EUROPEAN PARLIAMENT

2004 *2009*

Delegations to the Conciliation Committee

A C T I V I T Y R E P O R T
1 May 2004 to 13 July 2009

(6th parliamentary term)

of the delegations to the Conciliation Committee
presented by

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Vice-Presidents responsible for conciliation

FOREWORD

As Vice-Presidents responsible for conciliation it is an honour for us to present this report about codecision and conciliation in the 6th legislative term as have done our predecessors in the past. From the numerous reactions to those reports we saw we concluded that their reports were widely read and we aim to continue the successful tradition of this report.

The way the codecision procedure works changed drastically during this term. 72.0% of the files were concluded at 1st reading and a further 10.8% at early second reading with the trend being a constant increase of early agreements.

On the one side, this figure is an indicator of the institutions' willingness to cooperate, to achieve results and to be efficient. It shows the flexibility of the procedure and the political dynamics of pushing for results. On the other side there is some criticism about the transparency of many of the informal negotiations, the democratic nature of the process, the resources available for trilogues and the quality of the legislation agreed sometimes within a very short timeframe. The EP *Code of Conduct for negotiating in the context of codecision procedures* is a clear and strong first answer to these concerns. Administrative and organisational improvements are a second.

In each case, Parliament should reflect on how to ensure the best possible deal, not precluding itself of going through all the stages of the codecision procedure.

This report gives an overview and a basis for further reflection. It begins with a quantitative overview of codecision (number of files, stage of conclusion, length of procedures) before presenting in quantitative and qualitative terms the activities of the delegations of Parliament to the Conciliation Committee. The last chapter deals with the future of codecision.

During the first half of this legislature the responsibility for conciliation rested with Dagmar ROTH-BEHRENDT, Antonios TRAKATELLIS and Alejo VIDAL-QUADRAS. Since the present report covers the entire legislative term we would like to thank warmly Dagmar ROTH-BEHRENDT and Antonios TRAKATELLIS for their work.

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TABLE OF CONTENTS

ANNEXES

1. OVERVIEW OF CODECISION

During the 6th legislative term codecision was extended to further legal bases. This concerned the area of freedom, security and justice for which, following the transition period of five years after the entry into force of the Treaty of Amsterdam, some legal bases became subject to codecision automatically, some following certain conditions and some following a decision[1]. Codecision now applies to most legal acts regarding borders, visas, asylum, illegal migration and civil law cooperation.[2]

Despite this extension the absolute number of codecision procedures increased moderately. While in the 5th legislative term a total of 403 co-decided acts were adopted, in the 6th term there were 454.[3]

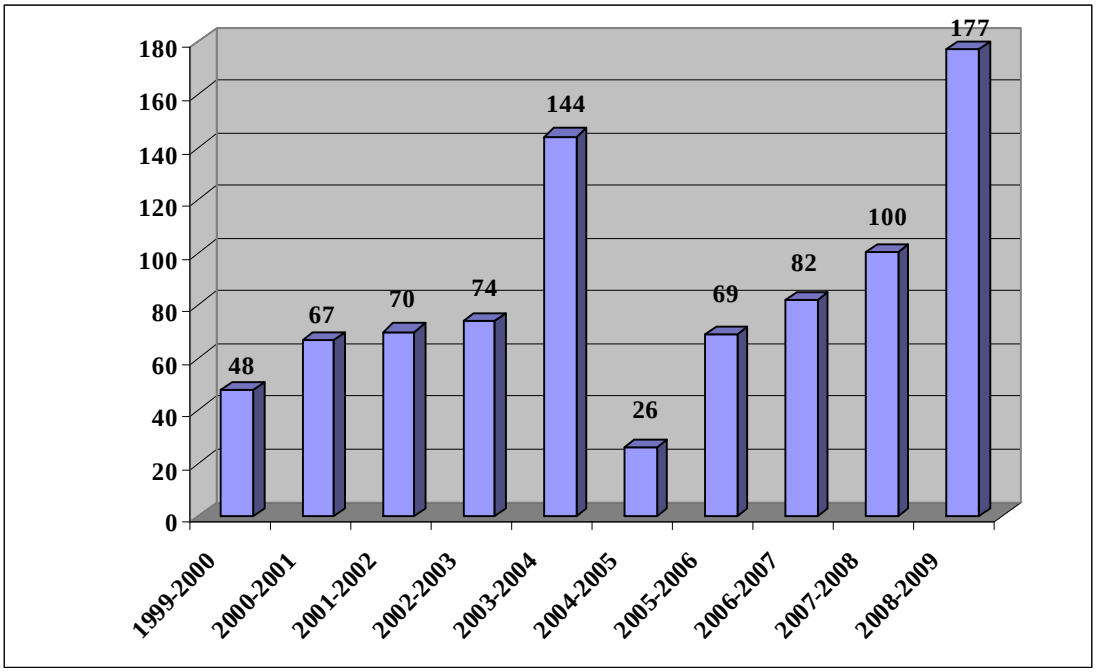

Figure 1*: Number of codecision files 1999-2009* (*all files adopted between 1 May of the first year and 30 April of the second year with the exception of 2009*)[4]

[1] Council Decision of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty (OJ L 396, 31.12.2004, p. 45–46)

[2] For a first analysis of the increased codecision powers in this area and the role of the LIBE committee see part I.4 of the Conciliations and Codecision Activity Report 2004-2006; available like the previous reports under http://www.europarl.europa.eu/code/information/activity_en.htm (in the following the "Midterm Report 2007")

[3] The present report includes all codecision procedures which were formally adopted between 1.5.2004 and 13.7.2009 before Parliament meets for the first plenary session of the 7th term. This excludes procedures which were voted upon in Parliament and are de facto agreed with Council but are not formally adopted by the latter by that date. These are around 20 - 30 files. At the same time this figure includes 25 1st reading agreements which Parliament voted on during the 5th term but Council adopted later.

[4] The figures of the 5th legislative term (1999-2004) were recalculated on the basis of the same methodology as in this report with a yearly cycle starting on 1st of May. Figures for the period 1999-2004 might therefore in some cases differ from those presented in the report on the 5th legislature.

If one looks at the number of proposals adopted by the Commission under the codecision procedure the figures are similar. Between 1.5.1999 and 30.4.2004 517 proposals were adopted and between 1.5.2004 and 6.7.2009 546 proposals were adopted.[5]

In both terms one observes an increase in files adopted during the life of the legislature. The very low figure at the beginning of this term can be explained by the huge efforts which were made to conclude ongoing procedures before the end of the last parliamentary term and, in particular, the enlargement of May 2004.

The picture appears to be slightly different when one looks at the type of proposals presented by the Commission. While not denying that every legislative proposal is of importance, there is a general feeling that the Commission in this legislative term presented more technical and uncontroversial proposals.

For example, 54 codecision procedures in substance dealt exclusively with the adaptation of existing legislation to the new Comitology Decision[6]. In line with the increased importance of simplification there was also a very substantial increase in codification, recast and repeal procedures: During this term 46 codifications were adopted while during the 5th term 16 codifications were adopted. Interesting to note is the tendency towards more proposals being presented by the Commission as recasting.[7] While in the years 2003 - 2006 the Commission presented annually three or four recast proposals, this figure increased to 16 in 2007 and 19 in 2008. This led to 28 recasts being adopted in this term.[8] There were also 6 codecision procedures which only repealed existing acts without replacing it with new legislation.[9] Among the Commission proposals are 12 codecision procedures relating to the Directors of agencies.[10]

The distribution of codecision files within Parliament among the different committees remained fairly stable. ENVI (20.0%) and TRAN (11.4%) remain the two committees with the largest share of the codecision dossiers, while the relatively high share of JURI (18.3%) is to a large extent due to the codifications dossiers and the adaptation to the new Comitology Decision.

The one major exception is the LIBE committee. In line with the extension of codecision to this policy area, the LIBE committee's number of codecisions is the biggest difference in comparison to the 5th term. It had dealt with 8 codecision procedures during the last term and this figure went up to 38 procedures during this legislature.

[5] Figures drawn from Pre-lex: http://ec.europa.eu/prelex/apcnet.cfm?CL=en
[6] Following the revision of the comitology decision with the introduction of the new regulatory procedure with scrutiny the acquis needed to be adapted.
[7] A technique to adopt a single legislative text which simultaneously amends a previous act, codifies that amendment with the unchanged provisions of the earlier act, and repeals that act. See the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, OJ C 77 of 28.3.2002, p.1 and rule 87 of Parliament's rules of procedure
[8] These include the recasts adapting legislation to the new Comitology Decision.
[9] CODs 2005/0147, 2006/0178, 2006/0249, 2006/0308, 2007/0168, 2007/0234
[10] COM(2005)190

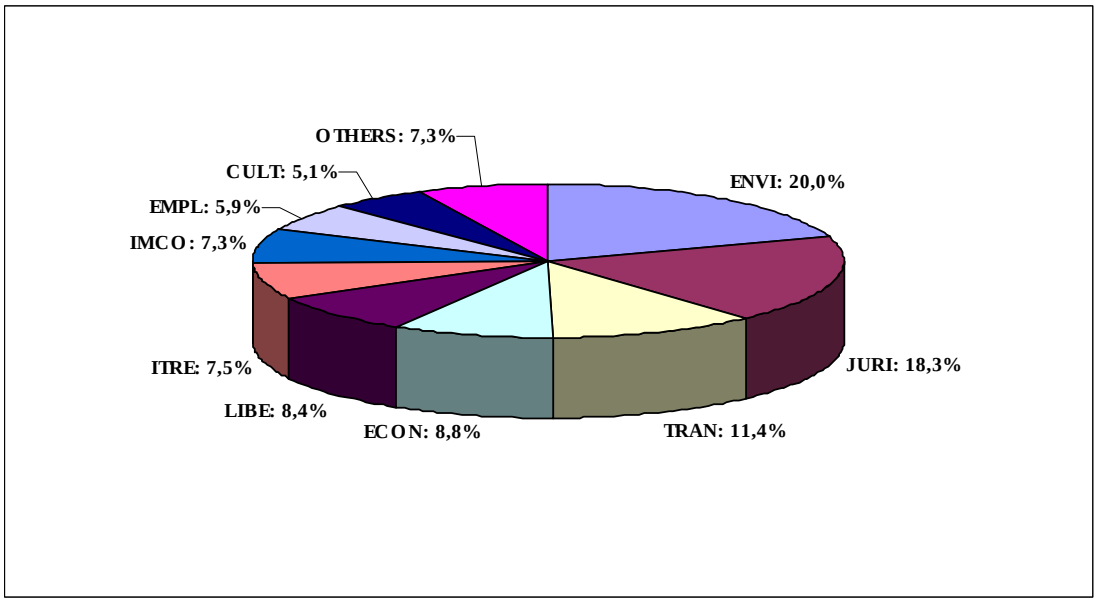

Figure 2: *Distribution of codecision files adopted 2004-2009 by parliamentary committee* (*all files included - e.g. 46 codification files for JURI*)

Very significant developments took place since the last legislature regarding the stage of conclusion. During the 6th legislature 72% of files were concluded at 1st reading, 22.9% at second reading[11] and 5.1% in conciliation. This contrasts strongly with the figures for the 5th legislature.

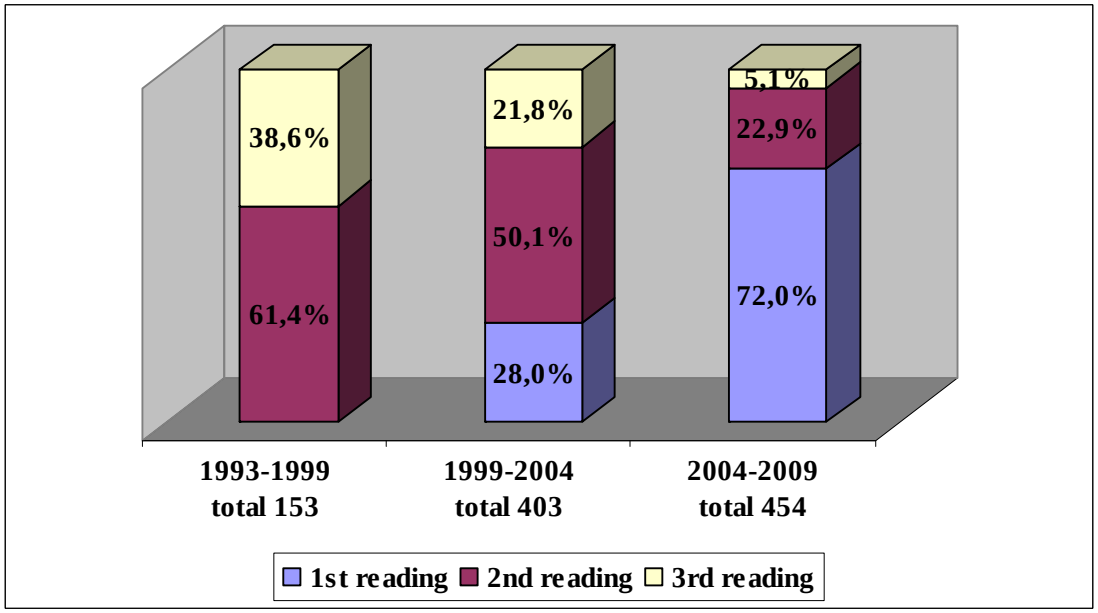

Figure 3: *Percentage of codecision files adopted at 1st, 2nd or 3rd reading by legislature* (*all files included*)

[11] In 10.8% of cases common positions were approved by Parliament without amendments ("early second reading agreement"), 12.1% went into a "classical" second reading.

If one excludes from the calculation the codification dossiers (46 files), which by definition are concluded at 1st reading, the repeals (6 files) and the dossiers dealing with the adaptation to the new Comitology Decision (54 files), for which there was a political wish to conclude quick 1st reading agreements, the picture looks slightly different.

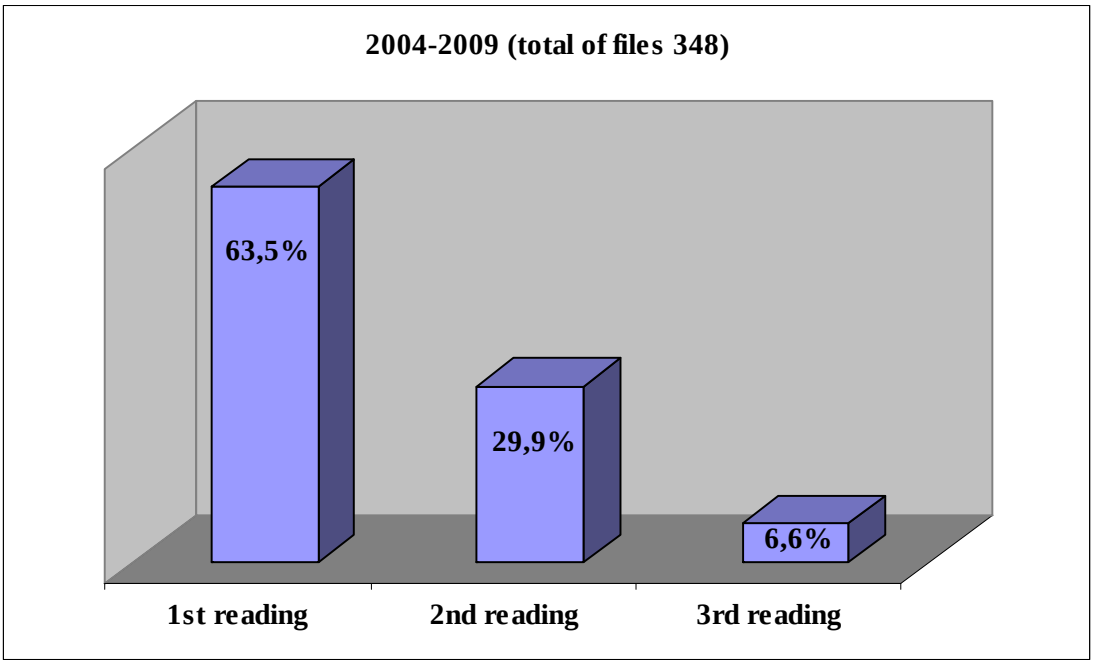

Figure 4: *Percentage of 1st, 2nd and 3rd reading conclusions of codecision files (codifications, repeals and comitology files excluded)*

Looking at the long-term trend 1999-2009 the picture looks fairly stable for the years 1999-2003. The prospect of enlargement to ten new Member States (with nine new languages into which the documents of ongoing procedures had to be translated) and the end of the legislative term in 2004 led to an unprecedented increase in 1st and 2nd reading agreements. In the year 2003-2004 a record number of 144 codecision acts were adopted by the end of April 2004. During the 6th legislative term the trend for 1st reading agreements has continued and even been reinforced.

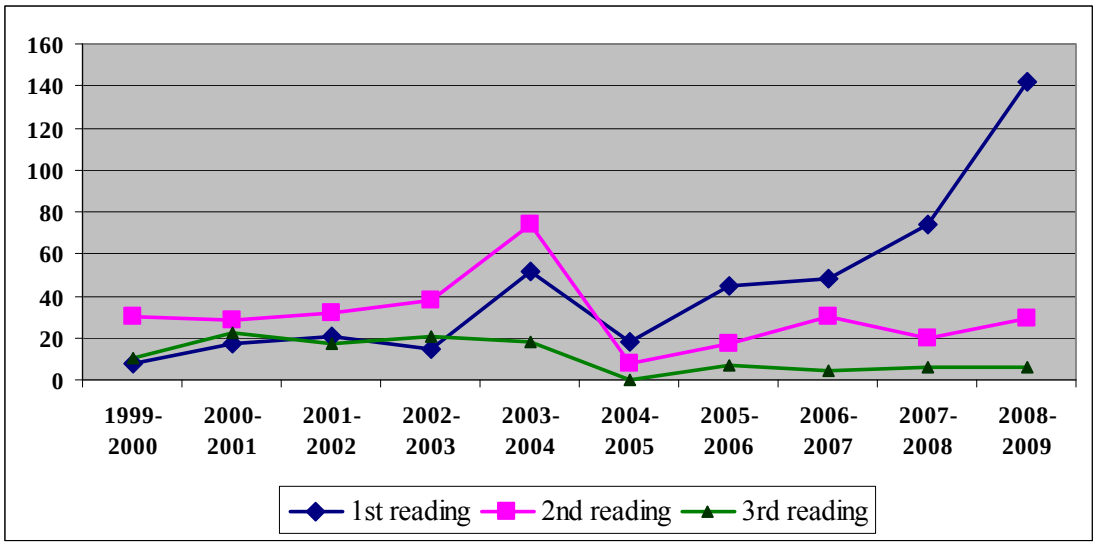

Figure 5*: Evolution of the stage of conclusion 1999-2009* (*Files adopted between 01.05. and 30.04. each cycle, except for 2008-2009 - all files included*)

	Total codecision	*Files concluded at 1st reading*		*Files concluded at 2nd reading*		*Files concluded at 3rd reading*	
		No	*%*	*No*	*%*	*No*	*%*
1994-1999 (annual average)	30	-	-	18	60	12	40
1999-2000	48	8	17	30	62	10	21
2000-2001	67	17	25	28	42	22	33
2001-2002	70	21	30	32	46	17	24
2002-2003	74	15	20	38	51	21	29
2003-2004	144	52	36	74	51	18	13
2004-2005	26	18	69	8	31	-	-
2005-2006	69	45	65	17	25	7	10
2006-2007	82	48	58	30	37	4	5
2007-2008	100	74	74	20	20	6	6
2008-2009	177	142	80	29	16	6	4

Table 1*: Development of stage of conclusion of codecision files 1994-2009 (all files included)*[12]

It is interesting to note that committees seem to have developed different cultures and practices regarding the stage of conclusion. Some committees tend to conclude their codecision procedures almost exclusively at 1st reading, while others use a much more varied approach. In the following chart the committees are listed according to the number of codecision files concluded at 1st reading.

[12] Regarding the figures of the last two years one has to add that most of the technical files mentioned before were also adopted in this period.

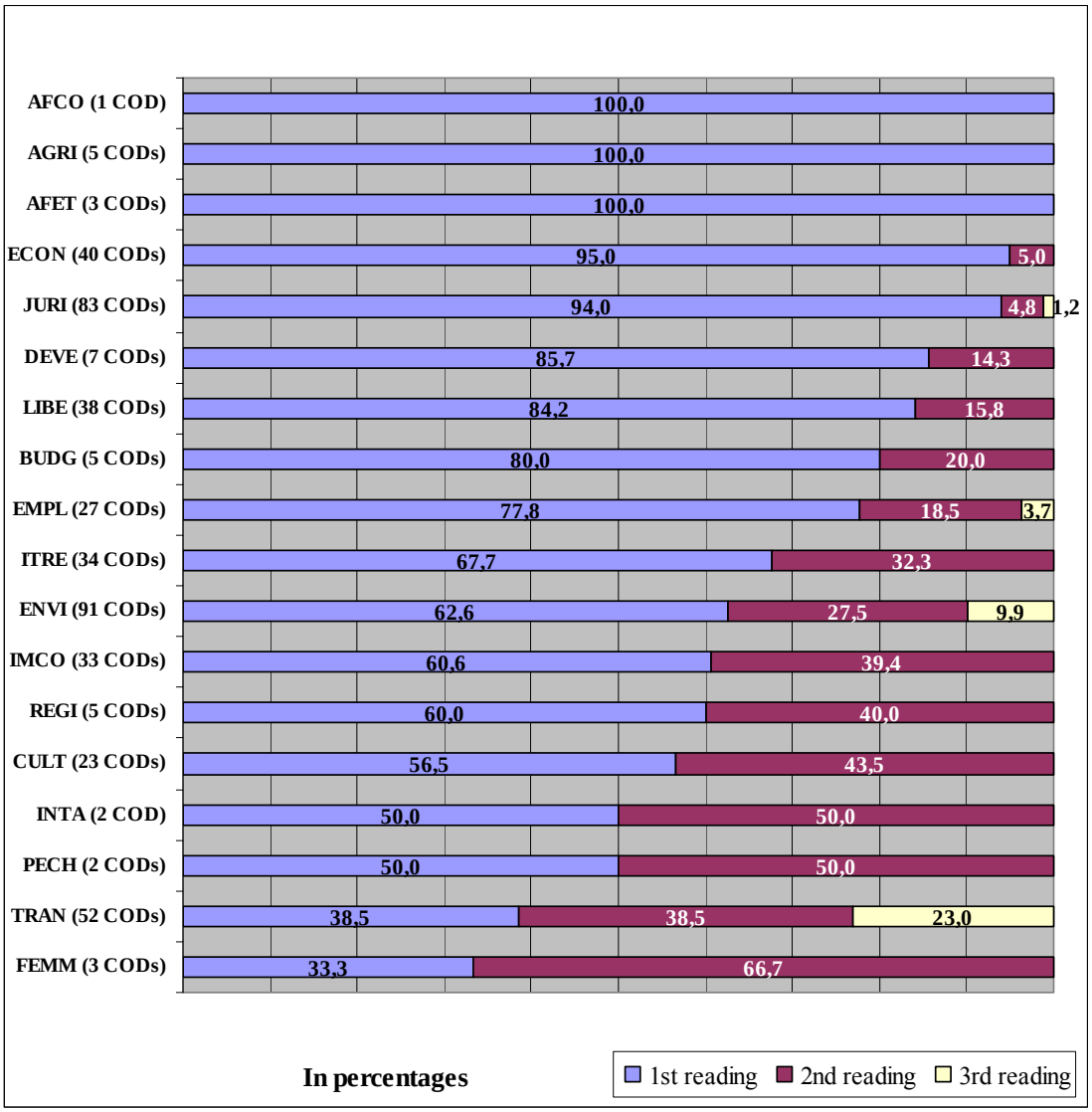

Figure 6*: Percentage of codecision files adopted at 1st, 2nd and 3rd reading during 2004-2009 by committee (all files included)*

The question how this trend towards 1st reading agreements can be explained is asked very often inside and outside the institutions. Among the factors mentioned very often is, firstly, the increasing familiarity with the codecision procedure - and in particular the possibility to conclude in 1st reading following a simple majority vote in Parliament - by all institutions involved. Linked to this is, secondly, the greater number and better contacts between the institutions whose representatives now start talking to each other routinely very early in the procedure. A third possible explanatory factor seems to be the higher number of uncontroversial and rather technical proposals. Fourthly, the objective, perceived or political urgency of proposals presented by the Commission also seems to play a role.[13] Fifthly, since the enlargement of 2004 it seems to become increasingly difficult to find a Council position among the now 27 Member States and an early input of the Parliament can be seen as a factor facilitating the Council's internal consensus-building. Finally, Council Presidencies seem very eager to reach quick agreements during their Presidencies and

[13] See part 2.2 on the files related to the new financial perspectives 2007 - 2013.

they seem to favour 1st reading negotiations for which the arrangements are much more flexible than in later stages of the procedure.

Perhaps the major factor is the trend to prepare more exhaustively the 1st reading (through evaluation of the Commission's Impact assessment, systematic evidence gathering, studies, public hearings, etc.).

During this legislative term, the European Parliament has demonstrated on a number of occasions (in dossiers such as the Cosmetic Regulation, the Ozone Depleting Substances Regulation, the Reduction of CO2 Emissions from Passengers Cars Regulation or the Trade in Seal Products), that 1st reading agreements can be an adequate and successful instrument for shaping legislation and obtaining a clear parliamentary added value.

An interesting development during this legislative term was the "formalisation" of early-second reading agreements. While already before and still today many common positions are approved by Parliament simply because it is satisfied with them, now the common position is increasingly approved by Parliament because it has negotiated it with Council in the phase between the 1st reading of Parliament and the Council's adoption of its common position.[14] The result of the negotiations is usually formalised in a letter by the chair of the committee responsible to the president of the respective Coreper indicating his recommendation to the plenary to accept the Council common position without amendment.

There is also a clear trend for 1st and 2nd reading agreements to take more time. The average time until adoption increased between the 5th and 6th legislature and also during the 6th legislature. A study of the Commission services[15] found that the average length of time for a 1st reading agreement in the period May 1999 - April 2004 was 12 months. For a second reading it was 25.1 months. In the period May 2004 - December 2006 the average time for a 1st reading agreement was 15.7 months and 32 months for a 2nd reading agreement.[16]

A calculation for all codecision procedures since the beginning of the 5th legislature confirms these findings:

[14] For the first description and assessment of this innovation see part 4c) of the Midterm Report 2007.
[15] Available at http://ec.europa.eu/codecision/institutional/analysis/codecision_stat_en.pdf
[16] The length was calculated from the date of adoption by the Commission until the publication of the act in the Official Journal.

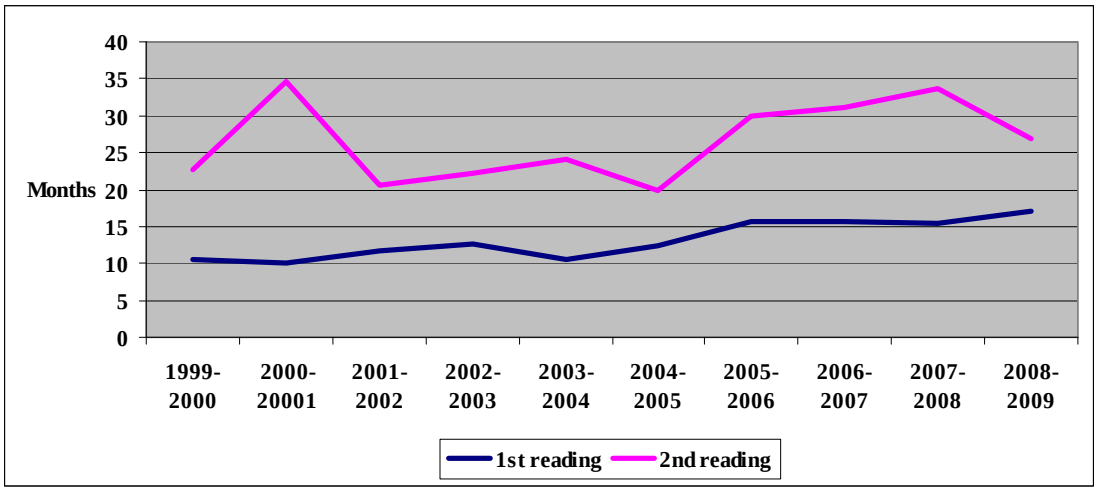

Figure 7: *Average length of procedure of codecision files concluded at 1st and 2nd reading during 5th and 6th legislatures from date of adoption of the Commission proposal until date of adoption of the final act (all files included)*

	1999-2004	2004-2009
1st reading	11,0 mo	16,2 mo
2nd reading	24,5 mo	29,7 mo

Table 2: *Average length of procedure of codecision files concluded at 1st and 2nd reading during 5th and 6th legislatures from date of adoption of the Commission proposal until date of adoption of the final act (all files included)*[17]

This trend can be explained with the higher number of 1st reading agreements which include more and more controversial files which need time to be negotiated and where Parliament strives to get the best deal.

It is interesting to note that the average total length of codecision procedures has been only very moderately shorter during this legislature than during the 5th term despite the increase in early agreements.

	1999-2004	2004-2009
All COD files	22,0 mo	20,7 mo

Table 3: *Average length of procedure in months of codecision files concluded during 5th and 6th legislatures from date of adoption of the Commission proposal until date of adoption of the final act (all files included)*

[17] The length of procedure of each file was calculated in days and converted into months dividing by 30.

2. OVERVIEW OF CONCILIATION

2.1.1 Quantitative overview - less conciliations and fewer committees involved

During the 6th parliamentary term a total number of 24 conciliation procedures (5.1%) took place.[18] This is in absolute and relative terms a very significant decline in comparison to the fifth legislature, which saw 86 conciliation procedures (22%).

During the first two semesters directly following the elections and the enlargement of 1.5.2004 no conciliation procedures took place. This was due to the fact that enormous efforts were undertaken to conclude files before the enlargement. In the following three Presidencies (2nd half of 2005 until the end of 2006) a total of 11 conciliations took place. In the second half of the legislature a further 13 procedures took place.

The TRAN committee was the committee responsible for half of the dossiers leading to conciliation (12), closely followed by ENVI (9). EMPL had two and JURI one file. This is also in contrast to the fifth term during which ENVI and RETT[19] together had around two-thirds of the files leading to conciliation while one-third was split between a number of committees (JURI, ITRE, EMPL, DEVE, CULT, AGRI, FEMM). The first half of the 6th term was dominated by ENVI files (8 out of the 9 procedures for which ENVI had been the responsible committee) and the second half by TRAN files (10 out of its 12 files; of which 6 made up the Maritime Package).

This legislative term saw also a novelty: for the first time since the entry into force of the Treaty of Amsterdam, which extended and modified the codecision procedure, the conciliation committee was not able to reach an agreement, namely in the case of the Working Time Directive[20] and subsequently the process was concluded. In two other cases during the previous term (Takeover Directive and Port Services Directive) the agreement reached in conciliation failed to find a majority in plenary at third reading.

2.1.2 Qualitative overview - key achievements of conciliation

The dossiers which went to conciliation dealt in particular with environmental standards, transport and workers' rights. In the following part some of the key achievements of Parliament in conciliation will be presented. The Civil Aviation Security file is presented in more detail since in this case documents allow to demonstrate precisely how the final agreement went much further than what was possible earlier in the procedure.

As was already shown in the mid-term report of the 6th legislature, Parliament in conciliation consistently succeeded in achieving higher environmental standards:

- higher standards of bathing water (Directive on bathing waters)

[18] See Annex 1 for the list of files.
[19] Committee on Regional Policy, Transport and Tourism
[20] For details see part 2.1.3.

- compulsory checks and maintenance work to prevent contamination of soil and water; adequate financial guarantees for the clean-up of land affected by waste facilities (Directive on mining waste)
- maintenance of the right of Member States to introduce tougher restrictions on emissions of fluorinated gases if they so wished (Regulation on fluorinated gases & Directive on motor vehicle air conditioning systems)
- capacity labelling to help consumers consume in a more environmentally-friendly way, distributor take-back free of charge of spent batteries, limited exemptions for small producers, producer support for research into less environmentally harmful batteries (Directive on batteries and accumulators)
- a single regime for access to all kinds of environmental information held by EC bodies and institutions (Regulation on application of the Aarhus convention)
- prioritising environmental concerns in references to pollution of groundwater by nitrates and avoidance of any delay in attaining environmental objectives (Directive on groundwater)
- the general principle of access to geographical information free of charge (INSPIRE Directive)
- higher total budget for the Life+ programme including higher percentage of budget for "nature and biodiversity" projects and allocated part for trans-national projects (Regulation concerning the financial instrument for the Environment (LIFE+))

The conciliation procedures in the transport field were distributed over all modes of transport: road, rail, aviation, and maritime.

In the two dossiers constituting the Road Package Parliament's objective was to achieve greater road safety. One way to achieve this was seen in providing better working conditions for drivers such as, for example, regarding breaks and rest periods, driving time and other work. Another means to achieve this objective were seen in more checks and a definition of common infringements. Besides further issues the compensation of victims of road traffic accidents was one of the main issues of the conciliation on Rome II. Here Parliament achieved that for the calculation of the compensation not only the standards in the country of the accidents are taken into account but also those in the country of residence of the victim.

During the conciliation on the 3rd Railway Package the focus of Parliament was on passengers' rights. It achieved important improvements for train passengers such as, for instance, the enjoyment of certain basic rights for all passengers independently of the type of train or journey covering liability for passengers and luggage or the right to transport for people with reduced mobility. Further improvements were achieved regarding information to passengers, service quality standards and the transportation of bicycles. In the two less controversial dossiers of the package on competition and train drivers and crews Parliament achieved better rules on comitology in addition to review clauses covering unsolved issues.

The biggest package ever in conciliation was the 3rd Maritime Package (also known as the Erika III Package) with six files.[21] In this case Parliament showed its consistent and strong support for measures increasing maritime safety. Politically Parliament's

[21] Two other related files were negotiated in parallel as early second readings.

insistence on higher standards was based on the work done by its Temporary Committee on improving safety at sea (MARE) during the 5th parliamentary term, which was set up following the Prestige accident in 2002. For Parliament it was clear that political decisions were needed to avoid such disasters in the future and that it is no solution to agree on additional measures only in the aftermath of major accidents.

The conciliation on the Maritime Package allowed the conclusion of two files (on flag States' obligations and civil liability) in the package as early second reading agreements, for which Member States were reluctant to adopt such legislation at EU level. Parliament managed to put pressure on Council to make progress with these files by incorporating the substance of them into some of the six other legislative files of the package via amendments in second reading.

During conciliation Parliament managed to convince Council to accept major improvements which did not seem possible in second reading:

- a fixed date of application, a wider scope covering more routes, clarifications regarding the applicable limits of liability, better information for passengers and wider scope for advance payments in case of death (Regulation on the liability of carriers of passengers by sea in the event of accidents; Athens Convention)
- a wider scope requiring a preliminary assessment for all serious accidents, a reinforced common methodology for investigating maritime accidents, clear rules on the start of investigations and on the principle of one investigation per accident and a reinforcement of the technical nature of such investigations in comparison to criminal investigations (Directive on accident investigations)
- notification of bunker oil on board ships in more cases, rules on fair treatment of seafarers in case of an accident to be taken into account by Member States, report of the Commission on possibilities to compensate ports (Directive on vessel traffic monitoring)
- a permanent banning of vessels in EU ports under certain conditions, extension of the scope of the directive to include vessels calling at anchorages and increased frequency of inspection of vessels (Directive on port state control)

In two cases (optical radiation and Working Time Directives) workers' rights were Parliament's main objective.

Many conciliation dossiers lead to tangible results for citizens:

- The conciliation on bathing water led, for example, to the introduction of safeguards for enhanced public information and participation by making available on the internet up-to-date information on water quality at bathing sites (the most frequently visited EU site).
- Capacity labelling for batteries will allow consumers to identify long-lasting batteries.
- Passengers' rights were improved for rail and maritime transport.

2.1.3 The Working Time Directive: a first conciliation failure and its impact

This legislative term saw also a novelty: for the first time since the entry into force of the Treaty of Amsterdam, which extended the scope of and modified the codecision procedure, the conciliation committee was not able to reach an agreement in the case of the Working Time Directive.

An overview of the procedure

After several trilogues and three full meetings of the conciliation committee that lasted until the early hours of the next day, the conciliation committee had to concede at its last meeting (one day before expiry of the six weeks deadline and one week before the last plenary of this term) that the positions of the two institutions were too far away and reconciliation was not possible. This decision was taken in the Parliament delegation to the conciliation committee with 15 votes against the latest compromise package on the table, none in favour and 5 abstentions. Pursuant to Article 251(6) TEC, the process was concluded at this point, and the plenary and the Council did not have the possibility to vote on a joint text at third reading.

The points of disagreement

The "opt-out", i.e. the possibility for Member States to allow for exceptions from the principle of a maximum 48 hour working week, proved the main stumbling-block. The Parliament delegation maintained by a majority that the opt-out was introduced in 1993 as an exceptional arrangement and therefore a specific date for its ending should be set: the date as such could be negotiated. The Council argued that it was confronted with a strong blocking minority since the opt-out applies in some 15 Member States.

The two co-legislators also disagreed strongly on the issue of "on-call" time, i.e. the time that a worker is required to be present at his/her working place and available to the employer in order to provide his/her services; "on-call" time is a key issue for employees in the health sector (such as doctors or nurses) and fire brigades. The EP delegation could not consent to legislate against the case law of the European Court of Justice, according to which all on-call time is considered full working time, by agreeing to a distinction between "active" and "inactive" on-call time, with a special calculation for the latter, as proposed by the Council.

The reconciliation of the two branches of the legislative authority proved impossible also with regard to "multiple contracts", as the Council could not agree to lay down in the recitals of the Directive that its provisions should apply "per worker" and not "per contract", thus protecting workers with multiple contracts from working longer hours.

The impact of the conciliation non-agreement

The failure of the Conciliation Committee to reach an overall agreement in the form of a joint text meant the immediate conclusion of the procedure with no adoption of the proposed act. As a consequence, the existing Directive 2003/88/EC remains in force. The opt-out continues to apply in its current form, but at the same time the Court ruling regarding "on-call" time remains fully applicable. A new attempt to amend the existing Directive could be launched only by a new Commission proposal.

The Commission has not stated clearly yet whether it intends to submit a new proposal and if yes, for which issues.

The first lack of agreement within the Conciliation Committee could have various repercussions both within Parliament and with regard to interinstitutional relations.

This was the first time that the Conciliation Committee decided to end the procedure. The members of the delegation, and not the whole Parliament, took this decision for the Parliament. In previous cases where the result of the conciliation negotiations was controversial the EP delegation had decided to accept the best possible deal at the end of the negotiations in order to enable the whole Parliament to take the final decision. In two of these cases (takeover bids in 2001 and port services in 2003), the agreement reached in conciliation was then rejected by the plenary.

In this particular case the rejection by the EP delegation of the latest proposal on the table was not controversial but rather a straightforward decision since it was taken by a clear majority of 15 votes against, none in favour and 5 abstentions. It could be estimated that since the composition of the EP delegation reflects the overall composition of the plenary, the result of a potential vote in the plenary would not have been different from the one within the EP delegation.

From an institutional point of view, this result strengthens the negotiating position of the Parliament in the interinstitutional triangle since it demonstrates that the agreement of the Parliament cannot be taken for granted and that it does not hesitate to make important political decisions when it considers that negotiations have not led to an acceptable result. It also strengthens the Parliament's negotiating position in the earlier stages of the procedure, since the option of "going to conciliation" is now linked not only with "further negotiations" but also with the possibility of "no agreement at all".

At the same time one could ask how this first failure will be perceived by the other institutions and particularly the Council and what kind of impact it will have on conciliation.

2.1.4 Case study - conciliation on Civil Aviation Security

There is a general feeling that Parliament concludes conciliations successfully in the sense that the final result often goes further than what was offered at 1st or 2nd reading. This is very difficult to prove formally but the dossier on Civil Aviation Security shows it is possible. For this reason it is presented here in more detail.

Contacts between the Parliament and the Council took place during the Finnish Presidency in the second half of 2006 in an attempt to reach an early second reading agreement. A compromise package (later referred to as the "Finnish compromise"[22]) was, however, rejected by the Parliament. Nevertheless, since then the Council representatives underlined repeatedly that the Finnish compromise was as far as the Council would be able to go.[23]

[22] See Council documents 14498/06, 14145/06, 12455/07 and DS 653/07.
[23] Letter from Mr BÁRTOLO (Chairman of Coreper I during the Portuguese Presidency) to Mrs KRATSA-TSAGAROPOULOU of 25 July 2007: "*... that the Council, for its part, is prepared to show*

In fact, the final agreement goes considerably further than the Finnish compromise:

Concerning the financing of aviation security measures, the positions of the Commission[24] and the Council[25] (which did not want to include any provisions on financing in the text) and the Parliament (with several quite far-reaching amendments on this issue[26]) were poles apart. The final compromise is clearly closer to the Parliaments amendments than the Finnish compromise.

As regards the sharing of costs, both texts use non-binding language. In the final text, however, the provisions are included in Article 5 while in the Finnish compromise they were only in recital 18a. Moreover, the language used in Article 4a of the Finnish compromise underlines the autonomy of Member States, while the final and more detailed text can be read as a first step towards Community rules.

As to the provisions on security charges (that they are directly related to the costs of providing security measures and designed to recover no more than the relevant costs involved) the expression "should" is used in recital 18a and Article 4a of the Finnish compromise. In Article 5 of the final text the word "shall" is used.

As for the next steps, the final text is also much more in line with Parliament's position than the Finnish compromise. It provides for a comprehensive report of the Commission on a fixed date and includes a commitment for a further legislative proposal.[27]

Comitology: The Finnish compromise provided for the regulatory procedure with scrutiny (RPS) in two cases (the criteria allowing Member States to derogate from the common basic standards and the specifications for the national quality control programme). The final text now provides for additional RPS procedures for the common basic standards which can be considered to be at the heart of the Regulation, although there had been no amendment on this point in 2nd reading.[28] This success allows for the Parliament's close involvement in such issues as articles prohibited on board an aircraft (liquids)[29] and methods for the screening of passengers (body scanners)[30]. In acknowledgement of the need to make quick decisions in certain

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some flexibility on its common position, but that it will not be able to go beyond the principles established in its compromise proposal submitted to Parliament in November 2006."

[24] The initial Commission proposal did not contain any provisions as to the question of who would pay for the security measures. Parliament had been very disappointed by this omission of the Commission since the Parliament, the Council and the Commission in an Interinstitutional Declaration added to Regulation 2320/2002 had recognised that the funding question had to be analysed urgently.

[25] The common position does not contain any provisions on financing. In its statement Council outlined that it would be inappropriate in such a technical regulation to include requirements or obligations on financing and that "*the principle of subsidiarity dictates that such questions be addressed at national level*." (OJ C 70 E of 27.3.2007, p. 32)

[26] Identical amendments in first (AMs 3, 35, 44 and 43) and second reading (AMs 3, 31, 38, 39 and 44).

[27] For a more detailed analysis of the provisions on the next steps see the explanatory statement in the plenary report A6-0049/2008.

[28] There were two amendments expressing concern about the delegated implementing power: AM 36 requiring detailed risk, cost and impact assessments for each implementing measure and AM 33 providing for a sunset-clause for all implementing measures.

[29] See European Parliament resolution of 5 September 2007 on Commission Regulation (EC) No 1546/2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security (introduction of liquids onto aircraft).

[30] See European Parliament resolution of 23 October 2008 on the impact of aviation security measures and body scanners on human rights, privacy, personal dignity and data protection

circumstances, Parliament's delegation accepted the possibility to use the urgency procedures for future measures under the RPS procedure.

Other issues: In conciliation additional issues not included in the Finnish compromise were agreed which constitute clear improvements from the Parliament's point of view:

- As regards the publication of implementing measures, a general rule was added that measures which have a direct impact on passengers shall be published (recital 16, Article 16).
- An Article on cooperation with the International Civil Aviation Organisation (ICAO) concerning audits was added (Article 8).
- The concept of "one-stop security" was strengthened (recital 20, Article 20).
- The provisions on the use of sky-marshals were improved with a reference to training (recital 8) and the required security conditions (chapter 10.3 of the Annex).
- Wording was added to recital 3 to the effect that consideration should be given to the most effective means of offering assistance following terrorist acts that have a major impact in the transport field.
- The date of application of the new Regulation can be less than two years from the entry into force. The Parliament will be involved in the decision on the date of application via the regulatory procedure with scrutiny (Article 24).

This analysis shows that the final outcome in conciliation in this particular case was better for Parliament than what had been negotiated earlier in the procedure. It also shows that in some cases it can be worthwhile not to accept an agreement on the table but to continue the procedure.

2.2 DEVELOPMENTS REGARDING CONCILIATION

Several factors had a considerable impact on the role of conciliation and its working methods. During the 6th parliamentary term these were, in particular, the trend towards 1st reading agreements and fewer conciliations, enlargement, the ruling of the Court of Justice on the *IATA* case, and the increasing number of legislative packages.

The lower number of conciliations during the 6th legislative term can be explained by several factors. Firstly, the very special circumstances of 2004 led to enormous efforts to conclude procedures before enlargement. This explains why during the 1st year of the 6th legislative term no conciliation took place. Circumstances at the beginning of the previous legislature in 1999 were very different, leading to 17 conciliations in the 1st year of the 5th legislature.

A second reason is that the agreement on the financial perspectives 2007-2013 led to agreements on the budget of the various multiannual programmes (such as the Cohesion Fund, the 7th Research Framework Programme, Culture 2007 or the European Neighbourhood and Partnership Instrument). When in 2006 the Commission presented legislative proposals revising 26 existing programmes and proposing 5 new ones, there was enormous time pressure to adopt them in time for the start, of most of them, in 2007. This led to a situation in which de facto the budget of programmes ceased to be a contentious issue between Parliament and Council, and there was no more bargaining on this issue as it had already taken place. During the

5th legislature, in comparison, 10 conciliation procedures dealt with financial programmes and in particular their budgets.[31] During the 6th legislature only one programme (Life+) was discussed in conciliation.

Third, the general trend towards 1st reading agreements as outlined in the first part of this report also explains the lower number of conciliations.

The reduction in the number of conciliations led to a situation in which conciliation is seen more and more as an exception. Actors become less used to it and it requires greater efforts to explain "the rules of the game". The Council seems increasingly to try to avoid conciliations and Presidencies seem to feel more at ease with the flexibility of 1st and 2nd reading negotiations. Conciliation is perceived by Presidencies as a more demanding procedure which requires the presence of Ministers, has strict deadlines, translation and interpretation requirements etc.

The reduction in the number of conciliations led to a certain change in the working methods of conciliation. The practice of more work being done during trilogues and of convening the full conciliation committee only once there is a realistic chance of concluding the procedure has been reinforced. There has also been frequent use of trilogues at political level, i.e. involving Ministers and Commissioners. With fewer procedures taking place, the possibility of dealing with several procedures during one meeting of the conciliation committee (with A- and B-points) has been completely abandoned.

In general terms, however, with the exception of the Working Time Directive, the conciliation procedures concluded in this term have again proven that the dynamics of a conciliation evening allow the conclusion of even very difficult negotiations, with good results for the Parliament. The presence of the highest political level that can assume the responsibility for difficult decisions and the presence of Coreper and the full Parliament delegation which allow positions to change in the course of the evening are important in this respect.

Enlargement to 27 Member States had an impact on conciliation but, most importantly, the feared reduced efficiency did not materialise. The structure of conciliation negotiations - with a small negotiating team mainly speaking to Council in trilogues and reporting back to the full delegation which also gives a mandate to the negotiating team - was not affected and continued to operate successfully.

At the same time, the increase in the number of languages not only made the actors involved more aware of the costs, but also had very practical effects: the limited number of interpreters especially for the new languages at the beginning of the parliamentary term to a large extent put an end to conciliations lasting the entire night. The requirement to have two full teams of interpreters present at any time during a conciliation evening is usually only maintained until midnight. This increased the pressure on the participants to find an agreement.

The ruling of the European Court of Justice in the IATA case (which confirmed that, in order to enable an agreement to be reached on a joint text, the conciliation

[31] Socrates II, Save II, Altener II, Culture 2000, Youth, Life III, environmental dimension of development, tropical forests, social exclusion, public health programme (for details see Annex 3a and 3b of the Activity Report 1999-2004).

committee could agree on changes to parts of the common position which were not amended by the Parliament at second reading)[32] had an impact on conciliations. Negotiators during 3rd reading felt reassured when speaking about parts of the common position not amended by Parliament in second reading or about completely new elements introduced with the aim of finding a compromise. In that sense the ruling certainly was an important argument when, for example, the Parliament delegation requested the use of the regulatory procedure with scrutiny in the Civil Aviation security conciliation or a fixed date of application in the case of the conciliation on the Athens Convention.[33]

Along with the general trend towards legislative packages (where several legislative procedures are dealt with together) there has also been a tendency towards packages in conciliation. While packages in conciliation are not a new phenomenon as such it seems remarkable that in relative terms more packages are dealt with in conciliation. This means that not every dossier which reached 3rd reading was necessarily controversial. It also means that the solidarity of rapporteurs, showing their support for the demands of others by not concluding their file even if they could, is a strategy for Parliament which pays off. This was, for example, expressed in the plenary debate on the Maritime Package.[34]

2.3 LESSONS FROM THE PAST 5 YEARS - VIEW OF THE FUTURE

The 6th parliamentary term has seen fewer conciliations, but the procedure continues to work well and produces results with which the Parliament can be very satisfied. Following a questionnaire[35] a clear majority of rapporteurs replied that in the case of their dossier(s) they got a better result in conciliation than they had obtained so far in earlier stages of the procedure. This confirms the general feeling that conciliation is usually a success for Parliament. At the same time, the strategic option of conciliation strengthens Parliament's negotiators only if the threat to go to conciliation is a credible one. For the threat to be credible it has to be used in justified cases.

It seems to be that the way in which Parliament is organised in 3rd reading gives it a competitive advantage over Council in that phase of the procedure. As it was put by one rapporteur: *"The conciliation procedure gives to the Parliament a lot of 'bargaining power' due to the stability of the Delegation leadership versus the rotating leadership of the Council Delegation."* To this can be added the system of a small but representative negotiating team (including the Vice-President responsible, the chair of the committee and the rapporteur) which regularly informs the full delegation and is mandated by it. All of the rapporteurs who replied to the above-mentioned questionnaire considered the specific nature of the organisation of the conciliation procedure justified given the results obtained.

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[32] C-344/04; for a general explanation see Midterm Report 2007 part I.3

[33] For more information on these points see the explanatory statements of the corresponding reports to plenary A6-0049/2008 and A6-0102/2009.

[34] "*I would like to thank my fellow rapporteurs, who have all considered this general interest before turning to their own individual interests, which has allowed us to achieve, together, a good result that none of us could have achieved individually.*" Dominique Vlasto in plenary on 10.3.2009

[35] For the preparation of this report a questionnaire was sent by the three Vice-Presidents to the rapporteurs who had one or several files in conciliation during this term and who were still Members of Parliament. In this questionnaire the rapporteurs were asked to give their views about how to evaluate the procedure and outcome of their reports.

It had been discussed whether the delegation of Parliament to the conciliation committee should not be a standing one. This possibility was, however, not pursued. It was considered that the current system allows for a mix of standing members (the Vice-Presidents responsible for conciliation and other members whom the political groups could nominate) able to defend Parliament's interinstitutional concerns and position on horizontal issues, and members nominated for a specific dossiers with a particular knowledge of the subject matter. This system leaves maximum flexibility to the political groups for the nomination of members in the delegation.

Participants in conciliation have also been, in particular, content with the practical set-up of the procedure.[36] Conciliation provides a model which is gradually being implemented in 1st and 2nd reading negotiations. Interpretation and translation is fully provided for, the delegation is regularly informed by and mandates the negotiation team, and the entire process is fully documented in a 4-column working document. A whole administrative team including staff from the conciliation and codecision secretariat, the committee secretariat, the legal service, the tabling office and the press service is set up to deal with each specific dossier.

Going to conciliation involves a risk. The risk is mainly related to the length of the procedure: going to conciliation means that it will take more time and effort. All of the rapporteurs who replied to the questionnaire considered, however, the time and effort necessary justified in view of the results obtained. It can be argued that the additional time and effort make it possible to find the very fine balance between the positions of the institutions. As it was put by one rapporteur: *"Though the total procedure took significant time (almost 2,5 years), I do not consider this as a disadvantage. On the contrary, the time we have invested led to a clear improvement of the text.[...] I truly believe that the conciliation led to a better cooperation between the institutions and better legislation in the end."* It also has to be added that the Treaty lays down clear deadlines for 2nd and 3rd reading, and the time risk is therefore limited. Fears of risking concessions already made by Council or of risking the success of the entire procedure never became a reality. Not in a single procedure did the Council at the end step "backwards" from positions it had taken earlier in the procedure; on the contrary Council showed flexibility and moved towards Parliament's position. Fears of "losing control" of the procedure on the part of committee members were also never a problem in practice since de facto the political groups nominate the Members who followed a given procedure in committee to Parliament's delegation. The system of full and substitute members provides for enough "places" to accommodate all interested Members.

Despite the fact that the system generally works well, a number of internal and interinstitutional issues should be addressed in the next legislative term.

Internally, a potential problem lies in the composition of the delegation, as decided upon by the Conference of Presidents under Rule 68(2)[37] which does not guarantee every political group, in particular small groups, at least one seat. In the second half of this legislature the application of the d'Hondt-system led to the following distribution

[36] For a detailed description of the practice of conciliation see "Conciliations and Codecision - A Guide to how the Parliament co-legislates" available on http://www.europarl.europa.eu/code/information/guide_en.htm.

[37] The references in this report are to the new version of the rules of procedure following the general revision of 6 May 2009.

of the 27 seats: PPE-DE: 11; PSE: 9; ALDE: 4; UEN, Verts/ALE and GUE/NGL: 1; IND/DEM: no seat.[38]

Interinstitutionally there is the question of transparency and in particular access to the documents used by the conciliation committee. So far point 37 of the joint declaration[39] provides for the 4-column working documents (outlining the common position, Parliament's 2nd reading position and the current positions of Parliament and Council) used during conciliation to be made public once the procedure has ended. Following the ruling of the European Court of Justice in the *Turco* case[40], this practice needs to be reassessed in cooperation with the Council.

An issue of contention between Parliament and Council has also on several occasions been the establishment of the consolidated joint text following an agreement on the outstanding issues. It has to be the conciliation committee as the political body responsible which approves the joint text and the procedure for doing so should be clarified.

3. DEVELOPMENTS REGARDING CODECISION

3.1 EP INTERNAL ORGANISATION

The trend towards 1st reading agreements, which have only been possible since the entry into force of the Treaty of Amsterdam on 1.5.1999, had already been visible during the 5th legislature. Transparency, clarity and legitimacy of contacts at 1st and 2nd reading had therefore already been issues in the activity report of the 5th legislature.[41] As a reaction to these concerns a set of "guidelines for best practice within Parliament" on 1st and 2nd reading agreements had been approved by the Conference of Presidents on 12 November 2004.[42] These guidelines aim to promote a uniform way of proceeding within Parliament when seeking agreement at an early stage, while at the same time maximising the transparency, effectiveness and legitimacy of the whole procedure.

On the one hand, the guidelines had the effect of making those involved more aware of the issues to be kept in mind and contributed to the increasing professionalism with which trilogues are conducted. On the other hand, different committees developed different practices, for example regarding the stage of the procedure during which

[38] So far, however, practical problems because, for instance, the committee chair or rapporteur belonged to a political group not represented, have not occurred.
[39] Joint declaration on practical arrangements for the codecision procedure of 13 June 2007 (Article 251 of the EC Treaty); OJ C 145, 30.6.2007, p. 5
[40] The European Court of Justice (ECJ) ruled that the refusal by the Council in 2002 to give access to former MEP Maurizio Turco to an opinion of its Legal Service was in breach of the provisions of Regulation No 1049/2001 on public access to European Parliament, Council and Commission documents. The Court considered that an overriding public interest is constituted by the fact that disclosure of documents containing the advice of an institution's legal service on legal questions arising when legislative initiatives are being debated, increases the transparency and openness of the legislative process and strengthens the democratic right of European citizens to scrutinize the information which has formed the basis of a legislative act (C-39/05 P and C-52/05 P).
[41] See chapter 3.3.2
[42] For the text of the guidelines see Annex B of the Midterm Report 2007.

negotiations take place (before the vote in committee with or without a specific mandate given in an orientation vote, or after the vote in committee).

During this legislative term voices inside[43] and outside[44] the Parliament raised concerns about a number of aspects of 1st and 2nd reading negotiations. Very often mentioned are the lack of transparency (which became in particular an issue in the case of early second reading agreements) and legitimacy.

To address these concerns a number of decisions were taken during this legislative term, some being based on the work of the Working Party on Parliamentary Reform and others developed in different contexts.

The Working Party on Parliamentary Reform - set up by a decision of the Conference of Presidents of 15.2.2007 - examined the way Parliament conducts its business and drew up a series of concrete reform proposals. It presented three interim reports on "The plenary and the calendar of activities", "Legislative activities and interinstitutional relations" and "Committees and delegations".

A series of decisions of the Conference of Presidents based on the work of the Working Party on Parliamentary Reform are important for the way in which Parliament acts as a co-legislator. Regarding the organisation of the plenary, it was decided to introduce a period of "cooling-off", i.e. "*a period of at least one month between the vote on any legislative report in committee (on first reading) and the vote on it in plenary*".[45] Given the intention of the cooling-off period - to facilitate deliberations within the political groups on legislative reports to be treated in plenary - this decision was interpreted to concern also the period between the successful conclusion of negotiations with Council on a 1st reading agreement and the plenary vote on it. Since this rule became applicable on 1.1.2008 it has, however, not been consistently applied. A further change to the organisation of plenary sessions was to take major legislation on Tuesday mornings and afternoons in order to increase the visibility of the legislative work of Parliament. At the same time it was formalised that votes requiring absolute majorities will take place on Tuesday and Wednesday.

Regarding legislative activities the main decision taken was the replacement of the "guidelines for best practice within Parliament" by the "Code of Conduct for

[43] Letters of 13.11.2007, 31.1.2008, 6.3.2008 of the Vice-Presidents responsible for conciliation to Dagmar Roth-Behrendt as chair of the Working Party on Parliamentary Reform; letter of 23.4.2008 of the Vice-Presidents responsible for conciliation to President Pöttering informing about the discussions at a seminar for Members on recent trends in codecision and the Lisbon Treaty; European Parliament resolution of 14 January 2009 on public access to European Parliament, Council and Commission documents (implementation of Regulation (EC) No 1049/2001), in particular point 12 on 1st reading agreements

[44] House of Lords European Union Committee 2008: The Treaty of Lisbon: an impact assessment; part 4.130 "First reading deals"; European Voice 23.4.2009 "First reading deals change the balance of power", p.7; European Policy Centre 2009: Strength in numbers? An evaluation of the 2004-2009 European Parliament: p. 16, 18, 24; CEPS 2009: The European Parliament – more powerful, less legitimate? An outlook for the 7th legislature; Statewatch Viewpoint: Secret trilogues and the democratic deficit - Under a new agreement between the Council and the European Parliament the efficiency of decision-making is enhanced at the expense of transparency, openness and accountability by Tony Bunyan (September 2007); for an analysis of early agreements see also Farrell/Héritier (2004): Inter-organizational Negotiation and Intra-organizational Power in Shared Decision-making - early agreements under codecision and their impact on the European Parliament and the Council of Ministers

[45] Decision of the Conference of Presidents of 25.10.2007

Negotiating Codecision Files".[46] This code, based on proposals made by the three Vice-Presidents responsible for conciliation, was adopted by the Conference of Presidents on 18.9.2008. Its general aim is to increase transparency and accountability of negotiations. In comparison to the rather vague term "guidelines", its name is intended to underline its more binding nature. The code has, however, not only a different nature from the guidelines but also goes much more into detail, for example, regarding the decision by the committee to enter into negotiations, the nomination of a negotiating team and its mandate, and the consideration by the whole committee of any agreement reached. In addition it lays down provisions on the documents used in trilogues (suggesting using the conciliation practice of four-column documents) and the administrative assistance to be provided for the negotiating team. Against the background of more files being concluded in early stages of the procedure the code underlines that "*the decision to seek to achieve an agreement early in the legislative process shall be a case-by-case decision, taking into account the distinctive characteristics of each individual file*."

On 6 May 2009 the plenary adopted a revision of the Rules of Procedure to incorporate the Code of Conduct, which is annexed to the Rules: Rule 70 (Interinstitutional negotiations in legislative procedures) provides that "*negotiations with the other institutions aimed at reaching an agreement in the course of a legislative procedure shall be conducted having regard to the Code of conduct*". The second paragraph of Rule 70, however, stipulates that before entering into negotiations "*the committee should, in principle, take a decision by a majority of its members and adopt a mandate, orientations and priorities*". This paragraph differs from the original Code of Conduct as adopted by the Conference of Presidents. Paragraph 3 of Rule 192 on committee coordinators and shadow rapporteurs stipulates that "*the committee, on a proposal from the coordinators, may in particular decide to involve the shadow rapporteurs in seeking an agreement with the Council in codecision procedures*."

Further decisions of the Conference of Presidents regarding legislative activities include an adjustment of the rules of procedure to recognise the roles, rights and duties of rapporteurs, shadow rapporteurs and political-group coordinators[47] and, to provide rapporteurs and shadow rapporteurs with an introduction package on codecision and the possibility of having cross-service administrative support teams on key legislative dossiers.

Based on the third report of the Working Party on Parliamentary Reform, the Conference of Presidents adopted a third package of measures on 12 and 19.3.2009 which includes a procedure providing for joint committee meetings and votes "*where matters fall almost equally within the competence of two or more committees*"[48] and a strengthening of the position of opinion-giving committees vis-à-vis the lead committee.

A number of initiatives were also taken during this legislative term which in general terms aim at providing more expertise to Parliament to exercise its role as co-

[46] See text of the Code in Annex 2
[47] Rule 192 on committee coordinators and shadow rapporteurs was added in the general revision of the rules of procedure of 6 May 2009.
[48] Rule 51 on joint committee meetings was added with the general revision of the rules of procedure of 6 May 2009.

legislator. The main instrument in this regard is the policy departments within the Directorate-Generals for internal and external policies. Operational since 2004, they provide the parliamentary committees with internal (notes and fact sheets) and external (studies, briefing notes, invitations of experts to hearings, workshops) expertise.[49] Expansion of the library services has also contributed to the improved provision of expertise for Members.

Efforts were also made to provide Parliament's negotiators with interpretation services. A pilot project was set up for ad personam interpretation for individual Members in their capacity, among others, as rapporteur or shadow rapporteur.[50]

3.2 INTERINSTITUTIONAL RELATIONS

Since the introduction of the codecision procedure, relations between the institutions have significantly changed. The quantity and quality of contacts at all levels is constantly increasing and the dynamics are changing. The trend to early agreements certainly plays an important role in the sense that early agreements require intensive interinstitutional contacts in the first place. The more the institutions then work together the more likely further early agreements become.

To take account of developments in the codecision procedure and, in particular, the trend to early agreements, the institutions agreed during this legislative term on a new joint declaration on practical arrangements for the codecision procedure (Article 251 of the EC Treaty) of 13 June 2007 which replaced the 1999 declaration.[51] The most important new elements introduced by the 2007 declaration certainly are the more detailed provisions concerning 1st and 2nd reading agreements.

The revised joint declaration has certainly proved to be a useful tool because it gives those involved in codecision procedures in the three institutions a clearer set of practical rules which complement the provisions of the Treaty. Given the informal way in which contacts between the institutions take place, it is difficult to evaluate to what degree the provisions of the joint declaration are respected: the obligation to confirm any agreement in writing by a letter seems to be generally respected. Some other provisions (which mostly are in a less binding wording using expressions like "as far as possible", "where practicable", "will endeavour to" etc.) do not seem to be consistently used. This concerns, for example, the exchange of draft compromises prior to the trilogue, the participation of the Presidency in committee meetings, the consultation regarding the date of transmission of a common position and the announcement of trilogues or joint press conferences. Also the provisions on the finalisation of texts could from Parliament's point of view be better implemented in a way that more accurately reflects the nature of the codecision procedure, in which Parliament and Council are on an equal footing.

In particular, in the light of the increasing number of 1st reading agreements, some elements of the joint declaration could be reassessed and if necessary adjusted. The provisions intended to ensure the transparency of interinstitutional contacts (announcement of trilogues, joint press conferences and press releases) are not

[49] http://www.europarl.europa.eu/activities/committees/studies/searchPerform.do
[50] Decisions of the Bureau of 10.12.2007 and 17.11.2008
[51] For the process leading to the revision see part II of the Midterm Report 2007.

sufficient. On the documents used for 1st and 2nd reading negotiations the declaration is silent. There are also no rules as to the timeframe within which the institution which has to adopt the act formally should do so. A new joint declaration should also, if the Treaty of Lisbon enters into force, take account of the explicit reference to the obligation of the institutions to cooperate, as laid down in Article 295 of the Treaty of Lisbon.

Some have argued that the joint declaration is drafted in a way to encourage early agreements. Point 11 is cited in this context: "*The institutions shall cooperate in good faith with a view to reconciling their positions as far as possible so that, wherever possible, acts can be adopted at first reading.*" It could be reflected whether it would not be better to mirror the provisions of the new code of conduct, which stresses that the decision to seek an early agreement "*shall be a case-by-case decision, taking account of the distinctive characteristics of each individual file.*"

The question to which degree the trend to early agreements has changed the relative power of the institutions has also been discussed. Some argue, for example, that the position of the Commission has been weakened.[52] What seems to be, however, the more relevant question is to what degree the trend to early agreements has changed the role of different actors within each institution.

3.3 CONCLUSIONS AND RECOMMENDATIONS

As can been seen from the various developments regarding codecision which took place during this legislature, the procedure and its dynamics are certainly in constant evolution and the Parliament is actively shaping and adapting to them. Important internal decisions, in particular the adoption of the Code of Conduct for Negotiating Codecision Files, were taken to address some of the identified shortcomings.

The challenge will be the implementation of the code of conduct in the daily activities of Parliament in a context which could see, together with the Treaty of Lisbon, an unprecedented increase in codecision procedures in which many new actors would be involved.

To further improve the way in which Parliament acts as a co-legislator we recommend having more regular oversight over the whole codecision process and on the state of play of procedures likely to be concluded in 1st reading. This would allow for a better overview and the development of a harmonious approach within Parliament based on best practice. The monthly information report on negotiation of 1st reading agreements to be submitted by the Conference of Committee Chairs to the Conference of Presidents is a good step in this direction.

From our experience the full implementation of the provisions of the code of conduct on assistance for Members is of the highest importance. We are in favour of enhanced assistance to Members in areas such as training, legal advice, expertise and drafting quality. Furthermore, enhanced resources for trilogues (like interpretation and translation where needed, rooms etc.) should be made available. The decision taken by the Bureau on 6th May 2009 reallocating 48 lawyer-linguist posts to the

[52] CEPS 2008: The European Commission after enlargement: Does more add up to less? pp. 30-31

secretariats of parliamentary committees is a step in this direction, as it would ensure an improvement of the drafting assistance to Members in the earlier phases of the legislative work.

To allow for better preparation and in order to make best use of the resources at our disposal we propose that committees could more systematically than today identify priority legislative dossiers in advance.

For such priority legislative dossiers certain decisions at political and administrative level could be advanced to better prepare the expected codecision procedure. At political level committees could, for example, appoint the rapporteur even before the Commission presents its proposal.[53] They could also make early requests to build up expertise for the committee, prepare background material and set up the administrative support teams provided for in the code of conduct.

The Vice-Presidents responsible for conciliation could liaise with the Conference of Committee Chairs in order to examine possible further improvements on the codecision procedures in the European Parliament on the basis of the current trends.

We would also propose a very practical measure which would significantly improve the transparency of codecision procedures and facilitate the work of Members: Every document related to a specific codecision procedure which is available in Parliament should be clearly marked with the COD-number identifying the procedure. This would allow - by means of an extended legislative observatory (which should also include data from the other institutions) - the direct identification of all documents related to a specific codecision procedure like studies, briefing notes, contributions of experts at hearings, proceedings of hearings, official letters (including those confirming an agreement), streamlined committee meetings, compromises negotiated with the Council, press releases, etc.

In order to give proper weight to the heavy workload of Members working on legislation, the recognition of the roles of coordinators and shadow rapporteurs as included in the revision of the rules of procedure (Rule 192) should also lead to a greater visibility of this work. For example, when a Member is coordinator or shadow rapporteur, this could be mentioned on that Member's page on Parliament's website.

Regarding interinstitutional relations, we think that in the not too distant future the joint declaration on codecision should be revised. The objective should be to have one single, consolidated document (by incorporating for example the provisions regarding the codecision procedure still contained in the interinstitutional agreement on better law-making[54]). Such a revision would be necessary in the event of the entry into force of the Treaty of Lisbon. It would also allow account to be taken of the impact of internal developments in Parliament, for example the code of conduct, and would allow the shortcomings identified above in conciliation and codecision to be addressed.

[53] According to Rule 43(1) of the rules of procedure: "*Where a proposal is listed in the Annual Legislative Programme the committee responsible may decide to appoint a rapporteur to follow the preparatory phase of the proposal.*"
[54] OJ C 321 of 31.12.2003, p.1

4. FUTURE OF CODECISION

During the next legislative term there will certainly be a number of new developments regarding codecision and conciliation, as has been the case so far in each legislature since the beginning of codecision. The procedure will continue to evolve as regards its practical functioning, and the Parliament like the other institutions will further adapt its working methods.

The biggest changes and challenges would certainly come with the entry into force of the Treaty of Lisbon.[55] The linguistic changes it introduces, in particular to call the codecision procedure the "ordinary legislative procedure"[56] and to speak of Parliament's "position" and not of its "opinion", are of great symbolic value. Most importantly, however, the codecision procedure would be substantially extended to cover a greater number of legal bases.[57] One can assume that this would lead to an increase in the total number of codecision dossiers to be dealt with. The additional policy areas which to a large extent would then be covered by the ordinary legislative procedure are the area of freedom, security and justice, international trade, agriculture and fisheries. In addition, the current assent procedure would be considerably extended since under Article 218(6)(a)(v) any international agreement covering fields to which the ordinary legislative procedure applies would require the consent of the Parliament. Overall the Parliament would come much closer to its wish to be a fully equal partner of the Council when adopting legislation at European level.

At the same time the power of national parliaments to control the application of the principle of subsidiarity would be reinforced. The protocol on the application of the principles of subsidiarity and proportionality provides for several scenarios. In its strongest version, if a simple majority of national parliaments adopts an opinion stating that a legislative proposal under the ordinary legislative procedure does not respect the principle of subsidiarity, and either the Council or the Parliament agrees with those national parliaments, the proposal is rejected.

The entry into force of the Treaty of Lisbon would also imply a completely new situation as regards comitology, as it establishes a hierarchy of norms with a distinction between legislative acts, delegated acts and implementing acts.

Finally, the Treaty of Lisbon would provide for a simplified procedure for amending the Treaties[58] which would allow moving from unanimity in a given area to qualified majority voting or from a special legislative procedure to the ordinary legislative procedure by a unanimous decision of the Council. If a national parliament objects, however, the decision cannot be adopted. In that case only the ordinary procedure of amendment of the Treaty would apply.

[55] At the time of the writing, no decision has still been adopted as regards the ratification of the Treaty of Lisbon by all Member States, so the information in this Chapter depends on whether or not it enters into force.
[56] Article 294 of the Treaty of Lisbon
[57] See annex 3 for the list of legal bases for which the Treaty of Lisbon provides for the ordinary legislative procedure
[58] Article 48(6)(7) Treaty on European Union

In conclusion, the entry into force of the Treaty of Lisbon would "*bring more democratic accountability to the Union and enhance its decision-making (through a strengthening of the roles of the European Parliament and the national parliaments), enhance the rights of European citizens vis-à-vis the Union and improve the effective functioning of the Union's institutions.*"[59]

[59] Extract from point 1 of the European Parliament resolution of 20 February 2008 on the Treaty of Lisbon (2007/2286(INI)) (P6_TA(2008)0055)

ANNEX 1

LIST OF CONCILIATION PROCEDURES IN THE PERIOD 2004-2009

No	Title	COD procedure	Chairman, EP delegation	Rapporteur	Responsible committee
UK PRESIDENCY - 2nd half of 2005					
1	Bathing Waters	2002/0254	Antonios Trakatellis (EPP-DE)	Jules Maaten (ALDE)	ENVI
2	Road Transport: control	2003/0255	Alejo Vidal-Quadras (EPP-DE)	Helmuth Markov (GUE/NGL)	TRAN
3	Road Transport: working time	2001/0241	Alejo Vidal-Quadras (EPP-DE)	Helmuth Markov (GUE/NGL)	TRAN
4	Mining Waste	2003/0107	Dagmar Roth-Behrendt (PES)	Jonas Sjöstedt (GUE/NGL)	ENVI
5	Optical Radiation	1992/0449B	Antonios Trakatellis (EPP-DE)	Csaba Őry (EPP-DE)	EMPL
AUSTRIAN PRESIDENCY - 1st half of 2006					
6	Fluorinated Gases	2003/0189A	Antonios Trakatellis (EPP-DE)	Avril Doyle (EPP-DE)	ENVI
7	Fluorinated Gases (air-conditioning)	2003/0189B	Antonios Trakatellis (EPP-DE)	Avril Doyle (EPP-DE)	ENVI
8	Batteries	2003/0282	Dagmar Roth-Behrendt (PES)	Johannes Blokland (IND/DEM)	ENVI
9	Arhus Convention	2003/0242	Alejo Vidal-Quadras (EPP-DE)	Eija-Riitta Korhola (EPP-DE)	ENVI
FINNISH PRESIDENCY 2nd half of 2006					
10	Groundwater	2003/0210	Dagmar Roth-Behrendt (PES)	Christa Klaß (EPP-DE)	ENVI
11	INSPIRE	2004/0175	Alejo Vidal-Quadras (EPP-DE)	Frieda Brepoels (EPP-DE)	ENVI
GERMAN PRESIDENCY - 1st half of 2007					
12	Life +	2004/0218	Rodi Kratsa-Tsagaropoulou (EPP-DE)	Marie Anne Isler Béguin (Greens/EFA)	ENVI
13	Rome II	2003/0168	Mechtild Rothe (PSE)	Diana Wallis (ALDE)	JURI
14	Railway 3 (competition)	2004/0047	Alejo Vidal-Quadras (EPP-DE)	Georg Jarzembowski (PPE-DE)	TRAN
15	Railway 3 (crews/drivers)	2004/0048	Alejo Vidal-Quadras (EPP-DE)	Gilles Savary (PSE)	TRAN
16	Railway 3 (passengers)	2004/0049	Alejo Vidal-Quadras (EPP-DE)	Dirk Sterckx (ALDE)	TRAN

No	Title	COD procedure	Chairman, EP delegation	Rapporteur	Responsible committee
PORTUGUESE PRESIDENCY - 2nd half of 2007					
17	Civil aviation security	2005/0191	Rodi Kratsa-Tsagaropoulou (EPP-DE)	Paolo Costa (ALDE)	TRAN
FRENCH PRESIDENCY - 2nd half of 2008					
18	Ship inspection	2005/0237a	Rodi Kratsa-Tsagaropoulou (EPP-DE)	Luis de Grandes Pascual (EPP-ED)	TRAN
19	Ship inspection	2005/0237b	Rodi Kratsa-Tsagaropoulou (EPP-DE)	Luis de Grandes Pascual (EPP-ED)	TRAN
20	Port state control	2005/0238	Rodi Kratsa-Tsagaropoulou (EPP-DE)	Dominique Vlasto (EPP-ED)	TRAN
21	Vessel traffic (VTM)	2005/0239	Rodi Kratsa-Tsagaropoulou (EPP-DE)	Dirk Sterckx (ALDE)	TRAN
22	Investigation of accidents	2005/0240	Rodi Kratsa-Tsagaropoulou (EPP-DE)	Jaromír Kohlíček (GUE/NGL)	TRAN
23	Athens convention	2005/0241	Rodi Kratsa-Tsagaropoulou (EPP-DE)	Paolo Costa (ALDE)	TRAN
CZECH PRESIDENCY - 1st half of 2009					
24	Working time	2004/0209	Mechtild Rothe (PSE)	Alejandro Cercas (PSE)	EMPL

ANNEX 2

CODE OF CONDUCT FOR NEGOTIATING IN THE CONTEXT OF CODECISION PROCEDURES[60]

1. Introduction

This code of conduct sets out general principles within Parliament, on how to conduct negotiations during all stages of the codecision procedure with the aim of increasing their transparency and accountability, especially at an early stage of the procedure[61]. It is complementary to the "Joint Declaration on practical arrangements for the codecision procedure" agreed between Parliament, Council and the Commission which focuses more on the relationship between these institutions.

Within Parliament, the lead parliamentary committee shall be the main responsible body during negotiations both at first and second reading.

2. Decision to enter into negotiations

As a general rule, Parliament shall make use of all possibilities offered at all stages of the codecision procedure. The decision to seek to achieve an agreement early in the legislative process shall be a *case-by-case* decision, taking account of the distinctive characteristics of each individual file. It shall be politically justified in terms of, for example, political priorities; the uncontroversial or 'technical' nature of the proposal; an urgent situation and/or the attitude of a given Presidency to a specific file.

The possibility of entering into negotiations with the Council shall be presented by the rapporteur to the full committee and the decision to pursue such a course of action shall be taken either by broad consensus or, if necessary, by a vote.

3. Composition of negotiating team

The decision by the committee to enter into negotiations with the Council and the Commission in view of an agreement shall also include a decision on the composition of the EP negotiating team. As a general principle, political balance shall be respected and all political groups shall be represented at least at staff level in these negotiations.

The relevant service of the EP General Secretariat shall be responsible for the practical organisation of the negotiations.

4. Mandate of the negotiating team

As a general rule, the amendments adopted in committee or in plenary shall form the basis for the mandate of the EP negotiating team. The committee may also determine priorities and a time-limit for negotiations.

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[60] As approved by the Conference of Presidents of 18 September 2008 and as included in the Rules of Procedure as Annex XX.

[61] Special attention needs to be given to negotiations taking place at those stages of the procedure, where the visibility within Parliament is very limited. This is the case for negotiations:

- before the committee vote at first reading with the aim of reaching a first-reading agreement;
- after Parliament's first reading with the aim of reaching an early second-reading agreement.

In the exceptional case of negotiations on a first reading agreement before the vote in committee, the committee shall provide guidance to the EP negotiating team.

5. Organisation of trilogues

As a matter of principle and in order to enhance transparency, trilogues taking place within the European Parliament and Council shall be announced.

Negotiations in trilogues shall be based on one joint document, indicating the position of the respective institution with regard to each individual amendment, and also including any compromise texts distributed at trilogue meetings (e.g. established practice of a four-column document). As far as possible, compromise texts submitted for discussion at a forthcoming meeting shall be circulated in advance to all participants.

If necessary, interpretation facilities should be provided to the EP negotiating team.[62]

6. Feedback and decision on agreement reached

After each trilogue, the negotiating team shall report back to the committee on the outcome of the negotiations and make all texts distributed available to the committee. If this is not possible for timing reasons, the negotiating team shall meet the shadow rapporteurs, if necessary together with the coordinators, for a full update.

The committee shall consider any agreement reached or update the mandate of the negotiating team in the case that further negotiations are required. If this is not possible for timing reasons, notably at second reading stage, the decision on the agreement shall be taken by the rapporteur and the shadow rapporteurs, if necessary together with the committee chair and the coordinators. There shall be sufficient time between the end of the negotiations and the vote in plenary to allow political groups to prepare their final position.

7. Assistance

The negotiating team shall be provided with all the resources necessary for it to conduct its work properly. This should include an 'administrative support team' made up of the committee secretariat, political advisor of the rapporteur, the codecision secretariat and the legal service. Depending on the individual file and on the stage of the negotiations, this team could be enlarged.

8. Finalisation

The agreement between Parliament and Council shall be confirmed in writing by an official letter. No changes shall be made to any agreed texts without the explicit agreement, at the appropriate level, of both the European Parliament and the Council.

9. Conciliation

The principles laid down in this code of conduct shall also be applicable for the conciliation procedure, with the EP delegation as the main responsible body within Parliament.

[62] In line with the decision taken by the Bureau of 10 December 2007.

ANNEX 3

LIST OF LEGAL BASES PROVIDING FOR THE ORDINARY LEGISLATIVE PRODECURE IN THE TREATY OF LISBON
(Reproduced from A6-0013/2008 Report on the Treaty of Lisbon 2007/2286 (INI))

This annex lists the legal bases to which the ordinary legislative procedure established by the Treaty of Lisbon will apply (this ordinary legislative procedure corresponds more or less to the procedure currently laid down in Article 251 TEC, i.e. the codecision procedure).
The subject areas underlined are those for which the legal basis is completely new, or where there has been a change in procedure so that the relevant measures are now subject to the 'codecision'/ordinary legislative procedure.
The numbers of the articles in the TEU and TFEU refer to those given in the Treaty of Lisbon; the numbers in [...] are those the articles will have in a future consolidated version of the Treaties (in accordance with the table annexed to the Treaty of Lisbon).
The corresponding articles of the Treaty now in force are indicated in italics and, in cases where the Treaty of Lisbon modifies the procedure, an indication is also given of the procedure that currently applies.

1. Services of general economic interest (Article 16 [14] TFEU) *(Article 16 TEC)*
2. Procedures for the right of access to documents (Article 16 A [15], paragraph 3, TFEU) *(Article 255, paragraph 2)*
3. Data protection (Article 16 B [16], paragraph 2, TFEU) (*Article 286, paragraph 2)*
4. Measures to combat discrimination on grounds of nationality (Article 16 D [18] TFEU) (*Article 12 TEC)*
5. Basic principles for anti-discrimination incentive measures (Article 16 E [19], paragraph 2, TFEU) *(Article 13.2 TEC)*
6. Measures to facilitate the exercise of the right of every citizen of the Union to move and reside freely in the territory of Member States (Article 18 [21], paragraph 2, TFEU) *(Article 18, paragraph 2, TEC)*
7. Citizens' initiative (Article 21 [24] TFEU)
8. Customs cooperation (Article 27a [33] TFEU) (*Article 135 TEC)*
9. Application of competition rules to the common agricultural policy (Art. 36 [42], which refers to Article 43, paragraph 2, TFEU) *(Article 36 TEC: qualified majority in Council and simple consultation of EP)*
10. Legislation concerning the common agricultural policy (Article 37 [43], paragraph 2, TFEU) *(Article 37, paragraph 2: qualified majority in Council and simple consultation of EP)*
11. Free movement of workers (Article 40 [46] TFEU) (*Article 40 TEC)*
12. Internal market – social security measures for Community migrant workers[63] (Article 42 [48] TFEU) *(Article 42 TEC: codecision – the Council acts unanimously)*
13. Right of establishment (Article 44 [50], paragraph 1, TFEU) (*Article 44 TEC)*

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

14. Exclusion in a Member State of certain activities from the application of provisions on the right of establishment (Article 45 [51], second paragraph, TFEU) *(Article 45, second paragraph, TEC: qualified majority in the Council without participation of EP)*

15. Coordination of the provisions laid down by law, regulation or administrative action in Member States providing for special treatment for foreign nationals with regard to the right of establishment (Article 46 [52], paragraph 2, TFEU) (*Article 46, paragraph 2, TEC)*

16. Coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons and the mutual recognition of qualifications (Article 47 [53], paragraph 1, TFEU) *(Article 47 TEC: codecision – Council acts unanimously when this involves a change in Member State legislation)*

17. Extending provisions on freedom to provide services to service providers who are nationals of a third State and who are established within the Union. (Article 49 [56], second paragraph, TFEU) *(Article 49, second paragraph, TEC: qualified majority in the Council without participation of EP)*

18. Liberalisation of services in specific sectors (Article 52 [59], paragraph 1, TFEU) *(Article 52, paragraph 1, TEC: qualified majority in Council and simple consultation of EP)*

19. Services (Article 55 [62] TFEU) (*Article 55 TEC)*

20. Adoption of other measures on the movement of capital to and from third countries (Article 57 [64], paragraph 2, TFEU) *(Article 57, paragraph 2, first sentence, TEC: qualified majority in the Council without participation of EP)*

21. Administrative measures relating to capital movements in connection with preventing and combating crime and terrorism (Article 61 H [75] TFEU) *(Article 60 TEC)*

22. Visas, border checks, free movement of nationals of non-member countries, management of external frontiers, absence of controls at internal frontiers (Article 62 [77], paragraph 2, TFEU) *(Article 62 TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP)*

23. Asylum, temporary protection or subsidiary protection for nationals of third countries (Article 63 [78], paragraph 2, TFEU) *(Article 63, paragraphs 1 and 2, and Article 64, paragraph 2, TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP)*

24. Immigration and combating trafficking in persons (Article 63a [79], paragraph 2, TFEU) *(Article 63, paragraphs 3 and 4, TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP)*

25. Incentive measures for the integration of nationals of third countries (Article 63a [79], paragraph 4, TFEU)

26. Judicial cooperation in civil matters (excluding family law)[64] (Article 65 [81], paragraph 2, TFEU) *(Article 65 TEC: procedure laid down in Article 67 TEC: unanimity in the Council and simple consultation of EP, with possible switch to codecision following a Council decision taken unanimously after consulting EP)*

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

27. Judicial cooperation in criminal matters – procedures, cooperation, training, settlement of conflicts, minimum rules for recognition of judgments (Article 69 A [82], paragraphs 1 and 2, TFEU)[65] *(Article 31 TEU: unanimity in Council and simple consultation of EP)*

28. Minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension (Article 69 B [83], paragraphs 1 and, possibly, 2, TFEU)[1] *(Article 31 TEU: procedure laid down in Articles 34, paragraph 2, and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP)*

29. Measures to support crime prevention (Article 69 C [84] TFEU)

30. Eurojust (Article 69 D [85], paragraph 1, second subparagraph, TFEU) *(Article 31 TEU: procedure laid down in Articles 34, paragraph 2, and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP)*

31. Arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities (Article 69 D [85], paragraph 1, third subparagraph, TFEU)

32. Police cooperation (certain aspects) (Article 69 F [87], paragraph 2 TFEU) *(Article 30 TEU: procedure laid down in articles 34, paragraph 2 and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP)*

33. Europol (Article 69 G [88], paragraph 2, first subparagraph, TFEU) *(Article 30 TEU: procedure laid down in articles 34, paragraph 2 and 39, paragraph 1, TEU: unanimity in Council and simple consultation of EP)*

34. Procedures for scrutiny of Europol's activities by EP and national parliaments (Article 69 G [88] paragraph 2, second subparagraph, TFEU)

35. Implementation of the common transport policy (Article 71 [91], paragraph 1, TFEU) *(Article 71 TEC)*

36. Sea and air transport (Article 80 [100], paragraph 2, TFEU) *(Article 80, paragraph 2, TEC)*

37. Measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market to promote the objectives of Article 22a [26] (Article 94 [114], paragraph 1, TFEU) *(Article 95, paragraph 1, TEC)*

38. Measures to eliminate distortions in the internal market (Article 96 [116] TFEU) *(Article 96 TEC: qualified majority in the Council without participation of EP)*

39. Intellectual property except language arrangements for the European intellectual property rights (Article 97a [118], first paragraph, TFEU)[66]

40. Multilateral surveillance (Article 99 [121], paragraph 6, TFEU) *(Article 99, paragraph 5, TEC: cooperation procedure)*

41. Modification of the Protocol on the Statutes of the ESCB and ECB (Article 107 [129] paragraph 3, TFEU) *(Article 107, paragraph 5, TEC: unanimity in the Council or, depending on the case, qualified majority after assent of EP)*

42. Measures necessary for the use of the euro (Article 111a [133], TFEU) *(Article 123, paragraph 4, TEC)*

43. Incentive measures for employment (Article 129 [149] TFEU) (*Article 129 TEC)*

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[65] An 'emergency brake' mechanism is provided for in paragraphs 3 and 4 of these articles whereby if a Member State considers that the measures concerned would affect fundamental aspects of its criminal justice system, it may request that the matter be referred to the European Council and the procedure suspended. The European Council must, within four months, either refer the matter back to the Council so that the procedure continues, or request the Commission or the group of Member States from which the initiative originates to submit a new proposal. If, within the four months, either no action has been taken by the European Council or if, within 12 months the new legislative procedure has not been completed, enhanced cooperation in the relevant area will automatically go ahead if at least nine Member States are in favour.

[66] In the absence of a specific legal basis, the Union has hitherto taken action in this area on the basis of Article 308 TEC: *Unanimity in the Council and simple consultation of EP*.

44. Social policy (Article 137 [153], paragraphs 1, except points (c), (d), (f) and (g), and 2[67], first, second and last subparagraphs, TFEU) *(Article 137, paragraphs 1 and 2 TEC)*

45. Social policy (equal opportunities, equal treatment and equal pay) (Article 141 [157], paragraph 3, TFEU) (*Article 141, paragraph 3, TEC)*

46. European Social Fund (Article 148 [164] TFEU) (*Article 148 TEC)*

47. Education (excluding recommendations) (Article 149 [165], paragraph 4, point (a), TFEU) (*Article 149, paragraph 4, TEC)*

48. Sport (Article 149 [165], paragraphs 2, point (g), and 4, TFEU)

49. Professional training (Article 150 [166], paragraph 4, TFEU) (*Article 150, paragraph 4, TCE)*

50. Culture (excluding recommendations) (Article 151 [167], paragraph 5, first indent, TFEU) *(Article 151 TEC: codecision – Council acts unanimously)*

51. Public health – measures to tackle common safety concerns in the health sphere[68] (Article 152 [168], paragraph 4, TFEU) *(Article 152, paragraph 4, TEC)*

52. Public health – incentive measures to protect human health and in particular to combat the major cross-border health scourges, and measures to tackle tobacco and alcohol abuse (Article 152 [168], paragraph 5, TFEU[69])

53. Consumer protection (Article 153 [169], paragraph 3, TFEU) (*Article 153, paragraph 4, TEC)*

54. Trans-European networks (Article 156 [172] TFEU) *(Article 156 TEC)*

55. Industry (Article 157 [173], paragraph 3, TFEU) (*Article 157, paragraph 3, TEC)*

56. Measures in the area of economic and social cohesion (Article 159 [175], third paragraph, TFEU) (*Article 159 TEC)*

57. Structural Funds (Article 161 [177], first paragraph, TFEU) *(Article 161 TEC: Currently: unanimity in the Council and assent of EP)*

58. Cohesion Fund (Article 161 [177], second paragraph TFEU) *(Article 161 TEC: currently: unanimity in the Council and assent of EP; as from 2007: qualified majority in the Council and assent of EP)*

59. European Regional Development Fund (Article 162 [178] TFEU) (*Article 162 TEC)*

60. Framework Programme for Research (Article 166 [182], paragraph 1, TFEU) *(Article 166, paragraph 1, TEC)*.

61. Implementation of European research area (Article 166 [182], paragraph 5, TFEU)

62. Implementation of the Framework Programme for Research: rules for the participation of undertakings and dissemination of research results (Articles 167 [183] and 172 [188], second paragraph, TFEU) *(Article 167 TEC)*

63. Supplementary research programmes for some Member States (Articles 168 [184] and 172 [188], second paragraph, TFEU) *(Article 168 TEC)*

64. Participation in research programmes undertaken by several Member States (Articles 169 [185] and 172 [188], second paragraph, TFEU) *(Article 169 TEC)*

65. Space policy (Article 172a [189] TFEU)

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

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

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

66. Environment (Community measures to achieve environmental objectives except measures of a fiscal nature) (Article 175 [192], paragraph 1, TFEU) (*Article 175, paragraph 1, TEC)*

67. Environment Action Programme (Article 175 [192], paragraph 3, TFEU) *(Article 175, paragraph 3, TEC)*

68. Energy, excluding measures of a fiscal nature (Article 176 A [194], second paragraph, TFEU)[70]

69. Tourism - measures to complement the action of the Member States in the tourism sector (Article 176 B [195], second paragraph, TFEU)

70. Civil protection against natural and man-made disasters[1] (Article 176 C [196], second paragraph, TFEU)

71. Administrative cooperation in implementing Union law by Member States (Article 176 D [197], second paragraph, TFEU)

72. Commercial policy - implementing measures (Article 188 C [207], second paragraph, TFEU) *(Article 133 TEC: qualified majority in the Council without consultation of EP)*

73. Development cooperation (Article 188 E [209], paragraph 1, TFEU) (*Article 179 TEC)*

74. Economic, financial and technical cooperation with third countries (Article 188 H [212], second paragraph, TFEU) *(Article 181 A TEC: qualified majority in the Council and simple consultation of EP)*

75. General framework for humanitarian operations (Article 188 J [214], paragraph 3, TFEU)

76. European Voluntary Humanitarian Aid Corps (Article 188 J [214], paragraph 5, TFEU)

77. Regulations governing political parties and their funding (Article 191 [224] TFEU) (*Article 191 TEC)*

78. Creation of specialised courts (Article 225 A [257] TFEU) *(Article 225A TEC: unanimity in the Council and simple consultation of EP)*

79. Modification of Statute of Court of Justice, except Title I and Article 64 (Article 245 [281] TFEU) *(Article 245 TEC: unanimity in the Council and simple consultation of EP)*

80. Procedures for monitoring the exercise of implementing powers (Article 249 C [291], paragraph 3, TFEU) *(Article 202 TEC: unanimity in the Council and simple consultation of EP)*

81. European Administration (Article 254a [298], second paragraph, TFEU)

82. Adoption of financial rules (Article 279 [322], paragraph 1, TFEU) *(Article 279, paragraph 1, TEC: unanimity in the Council after consultation of EP, then, as from 2007, qualified majority in the Council)*

83. Fight against fraud affecting the Union's financial interests (Article 280 [325], paragraph 4, TFEU) (*Article 280, paragraph 4, TEC)*

84. Staff Regulations of officials and Conditions of Employment of Other Servants of the Union (Article 283 [336] TFEU) *(Article 283 TEC: qualified majority in the Council and simple consultation of EP)*

85. Statistic (Article 285 [338], paragraph 1, TFEU) (*Article 285, paragraph 1, TEC)*

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[70] In the absence of a specific legal basis, the Union has hitherto taken action in this area on the basis of Article 308 TEC: *unanimity in the Council and simple consultation of EP.*

ANNEX 4

LIST OF ABBREVIATIONS

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