

**WORKING PARTY ON PARLIAMENTARY REFORM****Codecision and Conciliation**

Working Paper No.12 examines the issues of Codecision and Conciliation, which constitute the core legislative powers of the European Parliament. It focuses on the experiences made with codecision and conciliation so far and on possible reform proposals, and seeks to give an overview of possible future changes linked to the Lisbon Treaty.

Working Document No.12 has served as a basis for exchanges of views between the members of the Working Party at its meetings on 27 November and 11 December and was adopted at this latter meeting.

Table of contents

Codecision .....	page 1
Conciliation .....	page 6
Lisbon Treaty .....	page 9
<i>Annex I: Guidelines for first and second reading agreements</i> .....	page 11
<i>Annex II: Concluded codecision files by stage of procedure and committee....</i>	page 12

**Codecision****1. Codecision over the years**

Over the years the Parliament has established itself as an effective co-legislator with the Council. In the first three years of the current legislative term (7.2004 - 7.2007) Parliament has co-adopted with Council 196 codecision acts, amongst which are the Services and the REACH Directives. At the same time the rejection of proposals such as the Software Patents (at 2nd reading) and the Port Services (at 1st reading) have confirmed Parliament's role as a serious and determined co-legislator.

Since its introduction under the Maastricht Treaty in 1993, the scope of application of codecision is constantly expanding. It currently applies to 44 policy areas. The Lisbon Treaty is expected to double this number bringing the total of legal bases subject to the 'ordinary legislative procedure' as codecision will be called to around 90.

The current state of play with regard to codecision is defined by two major trends: on the one hand, in line with the belief of the Barroso Commission that '*less regulation is*

*better regulation'*, there are generally fewer Commission proposals; on the other hand, there is a significant increase in the number of codecision files concluded at an early stage of the procedure, namely at first reading or early at the beginning of second reading ("*early second or late first readings*"; see below)

The combination of these two trends has serious repercussions for the work and prerogatives of the European Parliament.

## **2. First reading and early second reading agreements**

In the first three years of the current parliamentary term (7.2004 - 7.2007), 125 codecision procedures (64% of the total) were concluded at first reading, 55 (28%) at second reading and 16 (8%) at third reading after conciliation. By comparison, during the 1999 - 2004 term, 115 (28%) codecision files were concluded at first reading, 200 (50%) at second reading and 84 (22%) at third reading after conciliation. Thus, first reading agreements account now for considerably more than the half of all codecision procedures.

Linked to this trend is also a more recent development: the 'early second reading agreements', which now account for half of all second reading agreements. In this case the outcome of the informal negotiations between Parliament and Council, with the participation of the Commission, is not reflected in the Parliament's first reading (as in the case of a typical 'first reading agreement'), but in the Council's common position ('early second reading' agreement). The Parliament undertakes then to adopt the common position of the Council without changes.

First reading and early second reading agreements together account for almost 80% of all codecision procedures concluded in the first three years of the current parliamentary term: is this to be seen as a positive development?

This trend demonstrates the flexibility of the procedure itself and, more importantly, a greater degree of trust and willingness to cooperate on the part of the Institutions. First and early second reading conclusions build on the practice of good cooperation obtained by the Institutions over the years and have the advantage of requiring only simple majority for their approval in the plenary. They speak therefore for speed, convenience and certain predictability as regards the vote in the plenary.

At the same time though, serious concerns have been expressed, within Parliament and beyond, about the potential lack of transparency and democratic legitimacy inherent in the informal first reading negotiations, but also about the quality of the adopted legislation. The enormous pressure to conclude within the six months time-frame of the respective Presidency places too much focus on fast-track negotiations, at the expense of an open political debate within and between the Institutions, with the involvement of the public.

When Parliament is asked to confirm in plenary a pre-negotiated agreement reached at informal meetings between a small number of representatives of the three Institutions (on Parliament's side normally the rapporteur, sometimes the committee chair and one or more shadow rapporteurs) this certainly does not increase Parliament's visibility in the public and the media, who are looking for political confrontation along clear political lines and not for a flat, 'technocratic' debate where the representatives of the

three Institutions congratulate each other on the "good work" done.

### 3. Guidelines for first and second reading agreements

In an early attempt to address these issues, and bearing in mind experience built up over the years, the Conference of Presidents approved in November 2004 a set of guidelines for Members and Parliament staff alike on how to conduct negotiations and conclude agreements at first and second reading (see Annex I). The purpose of these guidelines is to establish a uniform way of proceeding within Parliament when seeking an early agreement, while at the same time maximising the transparency, effectiveness and legitimacy of the whole procedure.

It is not clear though to what extent these guidelines have been applied since their adoption. Indeed, the figures indicate that different committees are negotiating and proceeding in very different ways: whereas some committees (in particular LIBE and ECON) conclude their dossiers overwhelmingly at first reading, other committees (such as ENVI and TRAN) follow a more balanced approach by making full use of the possibilities offered by all three readings (see table in Annex II)

It appears therefore necessary to re-establish these guidelines by strengthening their content, enhancing their status and improving their visibility. Their scope could also be extended to cover not only first and second reading agreements, but all cases when the Parliament is engaging into interinstitutional negotiations in the legislative field.

#### **Reform proposals for consideration by the Working Party**

##### 1. Strengthening of the content of the guidelines

The current guidelines leave considerable space for manoeuvre as regards the decision if and when to negotiate with the Council in view of an early agreement, the mandate of such negotiations, the composition of the negotiating team, the feedback to the committee, etc.

Based on the above-mentioned considerations and on the provisions of the 2006 Joint Declaration on Codecision, it appears necessary to review these guidelines with a view to strengthening their content. The Working Party decided to invite the three Vice-Presidents responsible for conciliation to submit hereto concrete proposals for consideration by the Working Party, by taking into account the following principles, which form the outcome of the deliberations within the Working Party.

- Decision to enter into negotiations: As a rule the Parliament should make use of all possibilities offered by all stages of the codecision procedure. Therefore, the decision to seek to achieve an early agreement should be an ad hoc decision taking account of the distinctive characteristics of every individual file and should be politically justified (e.g. in terms of political priorities, the uncontroversial or 'technical' nature of the proposal, an urgency situation, etc). It should be subject to a prior political debate in the committee and should be taken either by broad consensus or by a vote, if necessary.
- Negotiating team: The decision should also determine the composition of the negotiating team (rapporteur, committee chair, shadow rapporteurs). This would

also facilitate interpretation arrangements for participating Members.

- Mandate: The negotiating team should have a clear mandate for its negotiations with the Council. If the negotiations take place after the vote in committee or in plenary, the amendments adopted shall form the mandate. If, as an exception, the negotiations start already before the vote in committee, the latter should provide clear guidelines. The proposal by the Working Party to establish a 'cooling-off' period between the vote in committee and the vote in plenary fits ideally with this requirement as it will allow for sufficient time for negotiations.
- Feedback: After each trilogue (or a series of trilogues) the negotiating team should report to the committee on the outcome of the negotiations and make all distributed texts available. The latter particularly concerns the '*Multi-column Working Document*', which indicates the position of the respective institution with regard to each individual amendment, but also any compromise texts distributed at the meeting(s). The committee should confirm any agreement reached or update the mandate of the negotiating team if further negotiations are required.
- Assistance: The negotiating team should be provided with all necessary resources, including interpretation facilities, in order to conduct their work properly. To this effect, *administrative support teams* comprising the relevant services (e.g. committee secretariat, groups' staff, the CODE secretariat, the Legal Service, the EP Press Service and the lawyer linguists) could be created for the dossier in question.

## 2. Enhancing the status of the guidelines

Currently not all Members and Parliament staff are fully aware of the existence of the guidelines, and their status - though approved by the Conference of Presidents - is only that of suggestions for best practice: as a result, recourse to the guidelines is rare and if used, their implementation very much depends on the discretion of the Members involved and/or the staff of the committee secretariat.

The Working Party therefore suggests including the revised guidelines as an Annex to the Rules of Procedure. This will enhance their status and improve their visibility; it will increase the awareness of Members and staff alike of their existence and make their implementation more likely.

## 3. Improving the visibility of the guidelines

As regards the visibility of the guidelines, the Working Party suggests the regular organisation of '*Codecision Seminars*' for Members - one at the beginning of and one half-way through the parliamentary term - under the auspices of the three Vice-Presidents responsible for conciliation.

Moreover, whenever a Member is appointed rapporteur for a proposal, he/she should receive from the services in his/her own language an '*introduction package*' with all necessary information, including the Guidelines and the Joint Declaration on Codecision (see below), so that he/she is fully aware of the various possibilities offered by the codecision procedure and the administrative support he/she can expect from the services. DGs IPOL and EXPO are invited to make concrete proposals hereto for consideration by the Working Party.

#### 4. Role of coordinators and shadow rapporteurs

Though the coordinators and the shadow rapporteurs play de facto a very important role in the internal organisation of the House, their role is neither clearly defined nor officially recognised. The Working Party therefore suggests clarifying the role, rights and duties of shadow rapporteurs and coordinators in the Rules of Procedure.

#### **4. Joint declaration on practical arrangements for the codecision procedure**

In June 2007 the three Institutions adopted a Joint Declaration on practical arrangements for the codecision procedure. This declaration repeals and replaces the older declaration from 1994. The new declaration is more analytical than the previous one and follows closely the different stages of the codecision and conciliation procedures, with special focus on the various possibilities for concluding agreements at first, second or third reading. It takes account of the cooperation and negotiation practices that have evolved over the years between the three Institutions and seeks to make them more transparent, efficient and coherent.

#### **Reform proposals for consideration by the Working Party**

It is in Parliament's best interest to try to make the most out of application of this declaration. To this effect the Working Party proposes a series of concrete measures on how to ensure its best possible application within Parliament and vis-à-vis the other Institutions:

- Visibility: Annexing the Joint Declaration to the Rules of Procedure with a view to improving its visibility among Members and EP staff alike.
- Joint programming: The need for a better joint legislative programming, as laid down in paragraph 6 of the Joint Declaration, touches upon the general framework of interinstitutional relations and will be addressed in this context.
- Quality of adopted legislation: Improving the quality of adopted legislation, particularly as regards its legal-linguistic aspects, also features prominently in the Joint Declaration (§§ 40-42, 49). Officials of the relevant EP services should follow closely the committee meetings and interinstitutional negotiations so that they are aware of the particularities of each file; the proposal by the Working Party to establish a 'cooling-off' period between the vote in committee and the vote in plenary will, inter alia, give more time to the relevant services to examine the legal-linguistic aspects of each file.
- Information of the public and press-related issues (§§45-48 of Joint Declaration): Successful negotiations and conclusion of a file at any stage of the procedure should be followed by a press release and the organisation of a press conference, possibly jointly with the other Institutions, but always on Parliament's premises. The practice of signing legal acts adopted in codecision jointly with Council in a public ceremony in the spotlight of the media should be maintained and strengthened by making use of the possibilities offered by the EP WebTV.

## Conciliation

### 1. Conciliation over the years

Conciliation as the third and final stage of codecision, in the event of failure of the Parliament and Council to reach agreement in the first two readings, is the stage where the two co-legislators engage in 'face-to-face' negotiations in the framework of the Conciliation Committee. This is composed of representatives from the 27 Member States and an equal number of Members of the European Parliament.

During the 1999-2004 term a total of 86 files were treated in conciliation (with two rejections by Parliament: Takeover Bids and the first Commission proposal on Port Services); an annual average of 17 dossiers. In the first three years of the current parliamentary term the share of dossiers concluded in conciliation has decreased due to the general reduction of Commission proposals and the increase in early agreements: a total of 17 procedures have been concluded so far.

### 2. Current state of play

Nevertheless conciliation remains significant as a means for reaching agreement on many difficult and controversial codecision files. Moreover, the prospect of "going to conciliation" acts very often as a threat to Council and possibly the Commission to reach agreement at an earlier stage as it is clear to the other Institutions that in conciliation Parliament has the negotiating edge: it is on full equal footing with the Council and Parliament's amendments (backed by an absolute majority of Members) constitute the basis for negotiations; on the other hand, the respective Presidency is under enormous pressure to reach an agreement during its term.

Parliament's negotiating edge in conciliation is also demonstrated by the statistics with regard to the success of Parliament's second reading amendments: during the 1999-2004 term 23% (307) of Parliament's amendments which went to conciliation were accepted without changes, 60% (809) were approved in the form of compromises and 17% (228) were not included in the final text at all.

Conciliation has also acquired a wider significance for the legislative process as a whole: negotiating practices developed in conciliation (trilogues, four-column working document) have shaped the way in which negotiations are conducted and agreements reached at first and second readings.

Overall, as a result of the experience gained with the 160 dossiers concluded in conciliation since its introduction in 1993 with the Maastricht Treaty, the procedures developed in conciliation based on best practice have been systematized and work well in practice. The new Joint Declaration on practical arrangements for the codecision procedure, which in its original form was developed as a tool for streamlining negotiations under the conciliation procedure, provides the necessary institutional framework hereto.

Trilogues take place also in conciliation, but on the basis of a clear mandate (Parliament's second reading amendments) and with a formal decision by the Parliament Delegation on the composition of the negotiating team; after each trilogue a meeting of Parliament's Delegation takes place so that the negotiating team can report back to the Delegation and distribute any new texts; the Delegation meeting is concluded with a confirmation or, where necessary, an update of the mandate of the negotiating team. Every agreement reached through negotiations in conciliation must be approved by an absolute majority of the Members of the Parliament's Delegation.

### **3. Visibility of the conciliation procedure**

At the same time, the visibility of the Conciliation Committee and the conciliation procedure remains rather limited: its meetings normally take place late in the evening, are not open to the public and the media and are attended only by the Members of the Conciliation Committee, the representatives of the Commission and involved staff.

The Working Party could therefore consider proposals to improve the visibility of the Conciliation Committee: conciliation-related meetings could be held at more suitable time (i.e. not late in the evening, but during the day) and in more prominent meeting rooms, especially as regards the formal meeting of the whole Conciliation Committee; this latter meetings could be open to the public and the media (the new opportunities provided by the future EP Web TV should be explored). However, trilogues should continue to be meetings with restricted access, so that negotiations can take place in the most open and frank manner possible.

It must be clear, however, that all such changes to the functioning of the Conciliation Committee must be discussed and agreed with Council. Conciliation-related reforms therefore touch very much upon relations with the Council and should be addressed in this context.

### **4. Political representation to the Parliament Delegation**

At the beginning of every parliamentary term, or if the overall number of Members changes, the Conference of Presidents decides on the representation of the political groups to the Parliament Delegation to the Conciliation Committee. The current breakdown attributes 11 Members to PPE-DE, 9 to PSE, 4 to ALDE and 1 each from the UEN, the Verts/ALE and GUE/NGL.

This means that not all political groups are represented in the Parliament Delegation. At the same time, however, Rule 64 stipulates that *'the chairman and the rapporteur of the committee responsible ... shall be members of the delegation'*. This could lead to practical problems if, for instance, the rapporteur for a conciliation file were to be a Member from one of the non-represented Groups.

The three Vice-Presidents responsible for conciliation, the rapporteur(s) of the file in question and the chairman of the committee responsible are ex officio Members of every Parliament Delegation within the quota of their political group. Apart from them, the political groups have within their quota full flexibility to decide on their representation to the Parliament Delegation. Such a fully flexible system does not prevent the political groups from deciding to establish a more permanent representation to the Parliament Delegation, if they so wish.

**Reform proposals for consideration by the Working Party**

In the context of the revision of the guidelines for first and second reading agreements, their scope should be extended to cover also negotiations under the conciliation procedure.

The Working Party considers addressing in the context of examination and possible reform of its relations with Council the issue of opening-up the formal meetings of the Conciliation Committee to the media and the public (trilogues, however, should continue to be meetings with restricted access so that negotiations can take place in the most open and frank manner possible). The three Vice-Presidents responsible for conciliation are invited to submit proposals in this connection for consideration by the Working Party, but also on the more general issue as to how to enhance the visibility and transparency of the conciliation proceedings as a whole.

The proposals for consideration by the Working Party could also address the issue of the political representation in the Parliament Delegation, particularly as regards possible solutions for the non-represented Groups; for instance, in the past alternative participation of the non-represented Groups was possible. The current fully flexible system of political participation to the Parliament Delegation does not prevent the political groups from deciding to establish a more permanent representation in the Parliament Delegation, if they so wish.



## Lisbon Treaty

### 1. Changes in the codecision procedure under the Lisbon Treaty

Under the Lisbon Treaty the scope of codecision, which will become the 'normal legislative procedure', will almost double to reach around 90 policy areas. As regards the procedure itself, there will not be any significant changes, except that the outcome of Parliament's vote in first reading will no longer be called an 'opinion', but will become Parliament's 'position', bringing it on a fully equal footing with Council's 'common position'.

From a procedural point of view this will have as a consequence that Parliament will submit to the Council a 'consolidated' text, which will see all amendments adopted by Parliament at first reading integrated into the Commission proposal<sup>1</sup>. This will imply some procedural changes in the way committees, the Tabling Office and other involved services of DG PRES currently work.

The increase in the number of legal bases subject to codecision, however, will have significant repercussions for the work and structure of the committees of the European Parliament. Some parliamentary committees (such as AGRI, PECH and INTA) will have to deal for the first time on a regular basis with codecision dossiers, whereas others (mainly LIBE) will have to cope with a dramatic increase in their codecision activity.

This will certainly have implications for the future work of parliamentary committees and possibly also for their structure and the distribution of responsibilities between them. Parliament's working methods will have to be adapted in order to cope with the largest extension of the codecision procedure so far and to ensure a better horizontal coordination between a larger number of codecision committees. It goes without saying that this will necessitate also a review of the role, organisation and working methods of the services within Parliament dealing with codecision and conciliation. The Working Party will have to consider these issues on the basis of more concrete proposals.

### 2. Changes in the budgetary procedure under the Lisbon Treaty

Under the Lisbon Treaty the budgetary conciliation ('concertation') after Parliament's first reading on the budget will become a formal procedure, modelled on the legislative conciliation procedure of Article 251 EC. A Parliament Delegation composed of 27 Members will meet, in the framework of the Budgetary Conciliation Committee, with the Council Delegation composed of the representatives of the 27

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<sup>1</sup> Since 1999, Parliament has insisted on presenting its amendments in codecision proposals as 'consolidated texts', and has called the outcome of its votes 'positions', in line with the Council's 'common positions'. The Lisbon Treaty finally acknowledges this practice, but it goes even further by stating that the act shall be 'adopted in the wording, which corresponds to the position of the European Parliament'.

Member States with a view to reaching an agreement on the annual budget on the basis of Parliament's first reading budgetary amendments. The formalisation of the budgetary conciliation procedure necessitates, inter alia, that Parliament decides on the issues of the composition and chairmanship of its Delegation..

## **Guidelines for first and second reading agreements**<sup>2</sup>

### Preliminary considerations

1. Committees should make full use of the possibilities provided by the Treaties that allow for up to three readings. The decision to seek to achieve a first or second reading agreement should take due account of the very different situations existing at the first and second reading stages respectively. This concerns in particular the extent to which Parliament and Council have already reached a formal position; the majorities required at plenary stage and the deadlines imposed by the Treaties.
2. The decision should receive broad political support and should be taken in a transparent manner and announced in committee. It should be justified in terms of political priorities, deadlines, risk of legal uncertainty, or the uncontroversial nature of the proposal.

### Meetings with Council and Commission

3. Informal contacts should be possible at all stages, provided that the committee, coordinators or shadow rapporteurs are kept informed of their existence and content. Concrete negotiations should not usually take place until the committee has adopted its first or second reading amendments. This position can then provide the mandate on the basis of which the committee's representatives can negotiate with Council and Commission.
4. EP participation should be decided by the coordinators. It should permit the fullest possible information to be provided to all political groups within the committee, either through direct participation of the Committee Chair and/or shadow rapporteurs or coordinators, or through prompt and sufficiently detailed information from the rapporteur to the Chair and shadow rapporteurs or coordinators. The coordinators may decide to invite the opinion committee draftsman to participate.
5. Interpretation should be provided, if requested, in particular during the concrete negotiation phase after the vote in committee.
6. Draft compromise texts submitted by any institution, and which are to be the basis of discussion at a forthcoming meeting, should as far as possible be circulated in advance to all negotiators.

### Follow-up to meetings

7. The rapporteur should report back regularly on the state of negotiations, if necessary to the whole committee. Any significant change in the negotiating position should have broad political support.
8. The Council Presidency should be encouraged to participate in committee meetings to present the Council position.
9. If an agreement is reached, the Council Presidency should be invited to send a letter to the Committee Chair confirming Council's agreement in principle, and annexing the text.
10. Any compromise amendments required as a result of the agreement reached should be the subject of written information to all committee members. If they can not be approved by the committee for submission to plenary, they should be co-signed by the rapporteur and shadow rapporteurs or coordinators on behalf of their political groups to demonstrate that the amendments enjoy broad support.

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<sup>2</sup> Approved by the Conference of Presidents on 12 November 2004

## Annex II

**Codecision procedures concluded by stage of procedure and committee**  
(7/2004 - 11/2007; figures obtained through the search function of OEIL)

<b>Committees</b>	<b>1st reading</b>	<b>2nd reading</b>	<b>3rd reading</b>	<b>Total</b>
<b>ENVI</b>	<b>15</b>	<b>14</b>	<b>9</b>	<b>38</b>
<b>TRAN</b>	<b>13</b>	<b>11</b>	<b>5</b>	<b>29</b>
<b>LIBE</b>	<b>19</b>	<b>4</b>	<b>-</b>	<b>23</b>
<b>JURI</b>	<b>12</b>	<b>2</b>	<b>1</b>	<b>15</b>
<b>IMCO</b>	<b>7</b>	<b>8</b>	<b>-</b>	<b>15</b>
<b>CULT</b>	<b>5</b>	<b>9</b>	<b>-</b>	<b>14</b>
<b>ITRE</b>	<b>7</b>	<b>5</b>	<b>-</b>	<b>12</b>
<b>EMPL</b>	<b>8</b>	<b>3</b>	<b>1</b>	<b>12</b>
<b>ECON</b>	<b>10</b>	<b>1</b>	<b>-</b>	<b>11</b>
<b>DEVE</b>	<b>3</b>	<b>1</b>	<b>-</b>	<b>4</b>
<b>FEMM</b>	<b>1</b>	<b>3</b>	<b>-</b>	<b>4</b>
<b>REGI</b>	<b>1</b>	<b>2</b>	<b>-</b>	<b>3</b>
<b>AFET</b>	<b>3</b>	<b>-</b>	<b>-</b>	<b>3</b>
<b>BUDG</b>	<b>1</b>	<b>1</b>	<b>-</b>	<b>2</b>
<b>AGRI</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>1</b>
<b>PESC</b>	<b>-</b>	<b>1</b>	<b>-</b>	<b>1</b>
<b>INTA</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>1</b>
<b>CONT</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>1</b>
<b>AFCO</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total</b>	<b>108</b>	<b>65</b>	<b>16</b>	<b>189</b>