandings’, as the Council termed them. Following a progress report at the General Affairs Council in March 2019 and letters to President Tajani reassuring Parliament that the Council was committed to respecting the partial agreements reached, the committees sought to incorporate the latter into Parliament’s final first reading positions (adopted at the final plenary session of the term); this was an unprecedented process, as Parliament obliged itself not to re-open the agreed provisions under the new term.

After the European elections and the arrival of the von der Leyen Commission in 2019, a new dimension was added to the initial MFF proposals from spring 2018, introducing the so-called Green Deal, a European strategy creating a path to sustainability and climate neutrality, and which even included a new proposal on the Just Transition Fund. Later, as a reaction to the COVID-19 pandemic, another revision took place, adding the so-called Next Generation EU (NGEU), the European recovery strategy, to the MFF negotiations, which resulted in the adoption in May/June 2020 of six new proposals, while some of the proposals from 2018 were withdrawn and replaced by new ones, e.g. InvestEU, and 10 amending proposals to 2018 MFF programmes were put forward. These amending proposals were adopted by the Commission after Parliament’s first reading, giving rise to additional procedural complexities that had to be dealt with during the negotiations. One of the solutions found was to incorporate Parliament’s amendments to the Commission amending proposals directly into Parliament’s mandate during the ongoing negotiations.

The CoP adopted regular guidance on Parliament’s MFF strategy. This included the decision of 19 December 2019, which advised the committees to suspend negotiations on aspects related to the scope of the future programmes, given the Council’s approach to the negotiating box (refusing to discuss codecision provisions in the sectoral programmes that had been included in the ‘negotiating box’ of the European Council, while at the same time seeking cuts to the financial envelopes proposed by the Commission). This led to a full or partial suspension of negotiations on many files, sometimes on the key political issues.

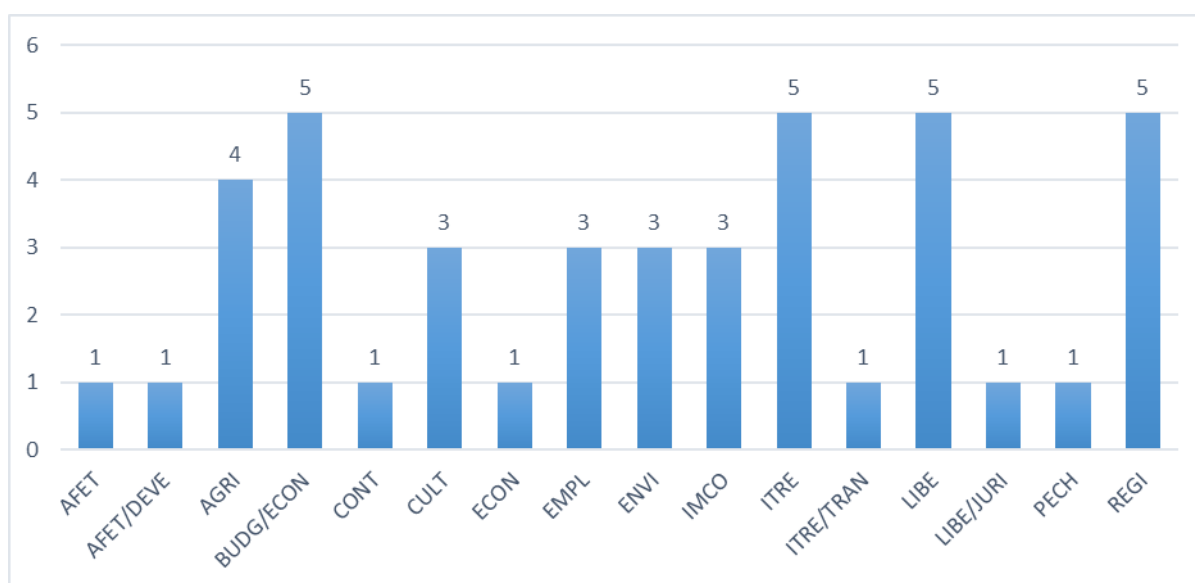
A particular challenge was the accumulation of delays on the part of the European Council, which postponed meaningful discussions and conclusions on the MFF several times. This prevented both budgetary and sectoral negotiations from going forward and risked resulting in additional time pressure on Parliament’s negotiators towards the end of 2020. Although the Treaty provides for a prolongation of the previous MFF until a new one is adopted, most of the old generation of programmes had December 2020 as an end date and would have been deprived of a legal basis for expenditure in the event of non-agreement on a new MFF (a ‘shutdown’ of programmes). Parliament therefore repeatedly called on the Commission to present an MFF contingency plan that would extend the relevant periods. This issue may arise again in the future, given that the compromise wording agreed for the duration of 2021-2027 programmes does not fully settle this issue.

Following the agreement of Member States on the MFF and OR at the European Council meeting of 17-21 July 2020, the Council gradually updated its negotiating

mandates (starting from the second half of September 2020). In accordance with the subsequent CoP decision of 16 September 2020 and the President’s letter to MFF sectoral Chairs and rapporteurs (25 September 2020), sectoral negotiations progressively resumed while BUDG negotiators held budgetary talks. Once a budgetary agreement on the MFF, including an EUR 15 billion top-up of several programme envelopes, was reached on 10 November 2020, the way was open for the conclusion of most files by the end of 2020.

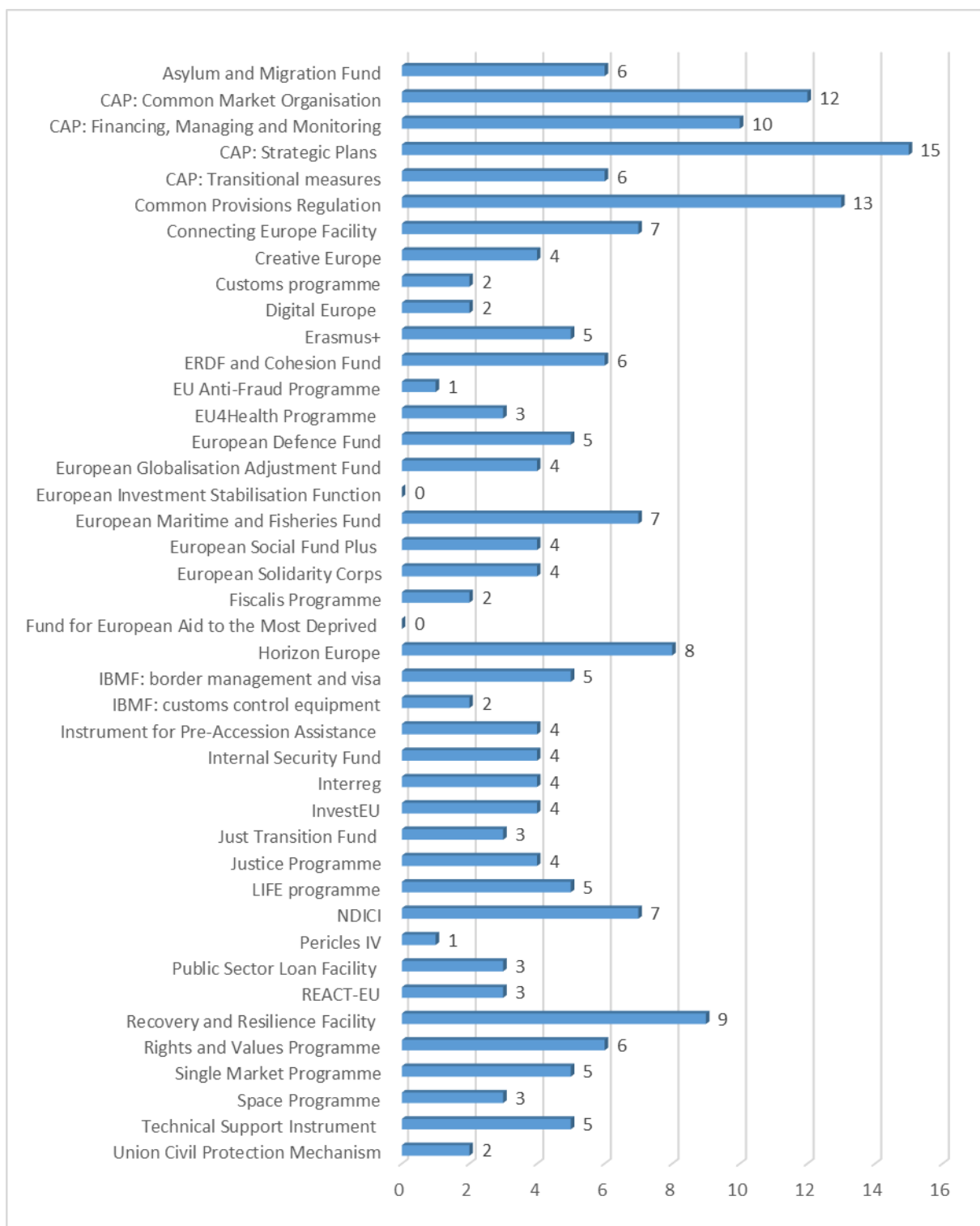
Towards the end of 2021, 41 MFF-related sectoral proposals had been agreed. A majority (28) of these proposals reached the early second reading stage (where Parliament had adopted its first reading position at the end of the previous term), while 13 proposals were agreed at the first reading stage.

**Chart 7: Distribution of MFF files per committee<sup>18</sup>**



<sup>18</sup> This chart also includes the ECON/BUDG file 2018/0212(COD) that is still blocked and the ITRE file 2018/0255, which was dealt with under the consultation procedure.

**Chart 8: Number of trilogues per individual MFF file<sup>19</sup>**



<sup>19</sup> Idem.  
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### **4.3. The role of the CCC during the negotiations on horizontal provisions**

The CCC and its Chair Antonio Tajani played a very active role in this process, sending several letters to President Sassoli, the CoP and, in the latter stages, even directly to the German Presidency. President Sassoli was present during the CCC exchanges of views on the MFF. In the exchange of letters at the beginning of November 2020, President Sassoli and CCC Chair Tajani reaffirmed the most important horizontal issues that committees should pay special attention to: governance, spending targets, evaluation mechanisms and end dates. The Chair reiterated the importance of maintaining a united front on these matters, of not making concessions that could have a negative impact on other negotiations. He recalled that Parliament should be given a suitable democratic role in important future decisions on how EU funds are spent. He regretted the fact that successive Council presidencies, supported by the Commission, were still largely refusing to cede any ground.

In his letter of 3 November 2020, CCC Chair Tajani proposed to carry out a scrutiny of the negotiations of the MFF sectoral proposals, focusing on the horizontal issues. President Sassoli's reply of 10 November 2020 requested that the CoP be kept regularly informed by the CCC about the state of play on the sectoral files, and that Chair Tajani should, whenever necessary, remind Parliament's negotiating teams of the importance of working together to defend Parliament's legislative prerogatives. This was an illustration of the internal coordination of Parliament's negotiations.

### **4.4. Results and Conclusions**

The negotiations of the 2021-2027 MFF sectoral programmes were very special for several reasons: the late Commission proposals, Brexit, Parliament elections and the appointment of the new Commission, followed by the COVID-19 pandemic that led to a new financial package, accompanied by new legislative proposals and some amending proposals to the existing ones. The first provisional agreement was reached on 2 December 2020 (Interreg programme) and the last on 25 June 2021 (CAP files). 199 trilogue meetings on the sectoral programmes took place during this period.

The main difference between the adoption process for the MFF 2021-2027 and for its predecessor is linked to the fact that the latter had been concluded before the end of Parliament's mandate 2009-2014, i.e. before the 2014 elections<sup>20</sup>. This time round, the Commission's proposals only arrived in May/June 2018, which made it impossible to adopt the MFF before the 2019 elections. Furthermore, owing to the COVID-19 crisis, the Commission needed to adapt the proposals from 2018 to the new situation in 2020. This meant that Parliament faced very rare circumstances that required innovative solutions, including from the point of view of the Rules of Procedure.

It is worth emphasising the speed with which Parliament worked under challenging circumstances: the committees took on average six months to adopt their reports, compared to the 11-month average during the MFF 2014-2020.

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<sup>20</sup> This is implicitly factored into the nature of the seven-year period of the MFF. Parliament has repeatedly reflected on the possibility of a five-year or 10-year MFF in order to avoid these difficulties.

The governance of the programmes (the use of delegated acts for annual and multiannual work programmes) was one of the most prominent horizontal issues. Although Parliament faced strong opposition from the Council and the Commission, many negotiating teams had worked out compromises that reinforced the basic acts. This reflected the main concern of Parliament, which was to ensure parliamentary oversight over the key elements of the programme. Parliament's negotiators did this by moving objectives, eligible actions, award criteria, allocation of funding, etc. from the work programmes to the basic acts. There were also many examples (e.g. Erasmus +, Creative Europe) where a new annex was introduced that outlined details of actions (to be amended by delegated acts). The most difficult negotiations in this respect were on the Neighbourhood, Development and International Cooperation Instrument (NDICI) / Global Europe (AFET/DEVE) and on the Instrument for Pre-accession Assistance (IPA III) (AFET). In these cases, Parliament managed to introduce into the basic act a provision for delegated acts for the key elements related to the multiannual programming, in a kind of middle layer, separate from the actual work programme, which will be adopted by implementing acts. Furthermore, in some files complementary governance measures were agreed, involving forms of reinforced 'dialogue' (e.g. in NDICI (AFET/DEVE) and the Recovery and Resilience Facility (BUDG/ECON)). The real meaning of these elements will have to be assessed in the future implementation of the programmes.

The role of the Council's 'negotiating box' was again an important factor in these negotiations, while Parliament attempted, along similar lines to the negotiations under the seventh term on the 2014-2020 MFF, to limit the dominant role of the European Council, which, according to the Treaty, does not exercise legislative functions. Although the Council succeeded in maintaining its position on most elements of its 'negotiating boxes' for the sectoral programmes, Parliament demonstrated a new, more coordinated approach by suspending negotiations on the most important issues between December 2019 and September 2020. BUDG negotiators, in close cooperation with the rapporteurs of the committees concerned, regularly sent Parliament's annotated versions of the negotiating boxes and the draft European Council conclusions to the Council in order to raise awareness about Parliament's positions and issue a reminder about Parliament's prerogatives at all stages of the MFF discussions in the Council. Ultimately, Parliament managed to overturn some of the positions taken by the European Council, in particular with respect to the financial envelopes of several MFF programmes<sup>21</sup>.

The impact of the decision by some committees to incorporate the results of the negotiations reached during the previous term into Parliament's first reading positions may be worth discussing. The effect of this decision was that these early negotiation results were preserved, but also became untouchable for the new Parliament in the early second reading negotiations after the elections. The motive behind this decision varied between MFF programmes, but it was widely stated that it was important to make as much progress as possible in order to demonstrate support for the

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<sup>21</sup> There were some interesting examples of interactions between the budgetary and sectoral negotiations, e.g.:

- Erasmus+: CULT established a direct correlation between the amount of the envelope and the secondary objectives that Parliament would call into question if funding was insufficient.
- Horizon Europe: ITRE leveraged the additional EUR 4 billion secured by the BUDG negotiators to change the internal breakdown of the Horizon Europe envelope entirely along the lines favoured by Parliament.
- Single Market Programme: even when Parliament did not succeed in increasing the envelope, IMCO leveraged this 'concession' to secure wins on the rest of the legal text.

programme (contents- and financial allocation-wise), to influence the programme design early enough in the process, to guarantee no delays in the implementation of the programme, to provide clarity, to ensure the involvement of the stakeholder community, etc. However, this begs the question of whether the position of Parliament's negotiators was not weakened by such a decision, particularly if we look at the Council's rigid approach to the 'negotiating box'<sup>22</sup>.

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<sup>22</sup> Parliament's negotiators tied their own hands on the provisions included in the common understandings, which in some cases pertained to important issues.

## 5. Delegated and Implementing Acts

The use of delegated and implementing acts continues to be a controversial issue in many legislative negotiations, owing to differing interpretations by the institutions of the respective Treaty provisions (Articles 290 and 291 TFEU). These difficulties were also addressed in the 'Interinstitutional Agreement on Better Law-Making' (IIA on BLM) concluded in spring 2016, by giving additional reassurances to the Council regarding the consultation of Member States' experts, in the expectation that this would pave the way for smoother legislative negotiations.

In addition, the institutions committed to conduct negotiations on common criteria for the application of Articles 290 and 291 TFEU. Before the 2019 elections, the three institutions agreed on a set of non-binding delineation criteria for the use of delegated and implementing acts<sup>23</sup>, outlining general principles as well as some key features of both delegated and implementing acts, with the aim of rendering the distinction between them clearer. The agreement also provided guidance on the crucial distinction between supplementing and implementing a basic act.

While it seems that in most legislative procedures conducted during the first half of the ninth parliamentary term, the agreement on common delineation criteria has better framed the Commission proposals and facilitated the interinstitutional negotiations in that respect, a number of problematic cases remain. In some cases, the Council insisted on using implementing acts in spite of the criteria, and negotiations also stalled because of this conflict<sup>24</sup>. In other cases, the co-legislators agreed not to use an empowerment and deal with the controversial provisions (e.g. amending annexes to the basic act) within the basic act instead.

Similar problems could be observed in the process of alignment of legislative acts adopted before the Treaty of Lisbon, that confer powers on the Commission to adopt measures under the regulatory procedure with scrutiny (RPS)<sup>25</sup> to the legal framework introduced by the Treaty of Lisbon. On the basis of the legislative alignment proposals required by the 2016 IIA on BLM<sup>26</sup>, in the eighth term the co-legislators were able to agree on 64 of the less controversial acts<sup>27</sup>. They decided to split the legislative procedure into a part that had been agreed and a part with the non-agreed files, enabling them to adopt the agreed acts. Nevertheless, interinstitutional negotiations on the remainder of the proposals (concerning more than 100 acts) are still due to resume in the ninth parliamentary term.

In addition to these more problematic files, Parliament was able to achieve some important successes regarding the use of delegated and implementing acts in the first half of the ninth term. As the result of a coordinated effort in the negotiations on the

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<sup>23</sup> [OJ C 223, 3.7.2019](#), p. 1.

<sup>24</sup> See, for example, the proposal for 'amending Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, 2019/0101(COD)'.

<sup>25</sup> Established by Article 5a of Council Decision 1999/468/EC.

<sup>26</sup> 'The three Institutions acknowledge the need for the alignment of all existing legislation to the legal framework introduced by the Lisbon Treaty, and in particular the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny. The Commission will propose that latter alignment by the end of 2016'.

<sup>27</sup> Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union, [OJ L 198, 25.7.2019](#), p. 241.

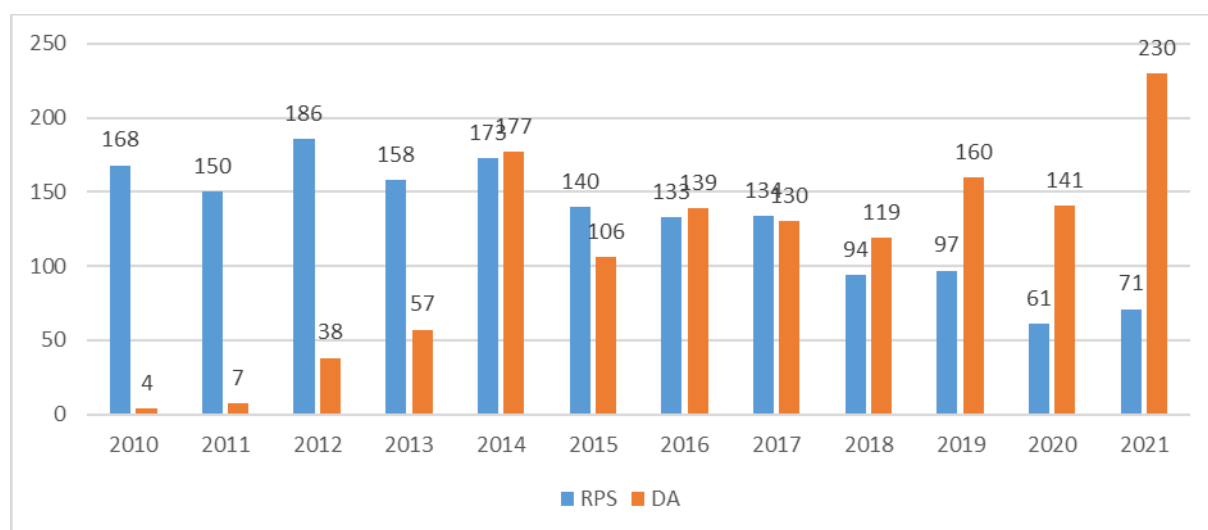


sectoral MFF programmes (for more information, please see Chapter 4 on the MFF), delegated acts were used in the NDICI and IPA III programmes in order to define the specific objectives and thematic priority areas of cooperation, thereby providing a better framework for the (multiannual) work programmes that will be adopted by implementing acts, as well as increasing Parliament’s scrutiny powers.

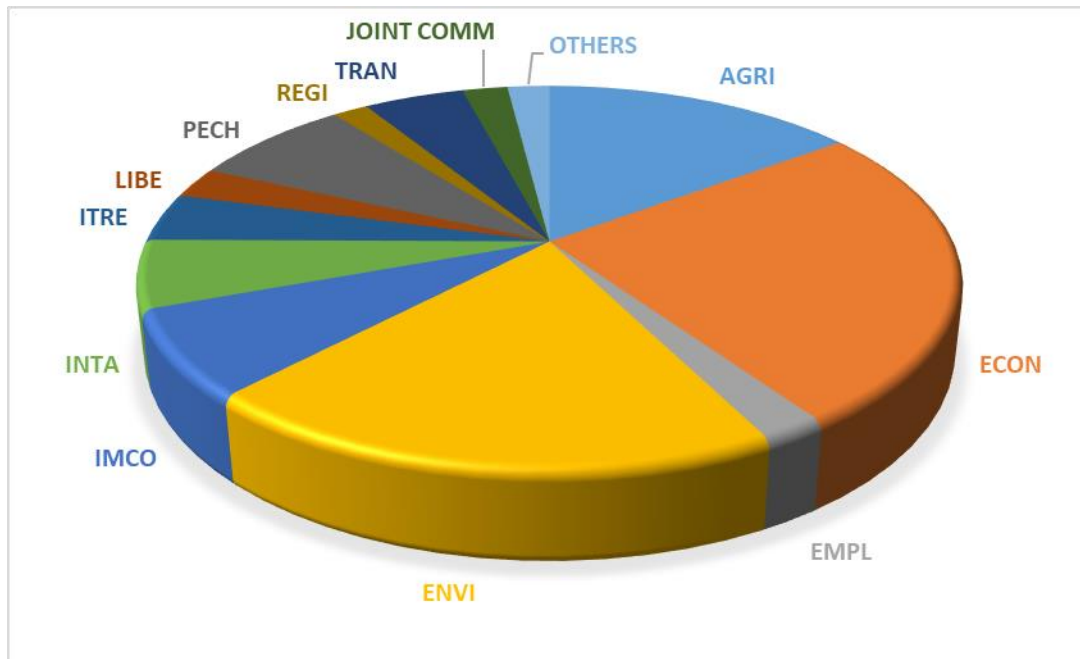
*Scrutiny of delegated and implementing acts and RPS measures*

Since the entry into force of the Treaty of Lisbon, Parliament has received an increasing number of delegated acts, from 166 during the seventh term and 682 during the eighth to 454 during the first half of the ninth Parliament. As Chart 9 below shows, Parliament continues to receive many RPS measures (1 782 since 2007, 185 of which during the ninth term) because of a large number of legislative acts containing RPS provisions that 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 Chart 10.

**Chart 9: Final draft RPS measures and delegated acts (DA) submitted to Parliament per year**



**Chart 10: Number of delegated acts received  
by parliamentary committee since 2010**



Between the entry into force of the Treaty of Lisbon and the end of the eighth parliamentary term, Parliament objected to 10 delegated acts; in addition, four objections were rejected by plenary during the first half of the current term. Furthermore, Parliament has objected to 17 RPS measures, including seven during the ninth legislative term. With regard to implementing acts, Parliament adopted several resolutions in the first half of the ninth legislative term, stating that the implementing measure in question 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 ninth Parliament, the scrutiny activities in Parliament's committees have continued unabated in spite of the constraints related to the COVID-19 pandemic. In particular, Parliament adopted a high number of early non-objection (ENO) procedures: 27 ENO procedures, of which 13 fell within the remit of ECON and eight of AGRI (including RPS), compared to 30 ENO procedures during the entire eighth legislative term. This trend can be partly explained by the urgency of some of the provisions related to COVID-19 or Brexit, but it should also be noted that in some committees, there is growing discontent about the late adoption of the acts by the Commission, which made these early ENO procedures necessary in the first place.

## 6. International Agreements

### 6.1 Parliament's involvement in international agreements

The Treaties give the European Parliament an active role – albeit with limitations – in the process of concluding most international agreements reached between the Union and third countries or the Union and international organisations. They also provide for a space for Parliament to influence these negotiations.

The powers of the European Parliament when it comes to international agreements are mostly covered by the consultation and the consent procedures set out in Article 218 TFEU. This requires the Council to obtain Parliament's consent before an international agreement can enter into force.

In addition, Parliament can leverage its power of consent to influence the outcome of negotiations by providing its views on the content of an envisaged agreement. This is done via resolutions with recommendations at various stages of the negotiations (Rules 114(4), 132(2), 136(5)), own-initiative reports (Rule 54), interim reports (Rule 105(5)), etc.

Article 218(10) TFEU stipulates: 'the European Parliament shall be immediately and fully informed at all stages of the procedure'. The IIA on BLM of 2016<sup>28</sup>, the Framework Agreement on relations between the European Parliament and the European Commission of 2010<sup>29</sup> and other political documents include various pledges from the other EU institutions to inform Parliament about negotiations on international agreements. The situation, however, remains far from ideal and varies greatly amongst the various policy areas.

Parliament's role does not end with the adoption of the agreement. Over the last decade, Parliament has increasingly been investing in its oversight powers at various levels, including through the adoption of implementation reports.

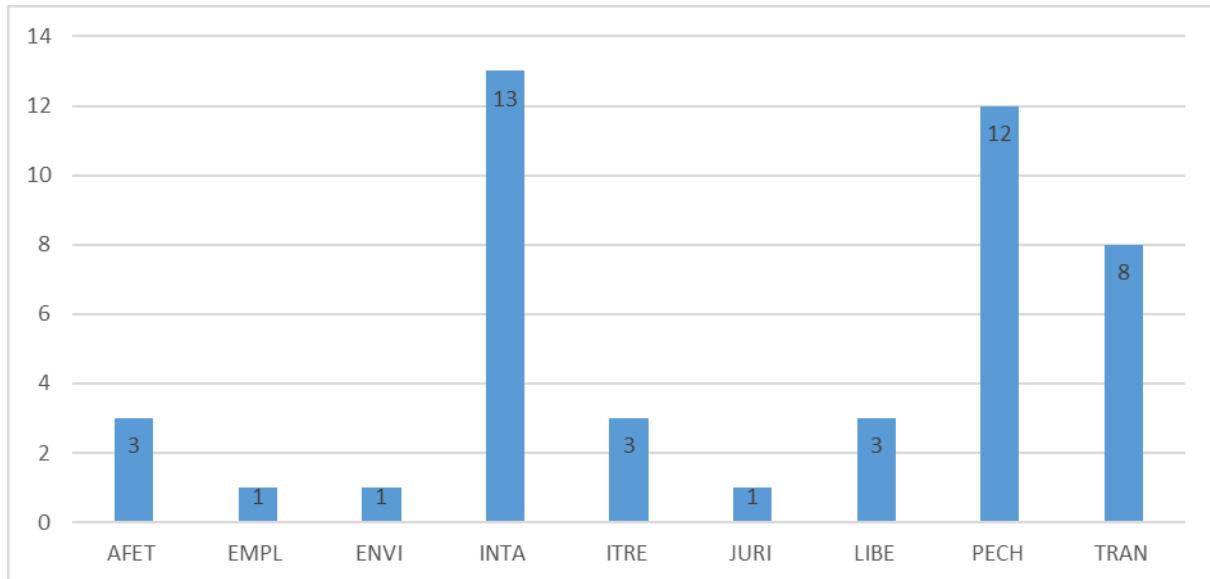
In the first half of the ninth parliamentary term, Parliament dealt with 45 consent procedures on the basis of Article 218, some of which were also accompanied by a resolution. Not all of these procedures were concluded by the mid-term.

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<sup>28</sup> OJ L 123, 12.5.2016, p. 1.

<sup>29</sup> OJ L 304, 20.11.2010, p. 47.

**Chart 11: Distribution of consent procedures  
by virtue of Article 218 by lead committee 2019-2021**



## 6.2. Brexit and the EU-UK TCA

In relation to international agreements, the first half of the ninth parliamentary term was overshadowed by Brexit. Both the UK Withdrawal Agreement and the subsequent UK Trade and Cooperation Agreement (UK TCA) were concluded during this period and both involved the European Parliament on different levels.

### *Role of the European Parliament prior to the ninth parliamentary term*

Given that this was the first time that an EU Member State had withdrawn from the Union based on Article 50 TFEU, no precedent as to the procedure existed. Therefore, apart from what is set out in the Treaties, Parliament's involvement had to be negotiated with the other institutions.

The United Kingdom European Union Membership Referendum took place in June 2016, but the negotiations on the withdrawal agreement began only one year later. By then, the European institutions had agreed on a modus operandi whereby Parliament was to be kept informed at all times of the state of play of the negotiations. This was short of the involvement originally sought by Parliament but nevertheless presented Parliament with the possibility of feeding into the process informally. In April 2017, the CoP set up the Brexit Steering Group to coordinate and prepare Parliament's deliberations, considerations and resolutions on the UK's withdrawal from the EU, thus making sure that the institution spoke with one voice. The steering group was composed of six Members from various political groups and chaired by MEP Guy Verhofstadt.

### *The Withdrawal Agreement*

When the ninth parliamentary term began, the UK was still formally a Member State of the Union and 73 UK Members were elected to the European Parliament. The Withdrawal Agreement, after almost two years of negotiations, was still being fine-tuned, the text having been rejected three times by the House of Commons between mid-January and the end of March 2019.

The new European Parliament lost no time in expressing itself on Brexit and in September 2019 adopted its first resolution on the state of play of the UK's withdrawal from the European Union. In it, Parliament insisted on the protection of UK and EU citizens and the importance of avoiding a hard border in Ireland through the Northern Ireland Backstop Mechanism (later replaced by the Northern Ireland Protocol), while placing responsibility for a possible no-deal scenario squarely on the shoulders of the UK Government. Following the election of Boris Johnson in 2019, negotiations on the Withdrawal Agreement were finally concluded and the agreement was subsequently adopted by both UK Houses of Parliament. Parliament gave its consent on 29 January 2020.

### *The UK Trade and Cooperation Agreement*

Since the beginning of the Brexit process, the UK had expressed its interest in negotiating a trade agreement with the EU. The Union, however, refused to start negotiations before the negotiations on the Withdrawal Agreement had been concluded. Parliament specifically asked for this in its resolution of 10 April 2017, stating that starting trade negotiations with a country that is still a member of the Union would be contrary to Union law.

Negotiations on the TCA between the EU and the UK started soon after the Withdrawal Agreement entered into force and after the UK had formally left the Union. Parliament did not wait until the end of the procedure to give its input. Before negotiations started, Parliament adopted a resolution on the proposed negotiating mandate, laying down several principles it expected the negotiations to adhere to, including the notion that a third country cannot have the same benefits as a Member State, the importance of a level playing field to avoid competitive advantage and the role of the Court of Justice of the European Union.

During the actual negotiations, Parliament adopted a set of relevant recommendations. These contained input from every single parliamentary committee and were coordinated by the specially established UK Coordination Group. The group included representatives from each parliamentary committee and had the task of ensuring a coordinated response from Parliament.

Parliament gave its consent to the EU-UK TCA on 28 April 2021. It was already clear at the time, however, that the UK was politically not comfortable with parts of the agreements, more particularly the protocol for Northern Ireland. Consequently, the UK unilaterally extended the grace period for the protocol three times and the end of the first half of the ninth parliamentary term was characterised by Union efforts to find practical solutions within the framework of the agreed protocol. Parliament followed this issue closely at various levels.

### *Scrutiny of the implementation*

Parliament's involvement did not end with the adoption of the agreements. The TCA provides for a EU-UK Parliamentary Assembly, half from the UK and half from the European Parliament. Based on an informal understanding between the two parliaments, it is to be composed of 70 members. Once established, the assembly will be kept informed of the EU-UK Partnership Council's decisions and can make recommendations to it. Parliament appointed the members of its delegation in October 2021. However, the Parliamentary Assembly did not meet in the first half of the ninth parliamentary term.

More so than with other international agreements, early on in the process, Parliament felt the need to monitor the implementation of the agreements with the UK regularly and closely. This need turned into an imperative once it became apparent that implementation would not be smooth. Indeed, the UK had already unilaterally introduced the 'grace periods' to the Northern Ireland Protocol, even before Parliament had given its consent to the TCA.

Various parliamentary bodies are currently involved in monitoring the EU-UK agreements and the general state of play of relations between the two, including plenary, the CoP, the committees and the delegation to the EU-UK Parliamentary Assembly. The role of the committees is particularly important, as they are responsible for the scrutiny of issues pertaining to their areas of competence. However, the level of involvement varies from one committee to another, largely according to the nature of the sensitivities and the issues that crop up in the course of implementation.

An ad hoc structure, the UK Contact Group, was set up by the CoP in June 2021 to facilitate coordination within Parliament on UK-related issues and to work closely with the EU-UK delegation. The contact group, which serves as a first point of contact within Parliament for Brexit issues, is co-chaired by the INTA and AFET Chairs together with the Chair of the EU-UK Delegation. Four committees (AFET, INTA, IMCO and AFCO) have standing representatives in the contact group, while other committees participate according to the topic being discussed.

## 7. Transparency of the legislative decision-making process

### 7.1. Effects of the COVID-19 pandemic

As set out in previous chapters, the COVID-19 pandemic seriously affected Parliament's working methods. While the decisions of the President and the tools put in place allowed for a semi-remote or remote continuation of Parliament's work, the effect on the transparency of the decision-making process should be highlighted, for example with regard to remote voting in committees.

### 7.2. Access to documents

Based on a report prepared by the LIBE committee, Parliament regularly adopts a resolution on 'Public access to documents' held by the Union's institutions. The most recent example dates from February 2021.

As an overall principle, Parliament stressed 'that a high level of transparency in the legislative process [was] essential in terms of enabling citizens, the media, civil society and other stakeholders to hold their elected officials and governments to account.' It considered in particular that the Council's arrangements regarding its publication of legislative documents was insufficient in this respect. Parliament expressed satisfaction with the fact that the requests for access to trilogue documents it had received had always been answered positively. Nevertheless, it considered that there is an overall need for further strengthening the institutions' access to documents policies and therefore called to 'develop a common approach to access to documentation, including the procedure for trilogue materials, and to constantly explore and develop new methods and measures to achieve maximum transparency'<sup>30</sup>.

Access to documents held by the EU institutions is governed by Regulation (EC) No 1049/2001<sup>31</sup>, complemented by a vast body of case law. The procedure established by Parliament<sup>32</sup> is based on the Regulation and requests are managed by its Transparency Unit. This parliamentary term has seen a constant flow of requests for access to documents related to interinstitutional negotiations. As pointed out above, all these requests were answered positively, following a case-by-case analysis in line with established case law.

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<sup>30</sup> European Parliament resolution of 10 February 2021 on public access to documents (Rule 122(7)) – annual report for the years 2016-2018, OJ C 465, 17.11.2021, p. 54.

<sup>31</sup> OJ L 145, 31.5.2001, p. 43.

<sup>32</sup> Bureau decision of 28 November 2001 on Rules governing public access to European Parliament documents. DV1248231