5 November 2013

20 YEARS OF CODECISION

Conference report

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Introduction

On 5 November 2013, almost 20 years to the day since the entry into force of the Treaty of Maastricht, the European Parliament hosted a conference on '20 Years of Codecision', under the auspices of the three Vice Presidents responsible for Conciliation, Mr Gianni Pittella, Mr Alejo Vidal-Quadras and Mr Georgios Papastamkos. The conference was an occasion to reflect critically and openly on all aspects related to the 'ordinary legislative procedure' and the role of the three institutions (Parliament, Council and Commission) involved in it, to confront past and present practices, and to pinpoint current challenges and possible means of addressing them.[1]

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

More than 150 people attended the conference. Alongside MEPs and Parliament staff, there were many participants from the Council (both the General Secretariat and Permanent Representations) and the Commission (often from the inter-institutional units), as well as a range of other stakeholders, including academics and past practitioners of the legislative process.

The lively discussions, which can still be viewed in their entirety[2], covered the very early days of the legislative procedure (including the initial clash of cultures in conciliation, the development of informal trilogue negotiations, and the impact of codecision on inter-institutional relations and internal working practices), an assessment of the current state of play, in part following the latest changes introduced by the Treaty of Lisbon (such as the first experiences in new codecision policy areas, the rise of early agreements, and issues related to transparency and democratic legitimacy), and a look into future prospects for codecision, with speakers making a series of suggestions for ways of improving the procedure in the short to medium term.

This conference report, which is sub-divided according to the three sessions, summarises the key debates. It concludes with a series of recommendations made by the conference speakers and participants on internal institutional working practices, inter-institutional cooperation, transparency, and communication to the public. These recommendations draw directly on the fruitful exchanges held, generally reflecting concrete proposals that were made; they address some of the practical issues that have emerged with the evolution of the now ordinary legislative procedure and, more broadly, attempt to sketch out solutions to the ever-present challenges of transparency and communication.

The conference programme, speaker biographies and background documentation can be found in the Annexes.

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[1] The terms 'codecision' and 'ordinary legislative procedure' (which is the new denomination following the entry into force of the Treaty of Lisbon) will be used interchangeably.

[2] The conference was webstreamed live:
- Sessions 1 and 2: http://www.europarl.europa.eu/ep-live/en/other-events/video?event=20131105-0900-SPECIAL
- Session 3: http://www.europarl.europa.eu/ep-live/en/other-events/video?event=20131105-1230-SPECIAL-UNKN2

Opening remarks - Mr Gianni Pittella, Vice President responsible for Conciliation

The Vice President recalled that the Treaty of Maastricht had been a true landmark for European integration, paving the way for enlargement in central and eastern Europe, laying the foundations of the Economic and Monetary Union and introducing the concept of Union citizenship. But it had also forged a genuine partnership of equals between the Parliament and the Council, co-legislators in a new legislative procedure. Conceived in part as a response to critics of the democratic deficit, codecision was quickly perceived by some as a complex and lengthy procedure; however, it overcame the initial hurdles, developing over time and with successive Treaty revisions (Amsterdam, Nice, then Lisbon) into the ordinary legislative procedure, covering almost all EU policy areas.

In parallel, the institutions had to adapt. The European Parliament, Mr Pittella, argued, was the institution that had undergone the most significant changes (from a body that issued resolutions to a fully-fledged co-legislator). But the two other institutions were also forced to adjust: the Council had to learn to deal with the Parliament as an equal player, while the Commission was increasingly called upon to act as a mediator.

Vice President Pittella summarised the key changes to the codecision procedure since its introduction: (i) the progressive extension of the scope, (ii) the changing dynamics of the procedure, from a large number of conciliations in the beginning to an overwhelming majority of first reading agreements now, (iii) the introduction of 'early second reading agreements', and (iv) the rise of informal trilogues.

Finally, Mr Pittella turned to the issue of transparency, which, he noted, had forever been an important concern linked to the way in which files were negotiated and agreed under the codecision procedure. This was also closely related to the steady rise in the number of early agreements.

Many of the topics mentioned in the Vice President's opening remarks would be discussed at length and in depth by the conference speakers and participants.

First session: The beginning of the codecision procedure

The first session, on 'The beginning of the codecision procedure', was chaired by Ms Nicole Fontaine, former President of the European Parliament (1999-2001) and Vice President responsible for Conciliation (1994-1999). The speakers were Mr Jean-Paul Jacqué, former Director in the Legal Service of the Council (1992-2008), Sir Ken Collins, former Chair of the Parliament's Environment Committee (1979-1984 and 1989-1999) and Chair of the Conference of Committee Chairs (1993-1999), and Mr Ingo Friedrich, former Vice President responsible for Conciliation (1999-2007).

Together they traced the origins and evolution of the codecision procedure, related how the initial clash of cultures was progressively overcome with the development of informal inter-institutional negotiations, described the progressively changing roles and internal working methods of the institutions, and touched upon the ever-present concerns of transparency and communication.

Codecision: the silent revolution

A "silent revolution", largely unnoticed by the public yet absolutely key to shaping the future of European integration, is how Ms Fontaine, in her preliminary remarks, described the introduction of

Ms Fontaine

codecision with the Treaty of Maastricht. Although it had initially been overshadowed by the Economic and Monetary Union, Sir Ken Collins recalled the significance and (at the time) potentially far-reaching implications of the new legislative procedure, as it conferred full legislative powers on the only directly elected European institution. Discussions over the course of the conference revealed that the original objective of bridging the "democratic gap" was one which, twenty years on, remained as salient and complex as ever.

Most speakers emphasised the importance of the cooperation procedure (introduced by the Single European Act in 1987), not only as the procedural basis for codecision (voting majorities, deadlines, etc.), but also as a first step towards building trust and developing cooperation between the institutions. It was during this period leading up to the Treaty of Maastricht that the Parliament reviewed its internal procedures, and, defying the sceptics, demonstrated its ability to work effectively and efficiently on draft legislation.

Ultimately, however, with the Parliament's elevation as equal legislator, and the addition of a third possible reading (conciliation) during which the two institutions' representatives engaged in direct negotiations, codecision inevitably led to a certain clash of cultures. Indeed, as Ms Fontaine noted at the outset, while the acquisition by Parliament of full legislative powers was a "fabulous adventure", it represented a veritable earthquake for the Council, which, from 1993 onwards, had to contend with a co-legislator (albeit, initially, in a limited number of areas) and therefore fundamentally adapt its legislative mind-set.

Conciliation and the emergence of trilogues

As the discussions demonstrated, the early days of conciliation were perceived differently from within the Parliament and the Council. Whereas Ms Fontaine highlighted a dichotomy between, on the one hand, a solid, committed and united Parliament delegation that built on its political and cultural diversity, and, on the other hand, a collection of divided national governments, Mr Jacqué instead stressed the "institutional culture" of the Council, with Member States' representatives united behind

the single voice of the Presidency, in stark contrast to the multiplicity of divergent views expressed by MEPs.

Mr Légal and Mr Jacqué

As a striking example of some of the early misconceptions surrounding the challenges of third reading negotiations and the complexities of the new legislative procedure, Ms Fontaine recounted the time a French Minister attended a meeting of the Conciliation Committee during the French Presidency of the Council, and who, on arrival, glanced at his watch and, misunderstanding the challenges of codecision, made clear his intention of concluding negotiations and departing two hours later for another meeting in Paris. "Absolutely," responded Ms Fontaine at the time, "that should be possible. If you agree to all of Parliament's demands."

Yet, irrespective of the different ways in which the legislative procedure was perceived or the third reading dynamics experienced, both the Parliament and the Council quickly recognised that the plenary meetings of the Conciliation Committee were unsuited to striking deals and compromises. It was from this realisation, and with the budgetary conciliations as a model, that the practice of organising preparatory, informal tripartite meetings took shape. As Sir Ken Collins remarked, it was during these informal trilogues, where the institutions' representatives could negotiate flexibly and speak frankly, that the most divisive issues were resolved and final compromise agreements reached; these were then formally approved at subsequent meetings of the full Conciliation Committee.

Sir Ken Collins

This development was one of several that were necessary to put flesh on the bones of the Treaty provisions, as certain speakers and participants remarked. Much of the ground-work was done by the officials of the three institutions and, slowly but surely, common rules were put in place (for example, the Joint declaration on practical arrangements for the new codecision procedure of 1999, revised in 2007), without ever completely formalising the codecision procedure. Crucially, according to Mr Jacqué, these common rules and guiding principles remained sufficiently vague to allow the practitioners of codecision the necessary degree of flexibility and discretion when dealing with the "hidden part of the iceberg".

Institutional responses to the development of codecision

The speakers evoked the successive Treaty revisions, pinpointing the Treaty of Amsterdam (1999) as a particularly important moment, as it opened up the possibility for the co-legislators to agree and adopt legislation at the first reading stage. In parallel, the Parliament, the Council and the Commission adapted to the developing legislative framework and environment.

According to Ms Fontaine, the progressive extension of the scope of the codecision procedure was the logical consequence and evidence of its success. But the increasing workload was a continuous challenge for the Parliament. It responded positively, with the Parliament's committees successfully transforming codecision into a quicker and more consensual procedure, without ever compromising the interests of the citizens' they represented.

As for the Council, most speakers noted the central role the COREPER quickly came to play, and, by extension, of the rotating Presidency of the Council. Mr Jacqué described the trend as a progressive "Coreper-isation" of the codecision procedure, with the COREPER tasked with ensuring coherence between the respective positions of the Member States, and the increasing importance of the Presidency in consulting and reporting back to national delegations in order to obtain mandates and reach agreement with the Parliament (particularly at the first reading stage). The key players on the Council side therefore rapidly became the Member States' Permanent Representatives (or their Deputies); while Ms Fontaine welcomed the strengthening of the COREPER as a means of ensuring efficiency and coherence in the Council, some Members, who did not believe it right that they negotiate mainly with civil servants, regretted this bureaucratisation. But Mr Jacqué suggested that the more limited involvement of Ministers was in fact a positive development, as the latter were rarely familiar with the details of files. Mr Friedrich conceded that the predominant role on the Council side of well-prepared and well-briefed civil servants (with clear instructions from their capitals), made Parliament's task in negotiations more difficult.

The manner in which the Commission adapted to the changing legislative environment was broadly saluted by the speakers. The Commission agreed almost spontaneously to play the role of mediator between the co-legislators, according to Mr Jacqué (who also suggested that it was weakened in its institutional role), something it did with realism and intelligence, in the eyes of Ms Fontaine. During the discussion, Ms O'Dwyer, former Head of the Codecision Unit in the Commission's Secretariat General, recalled also the need for the Commission to adapt its internal working methods, for example with the introduction of specialised meetings of the Cabinets on inter-institutional relations (the 'GRI' - *Groupe des Relations Inter-institutionelles*), which prepared the College's positions on Parliament's amendments (a procedure that still applies today).

The rise of first reading agreements, and challenges past and present

Once agreements at first reading between the co-legislators became a legal possibility, they became a reality by replicating at early stages of the legislative procedure the informal trilogue negotiations that had hitherto been limited to conciliation. The negotiations themselves were facilitated, as Mr Friedrich recalled, by the use of four-column documents, which ensured a degree of clarity for those actors directly involved.

Mr Friedrich

Mr Jacqué emphasised several factors that swiftly led to a considerable rise in the number of files concluded at first reading: the cultural 'rapprochement' of the institutions (with the three institutions realising that they were working towards a common goal), the increase in the number of Member States (which made the task of defining negotiating mandates during conciliations more difficult), and the rotating Council Presidency "scoreboards".

The conclusions of all guest speakers converged around two inter-related topics, namely transparency and communication to the public. According to Ms Fontaine, codecision represented a major step forward in attempts to consolidate European democracy. But she also noted that it was accompanied by constant

concerns about transparency, which the institutions sought to address to the extent possible, for example, in the Parliament, with the adoption of a code of conduct in 2008 (Annex XXI of the Parliament's Rules of Procedure). The challenge now, as previously, was to better communicate the results of negotiations to citizens, and demonstrate to them the added value of democracy at the European level. Similarly, Mr Friedrich pointed to the need to ensure more positive coverage of legislation adopted by the Union, as allowing negative publicity to dominate the headlines played into the hands of Euro-sceptics.

For Mr Jacqué, codecision was fruitful and efficient, and had proved its worth. However, he, too, emphasised the problems of transparency, vis-à-vis actors not directly involved in negotiations of files, but also public opinion. The procedure itself, which journalists and students described as "incomprehensible", remained mysterious; and it was such that the substance of agreements was only communicated long after their adoption. Mr Jacqué pointed to the constant search for consensus, in the Parliament, in the Council, and between the co-legislators as an underlying principle of codecision, and he concluded that a solution should be sought in a greater politicisation of debates.

Both Mr Jacqué and Sir Ken Collins highlighted the delicate task at hand: seeking an effective and just balance between the search for agreement through frank and flexible negotiations (and establishing and nurturing the trust of the respective delegations), while ensuring a sufficiently open and transparent procedure and providing prompt and accurate information to citizens on process and content.

Second session: Parliament's codecision powers under the Treaty of Lisbon

The second session, on 'Parliament's codecision powers under the Treaty of Lisbon', was chaired by Vice President Vidal-Quadras. The speakers were Professor Adrienne Héritier (European University Institute) and three MEPs - Mr Brian Simpson (Chair of the Committee on Transport and Tourism), Ms Carmen Fraga Estévez (Member and former Chair of the Committee on Fisheries) and Mr Bas Eickhout (Member of the Committee on the Environment, Public Health and Food Safety).

The session focused on how very experienced MEPs view codecision as it stands today, and included a perspective from academia. The speakers' interventions and the discussions that followed focused on several topics. In particular, they discussed at length and in depth the most important codecision trend, namely the increasing number of early agreements. They analysed not only the impact of this trend on internal practices and inter-institutional relations but also on the transparency and accountability of EU decision making. The speakers also debated other issues, including the dichotomy between the positions of committees and of the plenary, the challenges posed by the extension of the codecision procedure to new policy areas, and the prospects for a gradual politicisation of the European Union.

Professor Héritier

Early agreements in the codecision procedure

Professor Héritier set the scene for the panel by underlining that the introduction of the codecision procedure under the Treaty of Maastricht, and its gradual extension to new policy areas with successive Treaty revisions, had raised the hope of an increased democratic legitimation of EU decision making. With it, the legislative process at EU level was supposed to become not only more transparent and accountable but also more inclusive.

Nevertheless, as Professor Héritier stated, several counter-tendencies developed, one of them being a rapid increase in the number of early agreements; these, she argued, were not sufficiently framed and, to begin with, were thus highly criticised. However, early agreements nowadays constituted a standard form of decision making at EU level, as a result of which more legislative proposals could be adopted in shorter time frames, although it could also be perceived as having led to a less open process, limited to a handful of key actors who negotiated amongst themselves.

Mr Simpson pointed to several factors which contributed to the increase in the number of early agreements. Key among them was the rotating Council Presidencies, which, given their short terms in office, tended to push for early agreements, with a high number of concluded files usually perceived as an indicator of success and efficiency. Nonetheless, each Presidency continued the unfinished business of the previous Presidency, and Mr Simpson called on successive Presidencies to work closely together on individual files to ensure continuity and coherent positions within the Council. Mr Simpson also called on negotiators to seek early agreements only if such a solution was feasible and acceptable for both co-legislators. In practice, it required concessions from both the Parliament and the Council in the search for a compromise.

Looking at the impact of early agreements on the role of various institutional actors directly involved in legislative negotiations, Professor Héritier noted that the position of rapporteurs, in particular, had been considerably strengthened. This was also the case of shadow rapporteurs and the coordinators of large political groups, whereas the plenary and coordinators of smaller political groups had been weakened.

In this context, Mr Simpson underlined that one of the most important duties of a committee Chair was to make sure that rapporteurs represented the Parliament's position in negotiations and that they did not exceed the mandate they had been given. Professor Héritier noted that the need to improve coherence across committees had led to changes of Parliament's working methods, notably Rules 70 and 70a of the Parliament's Rules of Procedures, which described certain procedures that should be followed to enter into and carry out inter-institutional negotiations. However, she wondered whether the

Mr Simpson

new provisions were uniformly applied across committees, and indicated that more time and research would be needed to assess whether they had made the adoption of early agreements more transparent.

Transparency and accountability of EU law-making

Turning to the impact of early agreements on the transparency and accountability of the EU decision making process, the panellists reflected on the extent to which the alleged lack of transparency of trilogue negotiations was an issue both for MEPs not involved in the negotiations as well as for EU citizens.

Mr Eickhout, who had served as rapporteur and shadow rapporteur on a number of legislative proposals, highlighted that the problem of transparency and accountability of early agreements was perceived differently by academia, on the one hand, and those directly involved in trilogue negotiations, on the other. He argued that first-reading agreements were not necessarily less transparent than second or third reading agreements, even though the latter revealed more about voting patterns of individual MEPs or political groups, which citizens could access. However, second

and third reading agreements were, Mr Eickhout underlined, perceived as more risky as there would be less margin for manoeuvre if a final compromise was rejected.

Mr Eickhout also stated that a comparison of the institutions' internal procedures clearly revealed that the Council was the least transparent of the co-legislators. From the perspective of the Parliament, where committee and plenary votes were available to the public (and thus to the Council and Member States), this was difficult to accept. The lack of information on the respective positions of the Member States could strengthen the Council Presidency's hand in negotiations, as it could, for example, mislead the Parliament on issues such as blocking minorities. This could be problematic, and Mr Eickhout called for more openness from the Council.

Mr Eickhout

Dichotomy between the positions of committees and the plenary

The speakers also discussed the dichotomy between the positions of committees and the plenary, and the extent to which the committees adequately reflected the political balance within the Parliament as a whole.

Mr Eickhout noted that even if the Parliament represented the general interest, this did not necessarily coincide with the sectoral approaches of committees (for example, different perspectives on the same issue could be adopted by the ENVI and AGRI committees). The issue was compounded by the fact that Members could not know in detail the content of all legislative proposals on which they voted in plenary. This opinion was supported by Mr Simpson who said that his trust in plenary of the European Parliament was limited.

The extension of the codecision procedure to new policy areas

The discussions that followed focused also on the impact on the codecision procedure of the Treaty of Lisbon; it was noted that the extension of the scope of the co-decision procedure to new policy areas was not without problems and, in some cases, had led to an impasse in negotiations.

In this context, Ms Fraga described the codecision procedure from the perspective of the Committee on Fisheries. The Council, she explained, had struggled to accept and adapt to Parliament's acquisition of codecision powers in the field of fisheries following the entry into force of the Treaty of Lisbon; the difficulties stemmed largely from different perceptions of the relevant Treaty provisions. As a consequence, almost all Commission proposals were blocked and it was very difficult to predict when proper negotiations might begin. One area of particular discord concerned the multi-annual conservation plans, with the Parliament and the Council unable to agree on the interpretation of Articles 43(2) and 43(3) TFEU. The Council's position, which sought to circumvent Parliament's co-legislative powers, was unacceptable, and years of debate between the three institutions had not brought the negotiators closer to a common understanding.

Mr Simpson added that problems also existed in more traditional codecision policy areas, mainly because the Parliament adopted a more European perspective, whereas the Council was often limited by Member States' national interests. This was a particular problem in transport, where "the Council never delivered" and agreements were poorly implemented by the Member States. An example was the First Railway Package, for which the Commission had launched a number of infringement procedures. In Parliament, the ordinary legislative procedure was therefore often a frustrating

experience, principally due to difficult relations with the Council, both in old and new codecision policy fields.

Mr Simpson added that the Council, supported by national ministries, had more resources than the Parliament, which could only depend on its Members and resource-limited Secretariat. Nevertheless, he concluded that if Parliament dug in and held its ground, it was more than capable of obtaining good agreements.

Finally, the speakers discussed the new regime of delegated and implementing acts. Ms Fraga criticised Council's resistance to delegated acts, and called for a "more rigorous application of the Treaty provisions". Ms Héritier highlighted that the lack of common understanding between the three institutions led to constantly revised interpretations of Articles 290 and 291 TFEU and therefore recurrent problems during negotiations on many legislative files.

Politicisation of the EU

The last important issue discussed by the speakers concerned the prospects for a gradual politicisation of the European Union.

Ms Fraga

From Mr Eickhout's perspective, the EU suffered from a lack of politicisation. One of the reasons for which the Parliament did not attract the attention of EU citizens was, he argued, the constant search for broad majorities across political groups; while this meant stronger negotiating mandates vis-à-vis the Council, the Parliament's position was in fact rather vague, and it was difficult for citizens to distinguish between the different political groups. He encouraged more critical reflection on this consensus-based politics, and underlined that Parliament's position could not be ignored by the Council, even if endorsed by only the smallest of majorities. In response, Vice President Vidal-Quadras noted that the EU was "not about victory in defeat"; instead it was designed to reach agreements and, while not exciting, it worked.

Professor Héritier remarked that the EU had no shared political community: on highly salient issues, there appeared little willingness to find European solutions, with national interests instead re-emerging. The over-politicisation of issues could therefore lead to even further divisions. She concluded that the codecision procedure, which the Parliament had used as leverage to expand its powers and reinforce its institutional position, could be perceived as an important step in the creation of a state-like system in the EU.

Third session: The future of the codecision procedure

The third session, on 'The future of the codecision procedure', was chaired by Sir Graham Watson, Member of the European Parliament since 1994 and former Chair of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (1999-2002). The speakers were Ambassador Tom Hanney, Deputy Permanent Representative of Ireland to the EU and former Chair of COREPER I (January to June 2013), Mr Maroš Šefčovič, Vice President of the European Commission responsible for Inter-Institutional Relations and Administration, and Ms Pervenche Berès, Member of the European Parliament since 1994 and current Chair of the Committee on Employment and Social Affairs and former Chair of the Committee on Economic and Monetary Affairs Committee (2004-2009).

The speakers of this final session, all highly experienced codecision practitioners, critically appraised the legislative procedure from an institutional perspective. Pointing to key issues raised also earlier during the conference, such as relations between the institutions, trends towards first reading agreements and the rise in trilogue meetings, as well as issues related to transparency, they made a series of concrete proposals for the future of the codecision procedure, seeking to address perceived weaknesses of the current system, imbalances between the institutions, and problems of democratic legitimacy and accountability vis-à-vis the public and other legislative actors. On many issues, their views appeared largely convergent.

Codecision: a stronger role for Parliament

Opening the session, Sir Graham Watson noted, as speakers of the first session on the origins of codecision

Sir Graham Watson

had done earlier, that the now ordinary legislative procedure and, more broadly, the empowering of the European Parliament added to the democratic legitimacy of EU decision making. According to Mr Hanney, who had helped to steer Ireland's recent six-month Presidency of the Council but spoke throughout on a personal basis, the procedure in fact worked very well: a great deal of important legislation was adopted by the co-legislators, and relatively quickly. The Irish Deputy Permanent Representative also pointed to a perception in the Council that the Parliament was getting stronger; there was a growing respect for the Parliament's expertise in, preparation for and strategy during negotiations, and a realisation that the Council would have to improve its working methods or risk falling behind.

While Mr Hanney's overall assessment was that a fundamental reform of codecision was not necessary, all three guest speakers, representing the three institutions of the institutional triangle, discussed a series of ideas and made a range of proposals for improvements. These concerned the broad categories of inter-institutional relations, internal working methods, and transparency.

Inter-institutional cooperation and dynamics

Both Mr Hanney and Ms Berès shared their views on a range of issues related to inter-institutional legislative negotiations, in particular their organisation, the level of institutional representation, and the dynamics within them and the respective negotiating teams.

Vice President Šefčovič   **Ambassador Hanney**   **Ms Berès**

For Mr Hanney, the fact that most trilogues were organised on the Parliament's premises gave the latter a definite psychological advantage; he argued, therefore, that trilogue meetings be "better distributed" between the Parliament and the Council (an idea supported by Vice President Šefčovič), meaning that negotiations on files would effectively be co-chaired. The Council General Secretariat was looking into the issue, which, from an organisational perspective, would mean making access to the Council premises for Members and Parliament staff easier, and require more meeting rooms and interpretation facilities.

According to Ms Berès, the core of the matter was less where trilogues were held, but who attended them. Whereas the Parliament's negotiating teams were composed of the rapporteur, the committee Chair and shadow rapporteurs, the Council side, she claimed, was rarely represented by the Permanent Representative (or their Deputy), let alone at Ministerial level, while Commissioners were almost never present. Not only did this lead to important imbalances in levels of representation between the institutions, it also meant that the Parliament delegation, which more closely reflected the political composition of a committee, had greater room for manoeuvre during negotiations without referring back to the full committee.

Mr Hanney admitted that certain files could benefit from a greater political involvement of Minsters. More generally, he regretted the lack of contact between committee Chairs or rapporteurs and their Ministerial counterparts, and recommended that Members of the European Parliament be regularly invited to attend Council meetings or lunches, as this would enhance awareness and understanding of the other institution's positions, and build trust between the co-legislators. In response, Ms Berès argued that this was a proposal that should be further pursued. She also criticised the Council, and the Presidency more specifically, for frequently not properly completing the four-column documents.

Picking up on a topic also discussed during the second session, Mr Hanney noted that the "complex issue" of delegated and implementing acts frequently "derailed or stalled important legislation", and he hoped the three institutions could come to a reasonable understanding soon. He also called for a review of the 2003 Inter-institutional Agreement on Better Lawmaking, although Vice President Šefčovič noted that certain problems stemmed from the poor application of parts of the existing Agreement.

Institutional working methods

There was much discussion on the rotating Presidency of the Council (including, during the exchange of views that followed, some strong criticism from Mr Duff, who suggested that the system be abolished). While Ms Berès stated that she was sometimes only too happy when a Presidency of the Council switched hands, the general feeling was that, although here to stay (at least in the foreseeable future), the six-month Presidencies could pose problems of continuity.

Encouraging steps had been taken, Mr Hanney noted, most recently by the Lithuanian Presidency (July to December 2013), which had associated the subsequent Greek Presidency throughout the negotiations on almost all files. But he hinted that this alleviated rather than solved the problem, and recommended that the Council General Secretariat make proposals for ways of improving Presidency performances. One idea, he proposed, could be to appoint a Council rapporteur to lead negotiations on specific files that were likely to span several Presidency mandates, and which could benefit from particular expertise.

In general, Ms Berès and Mr Hanney agreed that the Parliament's negotiating positions often represented the European position, in contrast to the Council's "delicate balance" of national interests, as Mr Hanney put it. But the situation in the Parliament was otherwise complex: there had been, as noted by Vice President Šefčovič and Ms Berès, a gradual shift in power on legislative files from the plenary to the committees, and more specifically to the rapporteurs, shadow rapporteurs and committee Chairs. It was important to keep the rapporteurs in check, Ms Berès argued; granting them too much power could lead to conflicts of interest or to bias, and it was therefore crucial that committee Chairs and/or shadow rapporteurs also attend trilogue negotiations. Such issues were covered in Rules 70 and 70a of the Parliament's Rules of Procedure; nonetheless, the Parliament's internal procedures were, according to Ms Berès, not without problems. While she had previously noted the diversity and corresponding negotiating flexibility of the Parliament's negotiating team, she also believed that Parliament's mandates constituted "closed boxes", the details of which it was not possible to amend ex post. In this respect, the Council approach had distinct advantages, although Ms Berès also called for quicker procedures in the Council, and more specifically the reaction times of Council working parties or COREPER.

Furthermore, on Rules 70 and 70a, Ms Berès called for more reflection on the de facto qualified majority voting to adopt mandates in committees (which, she claimed, "came from nowhere") and, though she could understand the spirit of the procedure, felt the obligation to submit the mandate to plenary in certain specific cases was a procedure that could be abused.

First reading agreements, trilogues and transparency

Picking up on some of the key topics raised by previous conference speakers and participants during the two first sessions, Vice President Šefčovič, in his initial remarks, highlighted two key developments of the codecision procedure: firstly, a steady rise in first reading agreements, which had now become the norm (they represented over 80% of agreements during the seventh legislative term), and, secondly, the widespread use of informal trilogues, which had grown exponentially in number over the past years.

Expressing a sentiment seemingly shared by the other speakers, Vice President Šefčovič warned against first reading agreements becoming the default option (the co-legislators should "dare to disagree"). In hindsight, the Irish Permanent Representative remarked that certain files may have been better served had they been agreed at later stages (i.e. at second or third reading). "The relentless wish to achieve first reading agreements" was due to Presidency "scoreboards" and pressure from rapporteurs; but he advised both of the co-legislators to "develop the will to walk away". Ms Berès, for her part, argued that the Parliament often became trapped or out-manoeuvred during first reading negotiations.

On the issue of transparency - which, as remarked during earlier sessions also, had become all-the-more important given the generalisation of trilogue negotiations - Mr Hanney pointed to the crux of the matter: "we need scope to talk privately", he insisted, and he believed that legislation was passed at the EU level with "as much transparency as we can muster" and doubted that it was necessary to be "100% transparent every step of the way".

According to Vice President Šefčovič, the democratic legitimacy of the codecision procedure was a crucial issue. Certainly, given in particular the rising number of early agreements, as well as the progressive shift in power in Parliament from plenary to the committees, some concerns were not wholly unjustified. Nonetheless, the institutions regularly adapted to the changing legislative environment. A recent case in point was the amendment of the Parliament's internal practices with the entry into force of new Rules 70 and 70a. However, he argued that still more could be done to improve the information available on ongoing or upcoming trilogue negotiations. He proposed the establishment of a public register of files under negotiation, which could, inter alia, include details on the composition of negotiating teams, and, once a file is concluded, make all related documentation publicly available. Vice President Šefčovič had earlier welcomed the timing of the conference, which was being held on the eve of important institutional renewal; this meant that debates and proposals could be digested, analysed and some of them perhaps implemented under the next Parliament and Commission.

Concluding remarks - Mr Alejo Vidal-Quadras, Vice President responsible for Conciliation

Closing the conference, Vice President Vidal-Quadras noted the growing political responsibility of the European Parliament, which, since the introduction of the codecision procedure, had become increasingly involved in the daily lives of citizens. This had been a positive development for democracy.

According to Mr Vidal-Quadras, the contributions of the conference speakers and participants, their exchanges of views and the discussions, constituted a critical reflection on the legislative activities and procedures of the institutions. Clearly, certain matters required careful attention, as they had an undeniable impact on many fundamental principles of the Union, such as democratic legitimacy, transparency and accountability. Many speakers had sketched out ideas for addressing these, as well as issues related to internal working methods and inter-institutional cooperation, some of which had provided significant food for thought and would no doubt be considered at greater length after the event.

The Vice President also pointed to a number of features that had remained constant over the past 20 years. These included the need for the co-legislators to first define their starting positions before entering into negotiations, the key role of the Commission, whose right of initiative inevitably shaped discussions, and the ever-closer cooperation between the Parliament and Council negotiators. Ultimately, he concluded, codecision was about people and trust, and creating the necessary conditions and atmosphere to enable compromises and agreements to emerge.

List of recommendations made by speakers during the conference

- <u>More contact between Ministers and rapporteurs and/or committee Chairs</u> at early stages of the legislative procedure, to enable better understanding of respective positions and perspectives (in Council and Parliament). These could take the form of invitations to Council meetings or side-events (e.g. lunches).

- <u>More and earlier participation of Ministers and Commissioners in trilogues</u>. This would partly address the representation imbalance in trilogue meetings (Parliament always represented by Members; Council and Commission often at technical level).

- <u>Parliament and Council to more evenly share responsibility of hosting trilogues</u>. This would lead to Council chairing more trilogues than presently (better burden sharing and equal pyschological advantage). The Council would have to make access to the Council premises easier for Parliament's Members and staff.

- <u>Greater continuity between rotating Council Presidencies</u>. Encourage internal Council reflection on how to improve the continuity between one Council Presidency and the next, along the lines already underway: the future Presidency assisting and providing support to the current one.

- <u>Designation of Council rapporteurs on certain files</u>. This would improve the level of continuity between Presidencies, create new possibilities for organising the work of the Council, and provide Parliament with a regular interlocutor over the course of negotiations on certain legislative proposals.

- <u>Greater openness of the Council</u>. The comparative lack of transparency of Council proceedings (at working party and Coreper levels) give it an unfair advantage in trilogue negotiations vis-à-vis Parliament.

- <u>Inter-institutional public register on trilogues</u>. This could make publicly available information on e.g. files under negotiation, and composition of negotiating teams or institutional representatives at the trilogues, and (once agreement is reached) documentation.

- <u>Better communication of agreements vis-à-vis the public</u>. Improve understanding of the way in which European legislation is adopted as well as of the substance of decisions taken at EU level.

- <u>Greater politicisation of debates, within and between institutions</u>. Stimulate public interest in and comprehension of EU decision making.

- <u>First reading agreements not the de facto objective</u>. Parliament and Council negotiators should reflect on a case-by-case basis on the benefits and disadvantages of first reading agreements compared to other options.

Annexes

Annex I: Conference programme

CONFERENCE

on

20 YEARS OF CODECISION

5 November 2013

European Parliament, Brussels, Altiero Spinelli Building

Room ASP 5G3

* * *

PROGRAMME

9.00 – Opening remarks: Gianni Pittella MEP, Vice President for Conciliation

9.30 - 10.45 – First session: The beginning of the codecision procedure

Chair: Nicole Fontaine, former President of the European Parliament and former Vice-President for Conciliation

- Jean-Paul Jacqué, former Director in the Council Legal Service
- Sir Kenneth Collins, former Chair of Environment Committee and of the Conference of Committee Chairs
- Ingo Friedrich, former Vice President for Conciliation

10.45 - 12.00 – Second session: EP codecision powers under the Treaty of Lisbon

Chair: Alejo Vidal-Quadras MEP, Vice President for Conciliation[3]

- Prof. Adrienne Héritier, European University Institute – Florence
- Brian Simpson MEP, Chair of the Committee on Transport
- Carmen Fraga Estévez MEP, Member of the Committee on Fisheries
- Bas Eickhout MEP, Member of the Committee on the Environment, Public Health and Food Safety

12.00 - 12.30 – Lunch Buffet (venue in front of ASP 5G3)

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[3] Vice President Vidal-Quadras chaired the second session in place of Ms Dagmar Roth-Behrendt MEP, who was unable to attend.

12.30 - 13.45 – Third session: The future of the codecision procedure

Chair: Sir Graham Watson MEP, former Chair ALDE group and Civil liberties Committee

- Tom Hanney, Deputy Permanent Representative of Ireland to the EU
- Maroš Šefčovič, Vice President of the Commission responsible for inter-institutional relations and administration
- Pervenche Berès MEP, Chair of the Committee on Employment and Social Affairs

13.45 - 14.00 – Closing remarks: Alejo Vidal-Quadras MEP, Vice President for Conciliation

Annex II: Chair and speaker biographies

Vice President Gianni Pittella MEP

Vice President of the European Parliament responsible for Conciliation (S&D)

Italian Member of the European Parliament since 1999. Elected in 2009 Vice President of the European Parliament responsible, inter alia, for conciliation. Co-presided the conciliation negotiations on the revision of a highly controversial Novel Foods Regulation. Has sat on the Committee on Budgets, the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education.

Nicole Fontaine

Former President of the European Parliament and former Vice President responsible for Conciliation (EPP)

Former French Member of the European Parliament from 1984 until 2009, with a break between 2002 and 2004. President of the European Parliament from 1999 to 2001. Served twice as Vice President of the European Parliament, from 1989 to 1994 and from 1994 to 1999. During her second tenure, was responsible, inter alia, for conciliation. Co-presided conciliation negotiations on almost thirty legislative proposals, e.g. two EU programmes for youth (Socrates and Youth for Europe Programmes). Was a member of the Committee on Legal Affairs and Citizens' Rights, the Committee on Culture, Youth, Education and the Media and the Committee on Women's Rights. Appointed in 2009 as Jean Monnet and Personal Chair at the University of Nice Sophia Antipolis.

Jean-Paul Jacqué

Former Director of the Council Legal Service and Professor of Law

Director of the Legal Service of the Council of the European Union from 1992 until 2008, and now Honorary Director General and Special Counsellor in the Council. Professor at the University of Strasbourg since 1978 and at the College of Europe since 1988. Visiting Professor at other universities, including the universities of Barcelona, Louvain, Lisbon, Madrid and Santiago du Chili. Secretary General of the Trans European Policy Studies Association (TEPSA) from 2010 to 2013. Author of books and articles on European Law, Constitutional and Administrative Law as well as International Law and Human Rights. Has published widely on the evolution of EU inter-institutional relations resulting from successive treaty revisions and the everyday institutional practice.

Sir Ken Collins

Former Chair of Environment Committee and former Chair of the Conference of Committee Chairs (S&D)

Former British Member of the European Parliament, elected in the first direct elections in 1979. Remained an MEP until 1999, serving twice as Chairman of the Environment Committee, from 1979 until 1984 and from 1989 until 1999. In this capacity, participated in the works of the Conciliation Committee and acquired considerable experience in the codecision procedure as the Environment Committee was one of a few committees that dealt with a relatively high number of codecision dossiers immediately after its introduction under the Maastricht Treaty. Was also Chair of the Conference of Committee Chairs (1993-1999) and served as Rapporteur on important legislative proposals. In 1999, was appointed Chairman of the Scottish Environment Protection Agency, holding the post until 2007.

Ingo Friedrich

Former Vice President of the European Parliament responsible for Conciliation (EPP)

Former German Member of the European Parliament, elected in the first direct elections in 1979. Remained an MEP until 2009. Between 1999 and 2007, served as Vice President of the European Parliament responsible, inter alia, for conciliation. Co-presided the conciliation negotiations on 14 legislative proposals, e.g. the directive on removing obstacles to women in employment by implementing the principle of equal treatment. Furthermore, sat on the Committee on Economic and Monetary Affairs and Industrial Policy, Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and its Committee on Constitutional Affairs. Since 2009, President of the European Economic Senate. In 2013, became Honorary Member of SME Europe, the pro-business organisation within the EPP.

Vice President Alejo Vidal-Quadras MEP

Vice President of the European Parliament responsible for Conciliation (EPP)

Spanish Member of the European Parliament since 1999, and has been since then Vice President of the European Parliament responsible, inter alia, for communications, buildings' policy, budget and conciliation. Co-presided the most recent conciliation negotiations concerning EU macro-financial assistance to Georgia (2013) and EU external financial instruments (2011). Has been an active Member since 1999 on the Committee on Industry, Research and Energy and served as Rapporteur on several legislative files, such as the regulation on conditions for access to the network for cross-border exchanges in electricity, the regulation for security of gas supply and the latest biofuels' directive.

Professor Adrienne Héritier

Professor of Comparative and European Public Policy, European University Institute, Florence

Holds a joint chair of political science in the Department of Political and Social Science and the Robert Schuman Center for Advanced Studies at the European University Institute in Florence. Research and publications extend to theories of institutional change, institutional change in the European Union, comparative public policy, European policy making, Europeanization, regulation and new modes of governance. Recent relevant publications include: "Explaining institutional change in Europe", Oxford University Press 2007; with H.Farrell "Contested Competences in Europe: Incomplete Contracts and Interstitial Institutional Change", West European Politics 2007; with Catherine Moury "Contested Delegation: The Impact of Codecision on Comitology", West European Politics 2011.

Brian Simpson MEP

Chair of the Committee on Transport and Tourism (S&D)

British Member of the European Parliament since 1989. Presently Chairman of the Committee on Transport and Tourism. Served as Rapporteur and Shadow Rapporteur on important legislative proposals, e.g. on the full accomplishment of the internal market of postal services or on the development of the railways in the EU. Also one of the senior members of the Transport and Tourism Committee dealing with Civil Aviation matters. Has also sat on the Committee on Agriculture and Rural Development, the Committee on Budgetary Control and the Committee on Petitions.

Carmen Fraga Estévez MEP

Member of the Committee on Fisheries (EPP)

Spanish Member of the European Parliament from 1994 until 2002 and from 2004 until present. Served twice as Chairwoman of the Committee on Fisheries, from 1997 until 1999 and from 2009 until 2012. In this position, participated in trilogue negotiations with the Council and the Commission as fisheries was one of the areas to which the ordinary legislative procedure was extended under the Lisbon Treaty. Currently sits on the Committee on Fisheries. Was Secretary-General for Maritime Fisheries in the Spanish government between 2002 and 2004.

Bas Eickhout MEP

Member of the Committee on the Environment, Public Health and Food Safety (Greens/EFA)

Dutch Member of the European Parliament since 2009. Member of the Committee on the Environment, Public Health and Food Safety. Served as Rapporteur on several legislative proposals concerning EU policy on reducing greenhouse gas emissions. Before being elected to the European Parliament, worked as a researcher at the Netherlands Environmental Assessment Agency and was involved in several projects concerning international environmental problems, such as climate change, agriculture, land-use and iofuels.

Sir Graham Watson MEP

Former Chair of the ALDE group and Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

British Member of the European Parliament since 1994. Presently sits on the Committee on Foreign Affairs. Between 2002 and 2009 was leader of the ALDE group in the European Parliament. From 1999 until 2002 served as Chairman of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs. Was also a member of the Committee on Economic & Monetary Affairs and the Committee on Budgets.

Ambassador Tom Hanney

Deputy Permanent Representative of Ireland to the European Union

Deputy Permanent Representative of Ireland to the European Union since 2011. Represents Ireland at the Committee of the Deputy Permanent Representatives (COREPER I). During the Irish Presidency of the Council in the first half of 2013, chaired meetings of COREPER I. Has first-hand experience of agreeing negotiating mandates in the Council and of negotiating in trilogues. Prior to joining the Permanent Representation of Ireland to the EU, Ambassador of Ireland to the Kingdom of Belgium and Head of Ireland's Liaison Office to the Partnership for Peace at NATO (2010-2011). Has held various positions both in the Irish Department of Foreign Affairs and Irish diplomatic missions around the world.

Vice President Maroš Šefčovič

Vice President of the Commission responsible for inter-institutional relations and administration

Vice President of the European Commission responsible for Inter-Institutional Relations and Administration since 2010. In this capacity, negotiated on behalf of the European Commission the Framework Agreement on relations between the European Parliament and the European Commission. Has been involved in several relatively high-profile codecision dossiers, inter alia, the European Citizens' Initiative, the reform of the Staff Regulations and the statute and funding of European political parties and European political foundations. Served as Permanent Representative of Slovakia to the European Union from 2004 until 2009. Professional experience includes various positions both in Slovak Ministry of Foreign Affairs and Slovak diplomatic missions around the world.

Pervenche Berès MEP

Chair of the Committee on Employment and Social Affairs (S&D)

French Member of the European Parliament since 1994. Chairwoman of the Employment and Social Affairs Committee since 2009 and Chairwoman of the Economic and Monetary Affairs Committee from 2004 until 2009. served as Rapporteur on important legislative proposals and has therefore considerable experience in the codecision procedure. Between 2009 and 2011 was Rapporteur of the Special Committee on the Financial, Economic and Social crisis. Was also Vice President of the European Parliament delegation to the Convention in charge of elaborating an EU Charter of Fundamental Rights from 1999 to 2000.

Annex III: Background documentation

1. From codecision to the ordinary legislative procedure: key milestones

November 1993

Entry into force of the Treaty of Maastricht and introduction of the codecision procedure (Article 189 B of the EC Treaty). The latter covered a limited number of legislative acts, principally those previously subject to the cooperation procedure (i.e. mostly internal market), as well as in new EU policy areas, such as trans-European transport networks and education, culture and health. The procedure was similar to the cooperation procedure with, crucially, the addition of a third phase, known as conciliation. The first formal trilogue, to examine compromise texts before the Conciliation Committee meeting, took place in December 1994 on the 'Socrates' and 'Youth for Europe' programmes (rapporteurs Mrs Pack and Mrs Fontaine).

May 1999

Entry into force of the Treaty of Amsterdam, which simplified the codecision procedure (Article 251 TEC) and made it possible to conclude agreements at first reading. It also extended the scope to cover more than 40 legal bases, in particular in the fields of transport, environment, development cooperation, employment and social affairs.

May 1999

Joint Declaration on practical arrangements for the new codecision procedure, in which the three institutions confirmed that informal contacts between them should "cover all stages of the co-decision procedure" and, *inter alia*, stated that they "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".

February 2003

Entry into force of the Treaty of Nice: extension of codecision to a few additional legal bases, primarily in the field of justice and home affairs.

June 2007

Revised Joint Declaration on practical arrangements for the codecision procedure. Explicit recognition of the importance of the "trilogue system" throughout the procedure. The revised Joint Declaration also codified a number of new practices, including agreements at the stage of the Council's common position, i.e. early second reading agreements.

September 2008

Conference of Presidents approves the EP's Code of conduct for negotiating in the context of the ordinary legislative procedures (Annex XXI of the Rules of Procedure), intended to increase accountability and transparency in inter-institutional negotiations.

December 2009

Following the entry into force of the <u>Treaty of Lisbon</u>, codecision officially became the 'ordinary legislative procedure' (Article 294 TFEU) and the rule for passing legislation at EU level. With new legal bases in the areas of freedom, security and justice, international trade, and agriculture and fisheries, codecision now covers 85 areas of Union action.

December 2012

Entry into force of <u>amended Rule 70 and new Rule 70a</u> of the EP's Rules of Procedure. They make binding key elements of the 2009 Code of conduct, and seek to make the procedures more effective, transparent and inclusive. They cover, in particular, the decision of a committee to enter into negotiations, the decision on the composition and mandate of the negotiating team, the regular report-back to the committee concerned on the progress and outcome of the negotiations, including any agreement reached, and the re-consultation of the committee on the text agreed before the vote in plenary.

2. From Maastricht to the present day: the evolution of 20 years of codecision

The number of adopted codecision files

Over the course of the four legislative terms covered by figure 1, there has generally been a steady increase in the number of codecision files adopted by the co-legislators.[4] This is largely due to the progressive extension of the scope of the codecision procedure, and partly to the increasing number of codecision legislative proposals adopted by the Commission, which has kept its right of initiative.

A cyclical trend for the adoption of codecision files is evident since the 5th legislative term (1999-2004), with a greater proportion of files adopted at the end of each legislative period. The year 2013-2014 will be no different; indeed, the number of files adopted since the end of the 2013 summer recess is already higher than for the entire preceding parliamentary year (July 2012 - July 2013).

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[4] All figures in the background documentation prepared for the conference are until the end of October 2013.
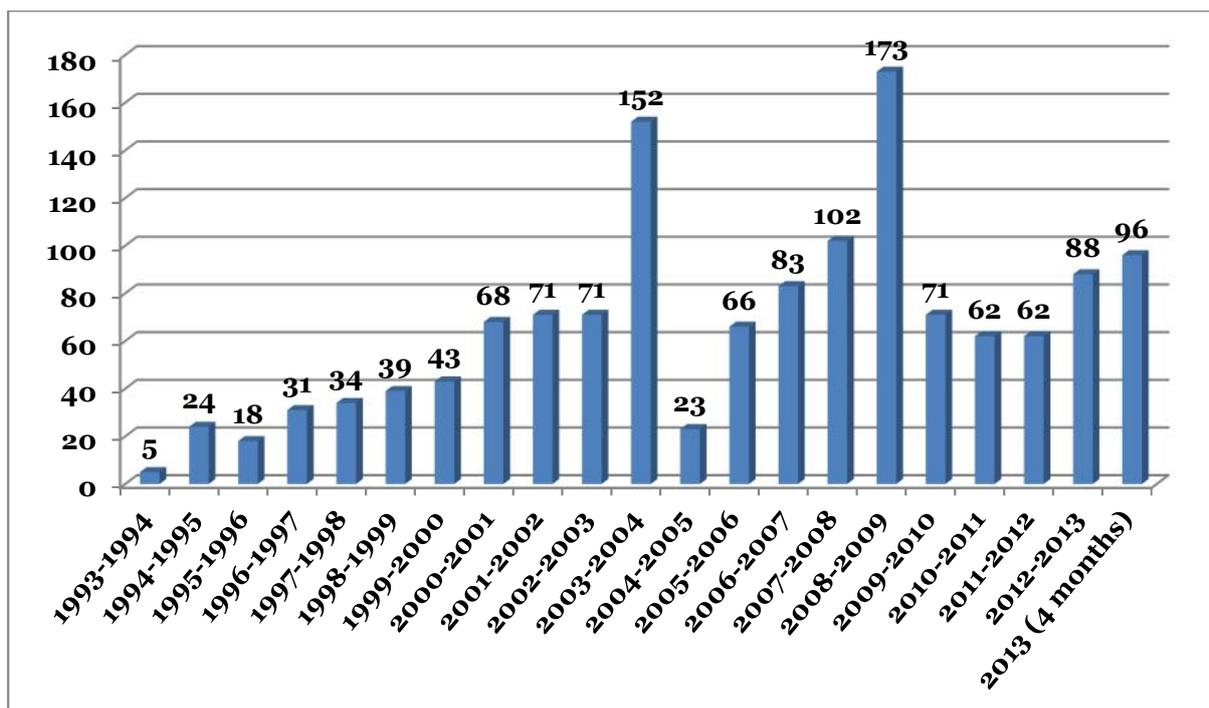
Figure 1: *Number of codecision files adopted over the course of a year in the period 1993-2013 (1993-2008: files adopted between 1 May of the first year and 30 April of the second year; 2009-2013: the cycle runs from 14 July of the first year till 13 July of the second year, except for the last column 2013 which runs until the end of October 2013).[5]*

Scope of the codecision procedure and distribution of codecision files among committees

Between 1993 and 1999, although ten EP committees dealt with codecision files, four of them[6] dealt with only one file each. Six EP committees were therefore responsible for almost all codecision files (151 in total) between the entry into force of the Maastricht Treaty on 1 November 1993 and the entry into force of the Amsterdam Treaty on 1 May 1999: Environment (36%), Economic (25%), Legal Affairs (18%), Culture (8%), Research (7%) and Transport (4%).

Over the years, the scope of the codecision procedure has been progressively extended, and the European Parliament's legislative powers correspondingly strengthened. Codecision now covers 85 areas of Union action, including, under the Treaty of Lisbon, new legal bases in the areas of freedom, security and justice, international trade, and agriculture and fisheries.

While codecision files are now more evenly shared across a larger number of committees (this is particularly true since the entry into force of the Treaty of Lisbon), the distribution of codecision files among the different committees within the EP has, over recent years, remained fairly stable: ENVI (14%) is the committee with the largest share of the codecision files, followed by the ECON committee (13%), the JURI committee (11%) and the INTA and LIBE committees (10% each) (the share of the two latter has increased since the entry into force of the Treaty of Lisbon).

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[5] The statistics for adoption dates are based on the dates on which the files are signed by the co-legislators.
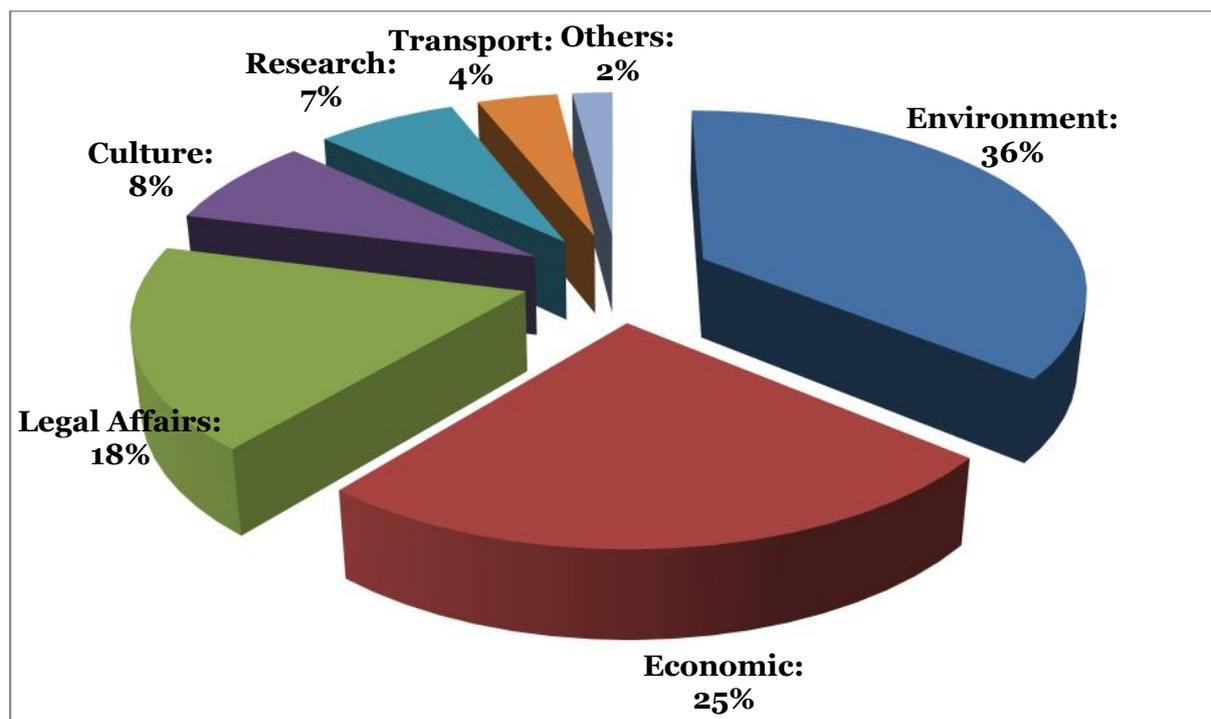[6] Agriculture, External Economic Relations, Social Affairs, Civil Liberties.

Figure 2: *Distribution of codecision files adopted by parliamentary committee between 1993 and 1999*
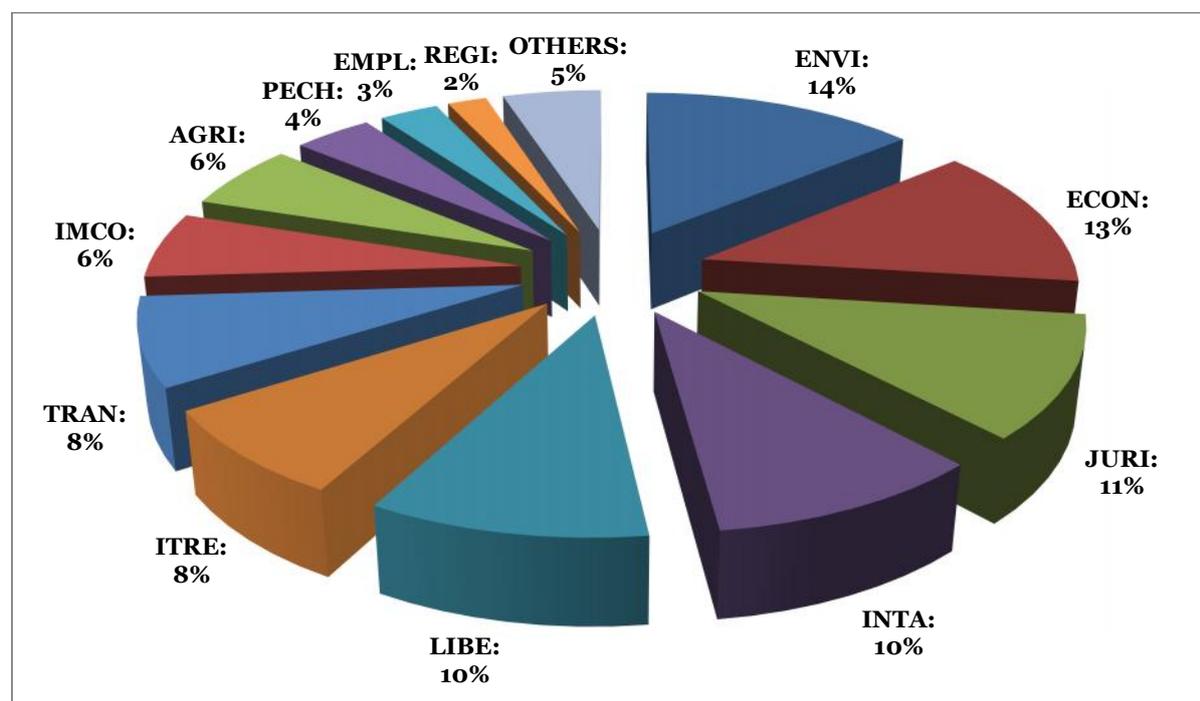

Figure 3: *Distribution of codecision files adopted from July 2009 until October 2013 by parliamentary committee*

Stage of adoption of codecision files

First reading agreements were not possible under the codecision rules of the Maastricht Treaty. However, the co-legislators quickly demonstrated an ability to agree files at an early stage of the codecision procedure; indeed, for almost 70% of files agreed at second reading during the 1994-1999 legislative period the EP merely approved the Council's common position without amendments, despite the fact that informal discussions between the institutions were at the time exceptional and trilogues largely confined to the conciliation phase. It was not until the entry into force of the Treaty of Amsterdam, in May 1999, that first reading agreements became possible. Each legislative term has since seen a steady increase in the proportion of files agreed at first reading and, correspondingly, fewer files adopted in conciliation. The rise and predominance of first reading agreements is no longer in doubt, while conciliations have become very much the exception and are limited to very difficult files.

The legislative period 1999-2004 also saw the progressive introduction of early second reading agreements. These have come to represent a distinct phase of the codecision procedure, which in practice could be described as consisting of four possible readings. This reality was explicitly stated in the revised Joint Declaration on practical arrangements for the codecision procedure (June 2007), which formally codified agreements at the stage of the Council's common position, i.e. early second reading agreements.
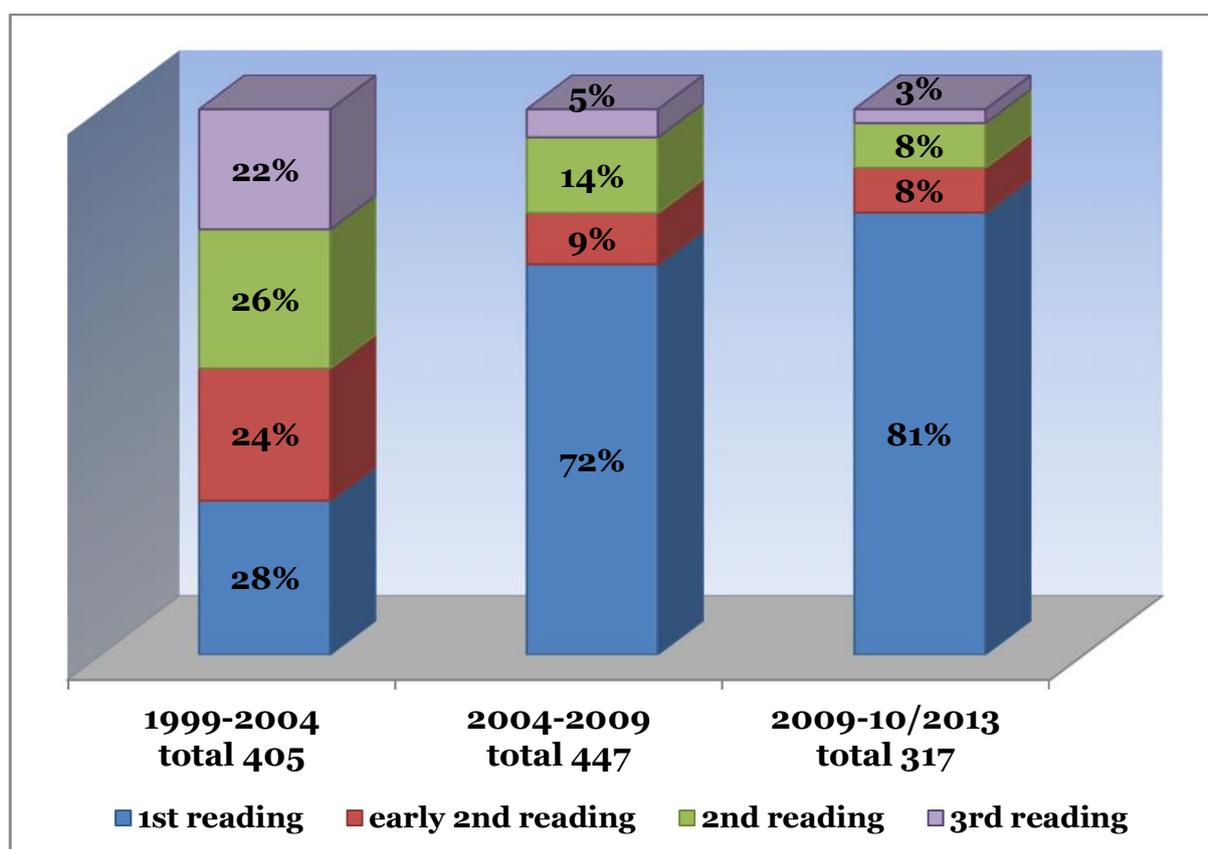

Figure 4: *Percentage of codecision files adopted at 1st, 2nd or 3rd reading by legislature*
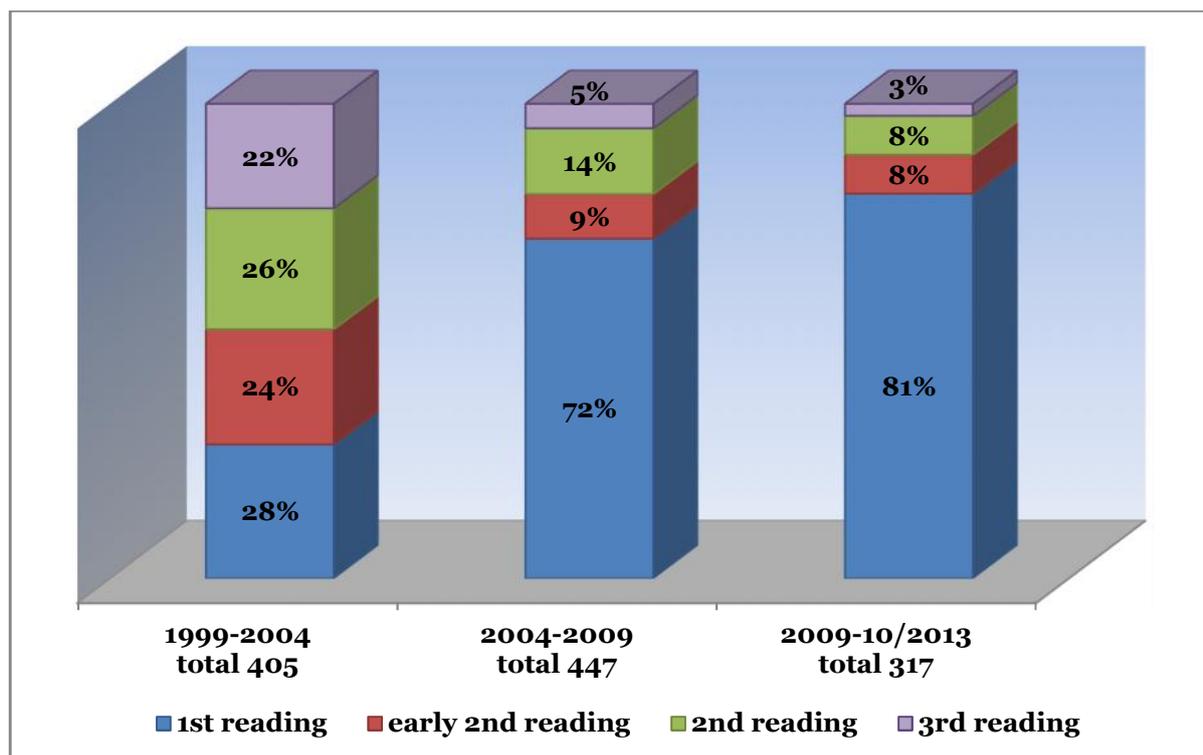
Figure 5: *Percentage of codecision files adopted at 1st, early 2nd, 2nd or 3rd reading per legislature since the 1999-2004 legislative term*

Length of procedure of codecision files

Since the introduction of the codecision procedure in 1993, the average length of time it takes for codecision files to be adopted has dropped progressively, from almost 24 months during the 1994-1999 legislative term to approximately 19 months during the current legislative term. The significant fall in the number of files adopted at third reading is one of the reasons for this. However, the time it takes to reach agreements at first or second reading has actually increased, as some very difficult files are now also negotiated at these stages of the procedure. In this respect, it is important to note that the institutions are not bound by time-limits during the first reading stage.

Indeed, over the past three or four legislative terms, the average length of the procedure has increased for both first and second readings: from an average of 11 months (1999-2004) to 16 months (2009-October 2013) for first reading agreements, and from an average of 21 months (1994-1999) to 31 months (2009-October 2013) for second reading agreements (which includes early second reading agreements).

The increasing role of trilogues

Trilogues are not codified but they are mentioned in the 2007 Joint Declaration. Yet they have become a defining feature of the codecision procedure and, over the course of the current legislative term, the number of trilogues that have taken place on codecision dossiers has steadily risen.

These tripartite negotiations involve, on the Council side, representatives of the Presidency, with the Chairs of COREPERs I and II increasingly involved, and, on the EP side, a negotiating team consisting of the Chair of the responsible committee, the rapporteur and the shadow rapporteurs.

As an example of the number of trilogues: in the first half of 2013 under the Irish Presidency of the Council, during a particularly busy legislative period (given the extensive negotiations on Multiannual

Financial Framework files), there were close to 400 trilogues, covering approximately 100 codecision files.

Whereas some files can be finalised with very few trilogues, other dossiers require far more. For example, there have been over 50 trilogues on the Common Provisions Regulation of the MFF Cohesion policy legislative package (REGI committee), while the Connecting Europe Facility (TRAN/ITRE committees) was agreed following 9 trilogues.

New EP rules for greater transparency and accountability

The revision of Rule 70 (Inter-institutional negotiations in legislative procedures) of the EP's Rules of Procedure was initiated by the Conference of Presidents of 10 March 2011, which invited the AFCO committee to review Rule 70 in order to make certain procedures related to the conduct of inter-institutional negotiations more effective, transparent and inclusive. This was considered necessary in light of the extension of the scope of codecision under the Treaty of Lisbon and, in parallel, the high number of trilogues and increasing number of codecision files adopted at first reading.

Amongst other things, the AFCO committee was tasked with incorporating into the binding part of the Rules of Procedure key elements of the non-binding "Code of Conduct for negotiating in the context of the ordinary legislative procedures".

The new Rules 70 and 70a entered into force on 10 December 2012 and introduce two different procedures for entering into negotiations:

- A standard procedure (Rule 70), under which negotiations can start immediately based on the report adopted in committee.
- An exceptional procedure (Rule 70a), which applies to negotiations that start prior to the adoption of a report in committee, and involves the Conference of Presidents and the plenary.

The following important elements concerning accountability and transparency are among those now binding on both the standard and exceptional procedures:

- the vote on the decision for entering into the negotiations requires absolute majority of the committee members;
- the decision for entering into negotiations includes the definition of the mandate and the composition of the negotiating team;
- documents intended to be discussed in trilogues must be circulated to the negotiating team in advance;
- there must be a regular report back to the committee after each trilogue;
- the committee must be informed of the compromise and the agreed text must be tabled for consideration and the agreement formally voted in committee.

It is too early at this stage to draw detailed conclusions about the functioning of the new Rules but from the first months of their implementation it is already possible to note that the large majority of codecision files are negotiated under the standard procedure (Rule 70), while, instead of using the exceptional procedure (Rule 70a), committees have very often preferred to use the standard procedure in combination with a plenary vote to reinforce or adopt the mandate (combining Rules 70 and 57 (2)).
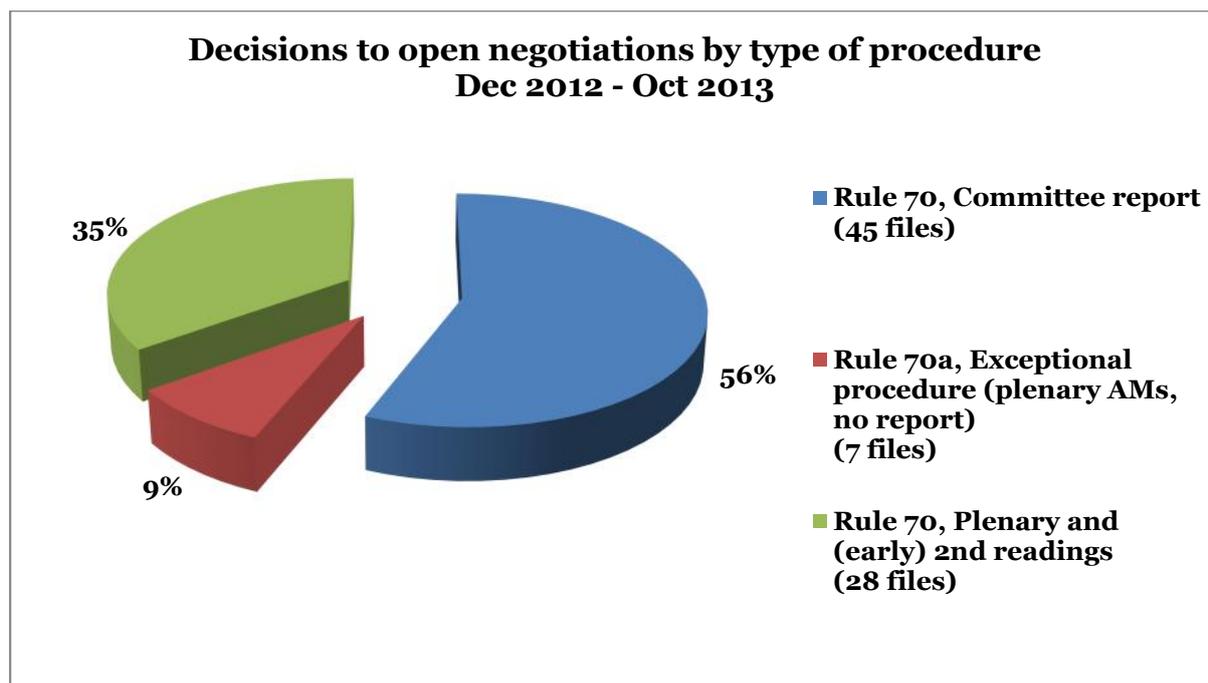
**Decisions to open negotiations by type of procedure
Dec 2012 - Oct 2013**

35%

56%

9%

- Rule 70, Committee report
  (45 files)

- Rule 70a, Exceptional
  procedure (plenary AMs,
  no report)
  (7 files)

- Rule 70, Plenary and
  (early) 2nd readings
  (28 files)

Figure 6: *Rules 70 and 70a: Decisions to open negotiations by type of procedure, December 2012 -
10 October 2013*

Conference on 20 Years of Codecision
organised under the auspices of the three Vice Presidents responsible for Conciliation:
Mr Gianni Pittella, Mr Alejo Vidal-Quadras and Mr Georgios Papastamkos

For further information, please contact the Conciliations and Codecision Secretariat
E-mail: codecision@ep.europa.eu
Website: http://www.europarl.europa.eu/code/default_en.htm

CONFERENCE
Tuesday, 5 November 2013
ALTIERO SPINELLI BUILDING - Brussels
9.00-14.00 ROOM: **ASP 5G3**

UNDER THE AUSPICES OF THE VICE-PRESIDENTS RESPONSIBLE FOR CONCILIATION
GIANNI PITTELLA, ALEJO VIDAL-QUADRAS AND GEORGIOS PAPASTAMKOS

20 YEARS OF CODECISION

ЕВРОПЕЙСКИ ПАРЛАМЕНТ   PARLAMENTO EUROPEO   EVROPSKÝ PARLAMENT   EUROPA-PARLAMENTET
EUROPÄISCHES PARLAMENT   EUROOPA PARLAMENT   ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ   EUROPEAN PARLIAMENT
PARLEMENT EUROPÉEN   PARLAIMINT NA hEORPA   EUROPSKI PARLAMENT   PARLAMENTO EUROPEO
EIROPAS PARLAMENTS   EUROPOS PARLAMENTAS   EURÓPAI PARLAMENT   IL-PARLAMENT EWROPEW
EUROPEES PARLEMENT   PARLAMENT EUROPEJSKI   PARLAMENTO EUROPEU   PARLAMENTUL EUROPEAN
EURÓPSKY PARLAMENT   EVROPSKI PARLAMENT   EUROOPAN PARLAMENTTI   EUROPAPARLAMENTET