

ACTIVITY REPORT

Developments and Trends of the Ordinary Legislative Procedure

1 July 2014 - 1 July 2019 (8th parliamentary term)



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Foreword

The European Parliament had an extremely busy 8th legislature in terms of the ordinary legislative procedure (OLP) - formerly the codecision procedure. Having inherited a large number of OLP proposals from the previous term, the Parliament's legislative activity got underway immediately. This was despite a consciously slow start by the Commission, taking a new approach to EU legislation.

The Commission tabled fewer proposals during the 8th mandate than its predecessors. It did so in part by adopting proposals in packages, covering several policy fields at a time. These types of 'merged' proposals added a layer of complexity, both in substance and procedure. The 8th term saw increased cooperation among parliamentary committees, and, as a consequence, new challenges for internal and inter-institutional working practices.

The Commission also tabled a significant number of legislative proposals late in the legislature, which added to the complexity. This was particularly the case for the sectoral proposals for the next multi-annual financial framework, which arrived less than one year before the end of the term and therefore could not be concluded under the outgoing Parliament. The policy focus otherwise remained relatively stable, with the LIBE, ECON and ENVI committees seeing the largest OLP legislative workload.

Other political events also impacted this parliamentary mandate, in particular negotiations on the UK's withdrawal from the Union. This has clear budgetary and legislative implications, including many urgent last-minute legislative proposals on which the Parliament was called to act.

Certain other features of the 8th mandate merit special mention: the tendency to negotiate and adopt legislative acts as early as possible in the legislative procedure; proportionally, there were more first readings than ever; and, for the first time over the course of a full term, there were no conciliations.

The ordinary legislative procedure is not just about legislating. It is also about transparency and political accountability, internal and institutional procedures and processes, cooperation between the institutions, and institutional rights and prerogatives. During the 8th term, Parliament renewed its efforts to legislate openly, adapting its Rules of Procedure accordingly. It also contributed to the implementation of commitments made in the framework of the newly revised Inter-Institutional Agreement on Better Law-Making.

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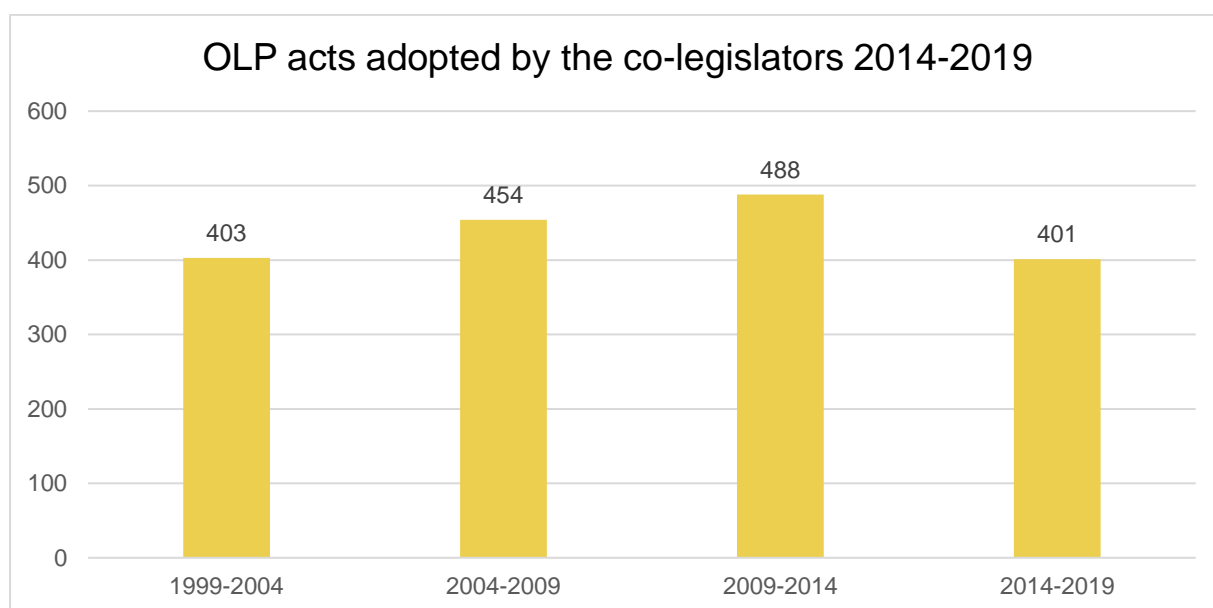
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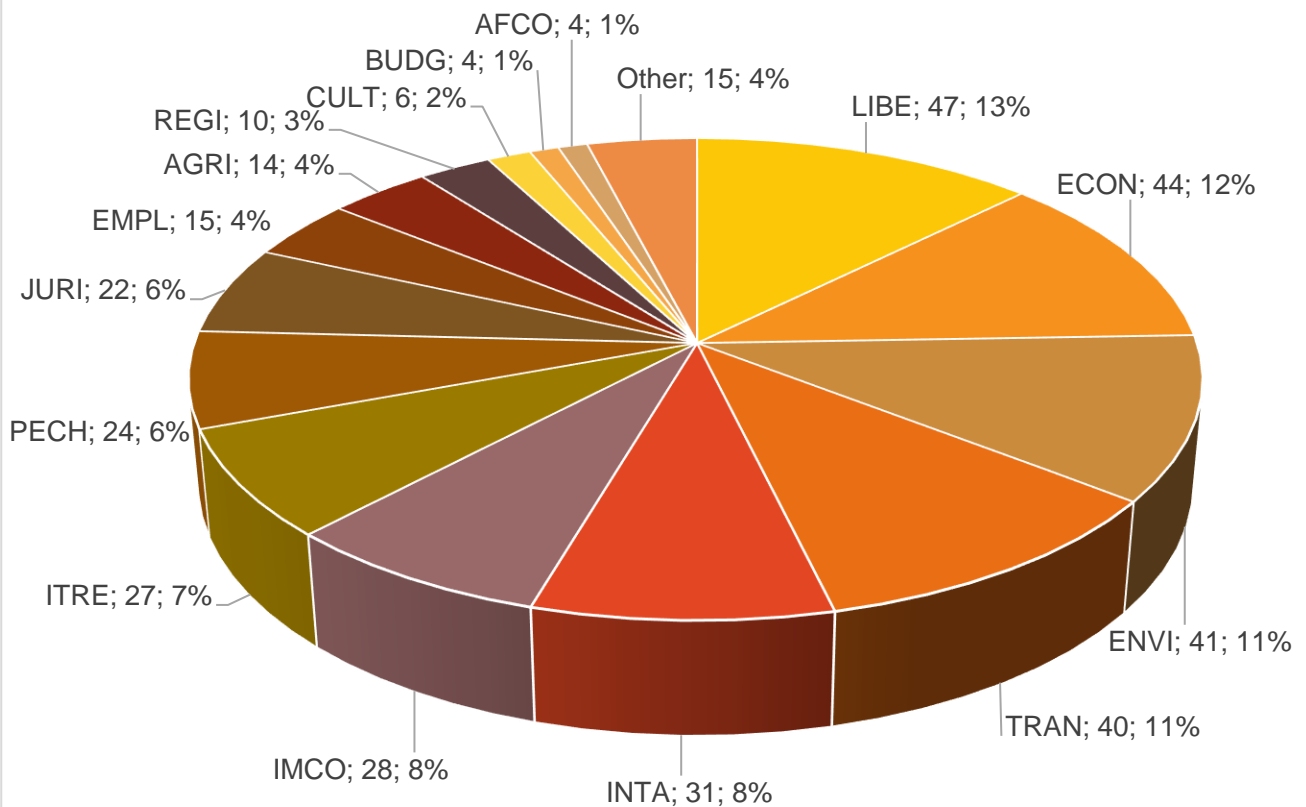
1. OLP acts adopted by the co-legislators

Over the course of the 8th parliamentary term, the co-legislators adopted 401 acts under the ordinary legislative procedure (OLP). The slight drop (20%) compared to the previous term can be readily explained: the start of the previous Parliament (7th term) coincided with the entry into force of the Lisbon Treaty (December 2009), the large number of proposals for Multiannual Financial Framework sectoral programmes (for 2014-2020) – tabled by the Commission during the second half of 2011 – were concluded before the 2014 elections, and the Juncker Commission consciously proposed less legislation. These things considered, however, the intensity of Parliament’s legislative activity remained high during the 8th term, as the numbers alone cannot accurately represent the reality and complexity of the outgoing Parliament’s workload between July 2014 and June 2019. A number of other factors, which this activity report will seek to highlight, have had an important bearing on the manner in which Parliament has legislated under the ordinary legislative procedure in the last five years.



The distribution of adopted (and signed) OLP files (not including codifications) among Parliament’s committees confirms the priority policy areas of recent years (justice and home affairs, economic affairs, the environment). As in previous terms, a large majority of proposals under the ordinary legislative procedure were dealt with by a handful of the Parliament’s 20 standing committees: more than 50% by five committees; and 75% by eight committees.

Distribution of adopted OLP files under 8th term

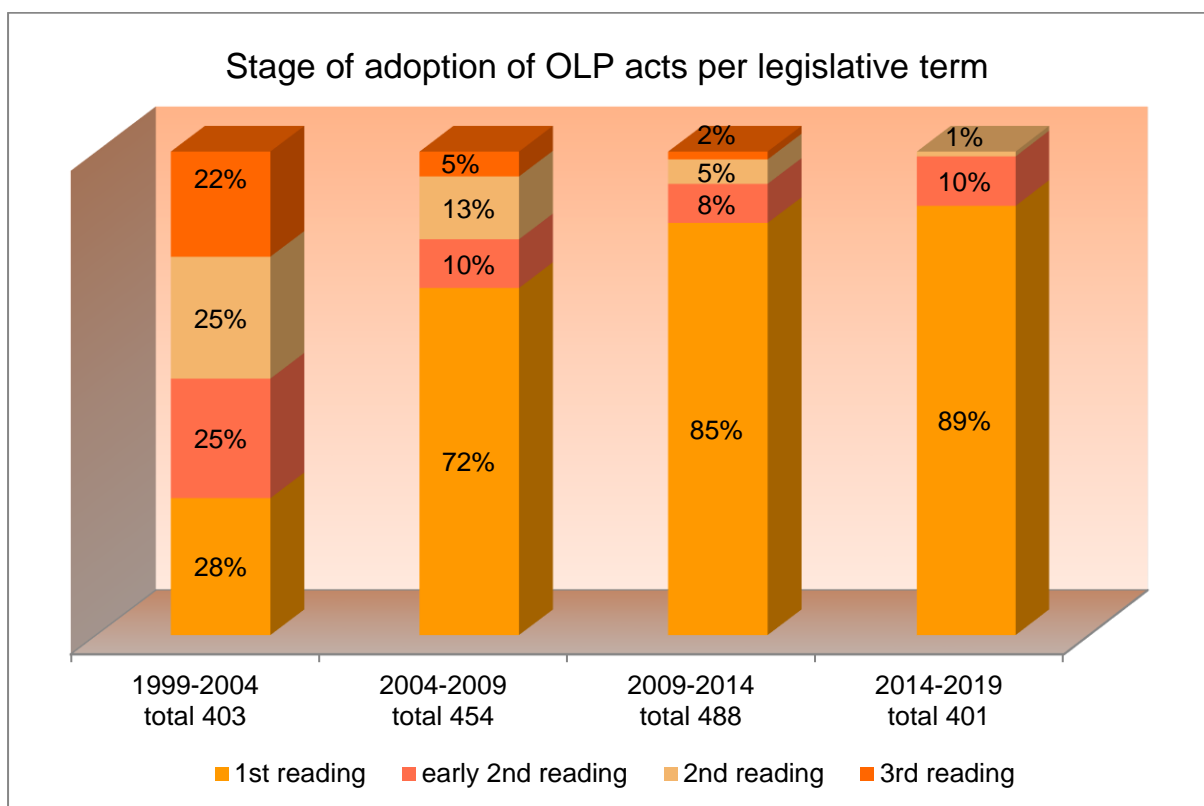


The committees with the most adopted OLP acts are, broadly speaking, similar to the 7th term; the three most active (from an OLP perspective) are the same (LIBE, ECON, ENVI), though in a different order. The LIBE committee had the largest share; it also had the highest number (12) of non-concluded negotiated files (mostly part of the asylum package), i.e. files on which negotiations took place but where Parliament and the Council were not able to reach an agreement.

Similarly to five years ago, there are still a number of procedures (approximately 20) on which negotiations were concluded under the 8th term but where the formal adoption should only take place at the start of the next Parliament (this corrigendum procedure is commonly procedure applied at the beginning of a new Parliament).

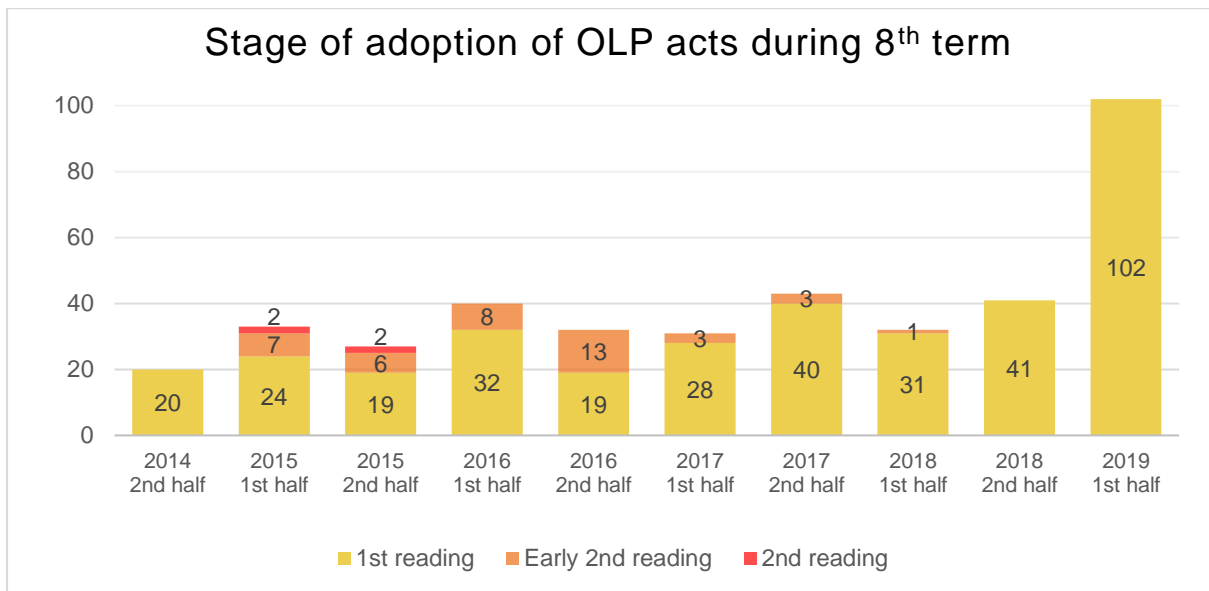
2. Stage of adoption and lengths of procedure

The trend towards first reading agreements, already evident under previous terms, was further accentuated. Parliament's Rules of Procedure for entering into negotiations were again revised in 2017, partly as a response to this: strengthening plenary oversight, political accountability and transparency at all stages of the legislative procedure (more details below).



This was the first legislative term under which there were no conciliations. There were only 4 full second reading procedures (and none since the end of 2015).

The share of early second readings increased. This is almost exclusively due to the high number of EP first reading positions (82) carried over from the previous term. 44 of these 'inherited' legislative proposals were concluded under the 8th Parliament (43 at early second reading); 21 of the remaining files were withdrawn by the Commission, and 17 are awaiting Council's first reading (although many of the latter are in fact blocked or obsolete).



This is also reflected in the stage of adoption trends during the term's five-year period: the early second reading agreements were almost exclusively concluded during the first half of the term; whereas, towards the end of the term, files were only adopted at first reading.

Of the legislative procedures finalised this term on which the 7th Parliament had not adopted a position, all but two were concluded at first reading.

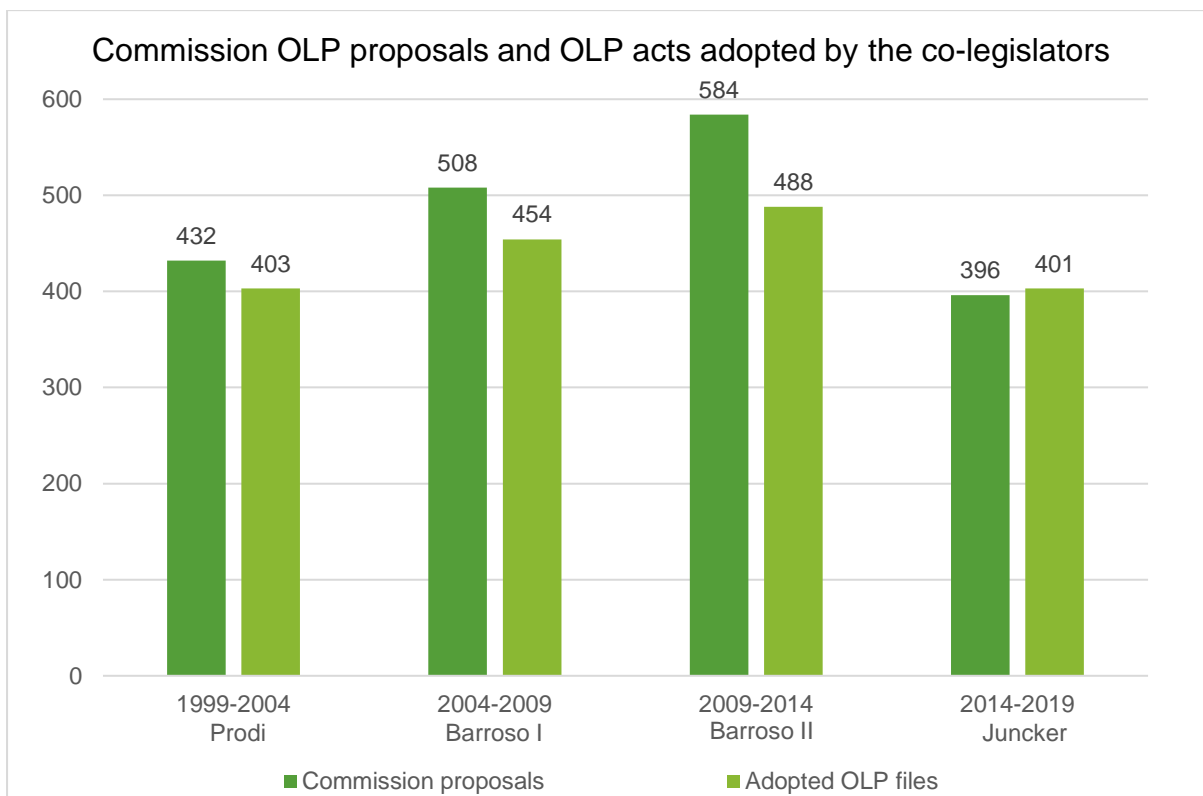
The transition to the 9th parliamentary term looks similar. As foreseen in the Rules of Procedure, the newly constituted committees will recommend to the Conference of Presidents which of the ongoing procedures they wish to continue. Pending a decision to be taken on the resumption of business, up to 87 EP first reading positions will be carried over to the next Parliament.

The average length of procedure for acts adopted at first reading is just below 18 months for the 8th term (from adoption by the Commission to signature by the co-legislators); the figure rises to approximately 20 months for those that were negotiated. Acts adopted at early second reading took 39 months on average; those adopted at second reading took 40 months. That the two latter categories took longer on average is partly due to the substance of the proposals, but is also because of the timing of their adoption by the Commission (meaning that the co-legislators had to postpone negotiations until the subsequent parliamentary term).

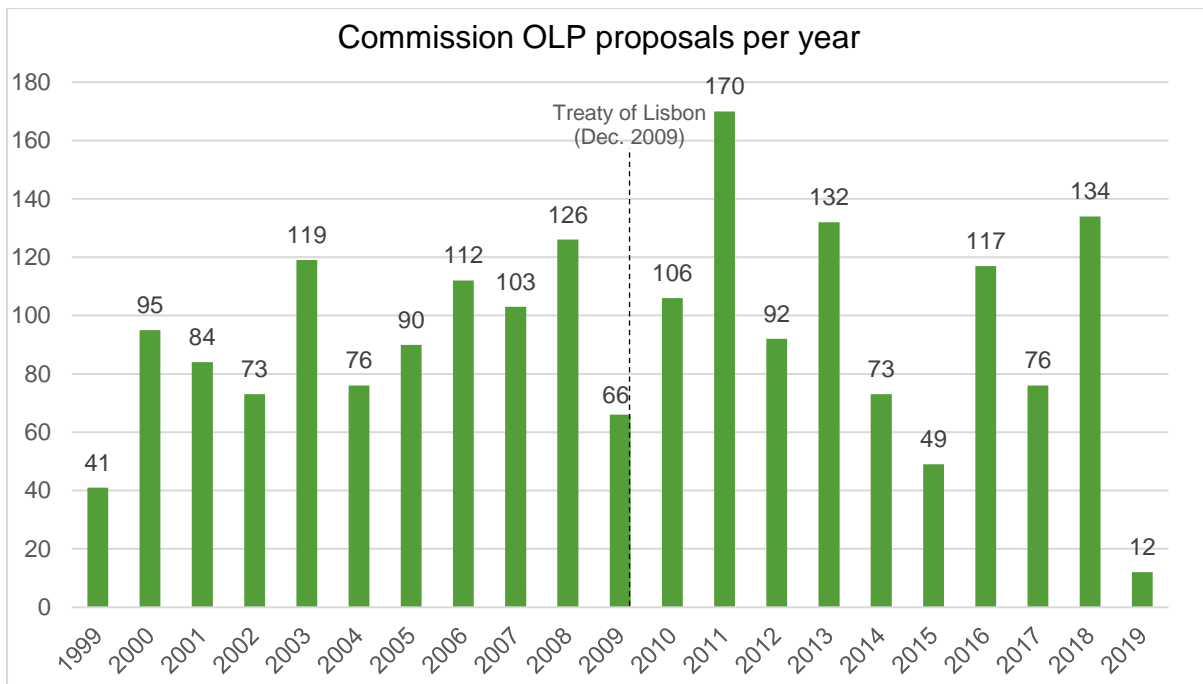
It is worth pointing out that, in exceptional cases, the co-legislators can act very quickly, such as for the European Fund for Strategic Investments (EFSI) (2015/0009 (COD)), which took 6 months from start to finish (some Brexit-related proposals were even faster – see section 5.2). However, generally speaking, the Parliament (and the Council) recognise that negotiating and adopting (often complex) legislation takes time (also taking the requirements of multilingualism into account).

3. Commission proposals – and their impact on the Parliament

The Commission tabled 414 OLP proposals during the 8th parliamentary term, of which 394 under the Juncker Commission (i.e. since November 2014). As already indicated, the 8th Parliament inherited an unprecedented number of ongoing legislative procedures: 82 on which Parliament had adopted its first reading, 47 which were still at earlier stages. This largely explains why the fall in tabled proposals was not matched by a correspondingly sharp drop in the number of acts adopted by the co-legislators. As noted previously, the high number of Barroso II Commission OLP proposals was partly due to the entry into force of the Lisbon Treaty at the end of 2009.



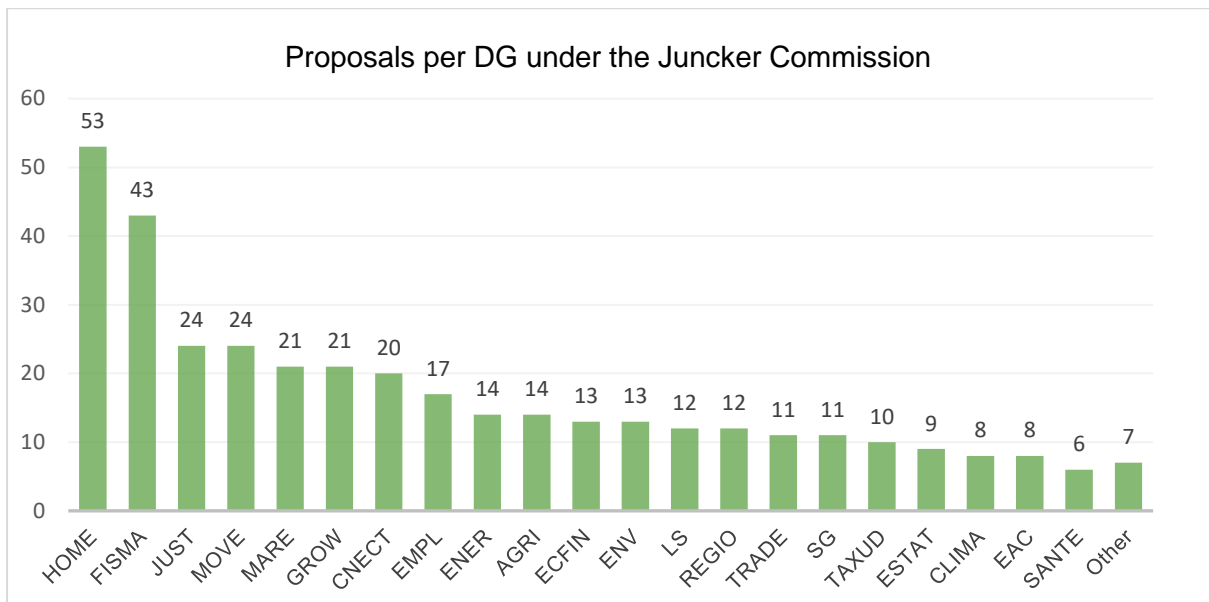
The Juncker Commission pledged that it would be “doing less, but (...) more effectively”. While it certainly started slowly (the 49 OLP proposals tabled in 2015 represented a 15-year low), things picked up considerably as its mandate progressed (as often happens in the course of a Commission mandate), with, in 2018, the second highest number of OLP proposals ever tabled by the Commission in a single year.



Indeed, a more in-depth look (beyond merely the yearly figures presented above) reveals that the Commission tabled 117 and 164 OLP proposals in the final 12 and 18 months preceding the start of Parliament’s last plenary session of the 8th term (15-18 April 2019). This put significant pressure on the Parliament to act quickly, particularly on priority files, in particular those covered in the Joint Declaration (see section 6.1). The proposals that came towards the end of the term included those for MFF sectoral programmes, referred to Parliament shortly before the summer recess in 2018 (see section 5.1); unlike under the previous term, it was therefore not possible to conclude them, also given the need for further discussions and negotiations on the MFF Regulation (i.e. the overall financial allocations).

Although there were fewer legislative proposals (19) in the last 6 months before Parliament’s final plenary session, the majority of these were urgent proposals related to Brexit, which had to be adopted, signed and published ahead of the (then) UK withdrawal date at the end of March 2019 (see section 5.2).

The distribution of OLP proposals under the Juncker Commission (November 2014 – June 2019) according to the lead Commission Directorate-General (DG) confirms that DGs HOME and FISMA were the most prominent, with approximately 25% of the proposals between them.



One of the distinctive features of the current parliamentary term was the scope of many Commission proposals. A significant number were broad, cross-policy proposals, the nature of which required Parliament to adapt. The 8th term saw a considerable increase in joint committee procedures (Rule 58¹): 25 proposals were jointly dealt with by at least two parliamentary committees (18 different configurations), compared to just 10 under the 7th Parliament, and there were many procedures with associated committees (Rule 57). In practice, this added a layer of complexity to the internal parliamentary coordination (determining committee competences) and inter-institutional work (length of negotiations; cooperation among committees) on many files and contributed to the legislative workload in Parliament (i.e. a single proposal often required more legislative activity than previously). For the first time, Parliament had a triple joint committee procedure (three committees: AFET, DEVE and BUDG, all associated under Rule 58), for the European Fund for Sustainable Development (2016/0281 (COD)). Another distinctive case was the Financial Regulation / Omnibus proposal, details of which are provided in section 4.1.

¹ For ease of reference, 9th term Rule of Procedure numbers will be used throughout this report. At the start of the 9th legislative term, the Rules used in this report will be as follows:

- Rule 57 (associated committee procedure), previously Rule 54;
- Rule 58 (joint committee procedure), previously Rule 55;
- Rule 60 (referral back to the committee responsible), previously Rule 59a;
- Rule 71 (negotiations ahead of Parliament's first reading), previously Rule 69c.

4. Inter-institutional legislative negotiations

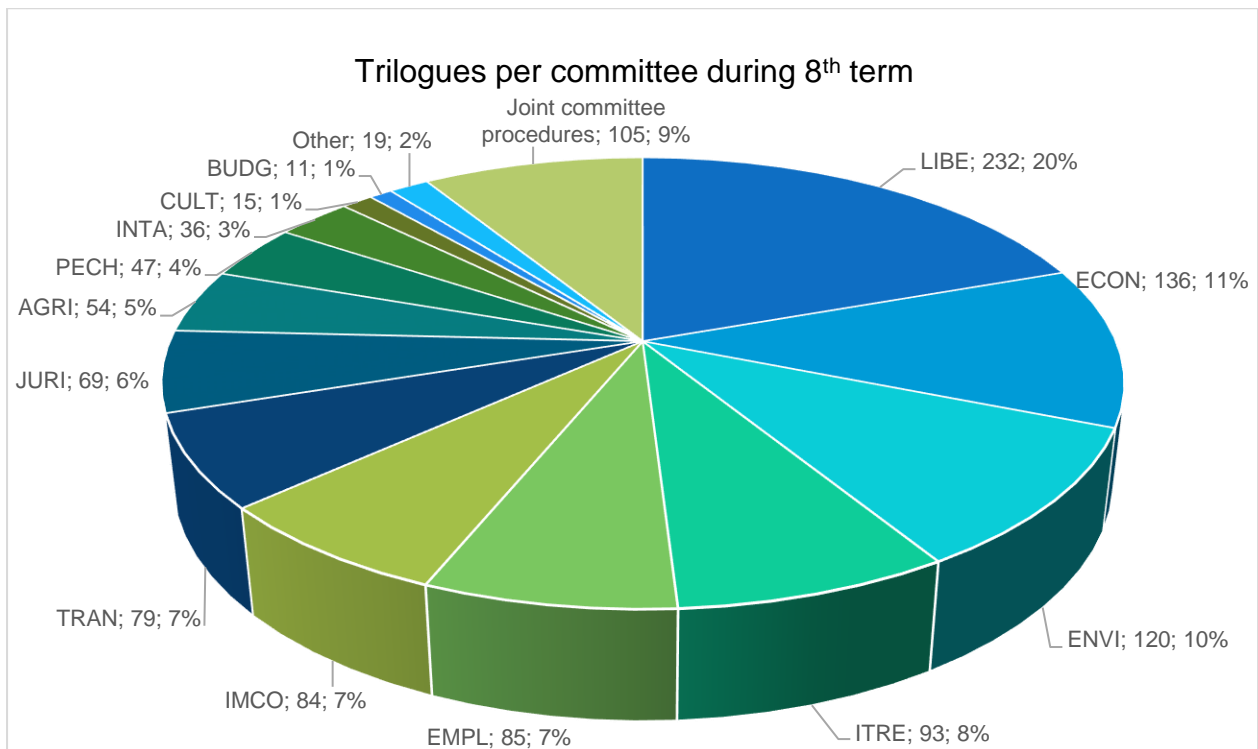
4.1. Inter-institutional legislative negotiations in numbers

1,185 trilogues took place at different stages of the legislative procedure (first, early second and second reading) on 346 legislative proposals during the 8th legislative term. A large majority (almost 65%) took place during the second half of the term; and over 15% took place in the first three months of 2019.

It is also interesting to note that 32 of these negotiated legislative procedures remained open at the end of the term, for the following reasons:

- (i) no provisional agreement reached (as was for example the case for many of the LIBE committee asylum package proposals);
- (ii) the provisional agreement was rejected by the Coreper; something that happened more frequently under the 8th term;
- (iii) only partial provisional agreements were reached: this occurred for all but one of the negotiated MFF sectoral proposals, following which the partial agreements were incorporated into the EP first reading positions at the end of the term (see section 5.1).

In addition, 20 acts, on which provisional agreements were reached, will only be finalised (via corrigendum procedure) at the start of the next term.



The number of trilogues required per legislative proposal ranged from one (for over 50 files) to 27, with 10 or more trilogues needed on 20 files or packages of files. The average number of trilogues per negotiated and concluded file was just under 4; that figure rose to just under 8 for joint committee procedures, which were mostly complex or politically salient files.

The **Financial Regulation / Omnibus** (2016/0282A (COD)) is a particular case that exhibits many of the 8th term's distinctive features: an extensive 'merged', cross-policy Commission proposal (which aimed to simplify general and sectoral EU financial rules, including for a range of multiannual funding programmes). However, it led to considerable coordination challenges (both in Parliament and inter-institutionally) as well as complex and lengthy negotiations. BUDG/CONT were the joint committees responsible; but the AGRI, REGI, EMPL, ITRE and TRAN committees were associated under Rule 57, and each led separate negotiations on their respective areas of competence. Having been concluded more quickly, the agriculture provisions were split (2016/0282B (COD)) from the broader package and adopted earlier. In total 32 trilogues took place over a 9-month period on this very complex proposal.

90 OLP acts (i.e. over 20%) were adopted without negotiations. The non-negotiated acts fall into several categories, such as: codifications (of which there were 29), the transposition of legally binding commitments, urgent procedures (with many in the field of international trade), and – towards the end of the term – most of the Brexit-related acts, many of which had to be adopted extremely quickly.

4.2. EP Rules of Procedure for negotiations

Background

Parliament has progressively adapted to the steady rise in trilogue negotiations over recent years. Successive revisions of the Rules of Procedure have formalised the manner in which Parliament enters into and conducts negotiations, including, for example, the composition of Parliament's negotiating teams or the obligation to report back to committee during negotiations.

The latest relevant changes to Parliament's Rules of Procedure, which entered into force early in 2017, reinforced political oversight and accountability: all committee decisions to negotiate have to be announced in plenary; political groups or Members have the possibility to raise objections; and, ultimately, it is the Parliament as a whole that must endorse (tacitly or otherwise) any mandate to negotiate with the Council.

Types of mandates

For negotiations at first reading, there are two types of mandate:

1. Committee mandates (Rule 71), which have most evolved following the 2017 changes to the Rules of Procedure, as they must now be confirmed by plenary, with or without a vote; and
2. Plenary mandates (Rules 59(4) and 60), the procedure for which has not changed: the committee legislative report is tabled to plenary but any amendments adopted by the plenary (which form the plenary mandate) are explicitly referred back to the committee for inter-institutional negotiations.

For early second reading and second reading negotiations, the mandate is the Parliament's first reading position; complementary guidelines are possible for second reading negotiations in order to take account of new elements contained in the Council's first reading position.

Since the introduction of the most recent revision of the Rules (i.e. between February 2017 and the end of the term), mandates for negotiations at first reading (which account for 90% of concluded OLP files under the 8th Parliament) have been adopted on 227 OLP files. Over three-quarters (177) have been committee mandates. 21 of these were contested (by a political group or Members representing one-tenth of Parliament's Members) within the 24-hour deadline following their announcement in plenary; and only 4 - on very controversial files - were ultimately rejected by the Parliament: copyright (JURI) and three files of the mobility package (TRAN) (see below).

All other decisions to negotiate at first reading were adopted on the basis of plenary mandates, referred back to the lead committee(s). Broadly speaking, plenary mandates are sought either because the absolute majority threshold (i.e. a higher requirement than the simple majority needed to adopt the report) was not or could not be reached in committee, or – for politically sensitive files (e.g. on which committee positions may differ) – to obtain a negotiating mandate that has the (majority) backing of the full Parliament. This has also become the route favoured by certain committees in certain cases, such as ENVI.

First assessment

With the announcement in plenary of all committee decisions to negotiate, the recent revision of the Rules of Procedure has increased the visibility of Parliament's negotiating mandates (which were themselves already made public). That such committee decisions undergo a form of 'plenary check', according to which they can be contested and put to the vote, has added to the political legitimacy of Parliament's negotiating positions: before negotiations start, Parliament as a whole must decide whether to approve (often tacitly), reject or amend any proposed committee mandates.

As indicated above, relatively few committee decisions to negotiate have been contested (approximately 10%), and only a very small number have been rejected (substituted by a plenary mandate in the case of copyright, referred back to the responsible committee for further consideration in the case of the mobility package proposals). To a large extent, the low number of objections and rejections are indicative of stable and reliable political compromises determined at committee level (combined with the absolute majority voting requirement); where these have not been representative of the Parliament more broadly, or for particularly sensitive legislative proposals, the plenary has intervened.

There have been only two instances – and four files – where plenary has voted to reject first reading negotiating mandates adopted at committee level: **Copyright** (JURI committee) and three of the **Mobility Package** proposals (TRAN committee). All files were politically very sensitive, splitting political groups (often also along Member State lines) and, given the competing policy-interests, dividing parliamentary committees (IMCO for copyright, and EMPL for two of the three mobility files, were associated under Rule 57). These differences – which were also evident in the high-profile political debates within and outside Parliament – revealed themselves fully in plenary: after the threshold to contest the files was reached, Parliament voted to reject the respective committee decisions to negotiate, and the four files were placed on subsequent plenary session agendas for discussion and vote.

The Directive on Copyright in the Digital Single Market (2016/0280 (COD)) seeks to enhance rights holders' chances, notably musicians, performers and script authors (creatives) as well as news publishers, to negotiate better remuneration deals for the use of their works and to ensure that the internet remains a space for freedom of expression. The plenary ultimately adopted amendments to the proposed JURI committee mandate in September 2018; this plenary mandate was referred back to the committee as the basis for negotiations with the Council. After intensive negotiations during eight trilogues, agreement was reached between the co-legislators in February 2019 on new updated copyright rules.

The process for the 'rejected' TRAN committee files was more complex still. The Mobility Package is a set of legislative proposals that the Commission adopted in 2017 and 2018. The three most controversial proposals of the package (2017/0121, 0122 and 0123 (COD)) relate to the road transport sector and in particular the employment and social conditions. In the end, the Parliament in July 2018 rejected the reports as amended by plenary and referred the files back to TRAN for further consideration. After exchanges between the Committee Chair, the Conference of Presidents and the President (in particular regarding the very high number of amendments and concerns, therefore, about whether plenary votes should go ahead), Parliament first reading positions were adopted on the three

legislative proposals at the penultimate plenary session of the 8th term. The Council agreed a General Approach for the three files in December 2018 (adding to the political pressure). Negotiations could start under the next Parliament.

4.3. Transparency

Ombudsman inquiries into transparency

The European Ombudsman's strategic inquiry into the **transparency of trilogues** (inquiry OI/8/2015/FOR), which was addressed to the Parliament, the Council and the Commission, was concluded in July 2016. While it underlined that there was no case of maladministration, the Ombudsman proposed that the three institutions make the following documentation and information publicly available: trilogue dates, the initial negotiating positions of the three institutions, general trilogue agendas, 'four-column documents', the text of the provisional agreements reached, the list of representatives from the three institutions and, as far as possible, a list of documents tabled during the negotiations. The Ombudsman also recommended the establishment of a joint legislative portal where citizens could find all relevant documents and information from all institutions for a specific legislative file.

Parliament already makes all its initial negotiating positions public as well as the names of its representatives in negotiations. On most other proposals made by the Ombudsman, a common approach with the Council and the Commission would be required.

The Ombudsman subsequently conducted a separate inquiry into the **transparency of the Council legislative process** (Inquiry OI/2/2017/TE) where she found that the current practice of the Council did constitute maladministration.

Her main findings were that "legislative documents of the Council are not, to any significant extent, being made directly and proactively accessible to the public while the [legislative] process is ongoing", that it was "the current administrative practice of the Council's General Secretariat not to record systematically the positions expressed by Member States" and that, "across the different GSC [General Secretariat of the Council] departments, there is a certain automatic or default response of marking preparatory level legislative documents as 'LIMITE'" [document for internal use only, not public].

To remedy the situation, the Ombudsman recommended that the Council should 1. systematically record the identities of Member States expressing positions in preparatory bodies (Coreper and working parties), 2. develop clear and publicly available criteria for the application of the 'LIMITE' status, in line with EU law, and 3. systematically review the 'LIMITE' status of documents at an early stage.

On 17 January 2019, Parliament adopted a resolution endorsing the Ombudsman's recommendations to the Council. It also urged the Council to make use of the possibility of qualified majority voting and to refrain from the practice of taking decisions by consensus and thus without a formal vote in public.

Court case

Court case T-540/15 concerned public access to multi-column documents used in ongoing legislative negotiations. The action was brought to the General Court following Parliament's decision, under Regulation (EC) No 1049/2001 on public access to European Parliament, Council and Commission documents, to grant only partial access to two four-column documents used in trilogue negotiations that were still ongoing at the time (an approach supported by the Council and the Commission). Parliament had justified its refusal to grant full access on the basis of one of the possible exceptions in the Regulation, namely where "disclosure of the document would seriously undermine the institution's decision-making process" (Article 4(3) first subparagraph).

The General Court annulled Parliament's decision; it considered that Parliament had not demonstrated that, by giving full access to the documents in question, the risk of specifically and actually undermining the decision making process was reasonably foreseeable and not purely hypothetical.

However, it clarified that this case did not concern the issue of direct access to the work of trilogues but only that of access upon request to documents drawn up in the context of trilogues. The General Court stressed that "it remains open to the institutions to refuse [...] to grant access to certain documents of a legislative nature in duly justified cases". Against this background, the Parliament assesses individually each request for access to multi-column documents.

It is interesting to note that, in addition, the General Court acknowledged that the "free exchange of views" between the three institutions during the negotiation process was not called into question, reflecting also the Ombudsman's conclusions that the institutions need a "space to think" when negotiating.

5. Case studies

5.1. Multi-annual Financial Framework sectoral proposals (2021-2027)

An interesting case-study from the 8th Parliament are the MFF sectoral programmes for 2021-2027. The Commission proposals were themselves distinctive. Firstly, due – according to the Commission – to the uncertainty over Brexit, they were tabled by the Commission far later than planned, in May and June 2018, i.e. less than one year before the Parliament's final plenary sessions. Compared with the 7th term, when the sectoral proposals for 2014-2020 period were tabled in the second half of 2011 (i.e. more than two full years before the end of the term), this made fully concluding the legislative process on the proposals before the end of the 8th Parliament a difficult task, despite the political will on all sides to advance quickly. Secondly, the Commission significantly reduced the number of proposed programmes (in a supposed bid for simplification) compared to the previous 7-year funding period (from close to 70 to approximately 35), leading to many 'merged' (and therefore broader and cross-sectoral) proposals. This also has an impact on the manner in which the future programmes were designed by the Commission: the proposals are generally less detailed and specific, and Parliament will have to see how appropriate levels of parliamentary scrutiny and oversight can be introduced in the final legal acts.

In Parliament, the Conference of Committee Chairs and the Conference of Presidents, conscious of the need to move swiftly, agreed on the distribution of committee competences for the various proposals in record time (by mid-July), enabling the committees to formally begin work shortly before or immediately after the 2018 summer recess. Given the cross-policy nature of the Commission proposals, there are a disproportionately large number (6) of joint committee procedures (Rule 58), which, as indicated previously, poses additional challenges for internal and inter-institutional coordination.

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

Factors that played a role in these considerations included: (i) the political complexity or sensitivity of a file, or assessing whether or not it would be more advantageous to reach agreements on certain provisions before the EP elections; (ii) the impact that variations to the final financial allocation might have on the possible content of the programme (which remained an uncertainty, given that discussions among Member States on the MFF Regulation were far from finalised and that negotiations with the Parliament had not even started); (iii) whether the Council had a mandate to negotiate (it did not on many important files – such as in the field of Justice and Home affairs, or on some cohesion policy proposals); and - linked to the previous one - (iv) the number of provisions in a given proposal that the Council had reserved for a decision by the European Council (i.e. for the so-called negotiating box, which Heads of State and Government decide, thus determining the Council position on aspects that should instead be co-decided by the co-legislators – with disregard for the applicable Treaty provisions).

It is important to point out that, as hinted at above, the Council only adopted *partial* negotiating mandates, ‘square-bracketing’ many provisions (that it submitted for decision at European Council level). This meant that the Council excluded significant provisions during the sectoral negotiations with the Parliament.

Throughout, the BUDG committee, in a strategy endorsed by the Conference of Presidents and the full Parliament in its interim report, worked intensively with the committees responsible for the sectoral programmes to ensure a comprehensive and coherent approach to the overall financial allocations.

Ultimately, the Parliament and the Council negotiated 12 of the sectoral proposals; on 11 of which they reached ‘partial provisional agreements’ – or ‘common understandings’, as the Council termed them. Following a progress report at the General Affairs Council in March 2019, and letters to President Tajani reassuring the Parliament that the Council was committed to respecting the partial agreements reached, the committees sought to incorporate the latter in Parliament’s final first reading positions (adopted at the final plenary session of the term); this was an unprecedented process, which reflected the unprecedented nature of this ongoing MFF exercise.

On 19 other proposals (including one on which negotiations had not led to a partial agreement), the Parliament also adopted first reading positions. The five remaining proposals, which were particularly complex or sensitive politically, remained at earlier stages in the legislative procedure: committee reports were adopted on the three AGRI committee files (reforming the Common Agricultural Policy); while two BUDG/ECON files (the Reform Support Programme and the European Investment Stabilisation Function) were still at the pre-report stage in committee.

To conclude, it is worth again emphasising the speed with which Parliament worked under challenging circumstances: the committees took on average 6 months to adopt their committee reports, compared to the 11-month average under the 7th parliamentary term. And to recall the considerable inter-institutional legislative work that remains to be done: 35 trilogues took place during the 8th term, compared to more than 350 that were required to finalise negotiations on all sectoral programmes under the 7th term.

5.2. Brexit contingency and preparedness legislation

During the 8th legislative term, the impact of the decision by the UK to leave the European Union was also felt strongly in the European Parliament. In addition to the resolutions it adopted before and during the negotiations on the withdrawal agreement, outlining its position as an institution, Parliament also had to legislate on a series of urgent, last-minute proposals.

In total, the Commission tabled 18 Brexit-related legislative proposals under the ordinary legislative procedure in 2018 and 2019. They can be divided into two categories: (i) preparedness legislation (8 OLP proposals), which is needed regardless of whether the UK leaves the EU with an agreement or not (e.g. relocating the two UK-based EU agencies to the EU 27; ensuring visa-free travel for EU and UK citizens; and rules on type approval of vehicles); and (ii) contingency legislation (10 OLP proposals), which would be needed only if the UK leaves the EU without an agreement, as it would temporarily mitigate against some of the consequences of a 'hard Brexit' (e.g. continuing the PEACE programme in Northern Ireland for another year; ensuring transport connectivity).

Both types of proposals were adopted in a very short time by Parliament given their political importance and the need to have them in force in time for the UK's initially expected departure date (end of March 2019). In some cases, the committees had to use the simplified procedure (proposing no amendments in committee) or, in three cases, the urgent procedure (by-passing the committee stage altogether) in order to expedite the proposals, even if it meant limiting the committees' and Parliament's ability to legislate properly or give them due scrutiny.

An additional complexity was the limited prior notice by the Commission, in particular on the contingency proposals, meaning the Parliament had to react very quickly, on top of the usual increased workload at the end of the legislative term. Despite a number of them being politically sensitive, the 10 contingency proposals were each adopted in a timeframe of between 1 and 3 months, with a total of 4 trilogues (on only 2 of the proposals).

In addition to the legislative proposals, the Commission came forward with a number of Brexit-related delegated acts – predominantly in the field of economic and monetary affairs – which needed to urgently enter into force, which meant that the committees were requested to curb the usual scrutiny periods and adopt early non-objections.

6. Effect of Inter-Institutional Agreement on Better Law-Making on the OLP

6.1. Joint Declaration programming

Background

In the 2016 Inter-Institutional Agreement on Better Law-Making (IIA BLM), the Parliament, the Council and the Commission decided that they would agree annually a Joint Declaration (JD) setting out “broad objectives and priorities” and “major items of political importance” for the following year, which “should receive priority treatment during the legislative process”. The objective was to associate the co-legislators more closely in legislative programming, and give a specific focus to subsequent legislative work, “without prejudice to the powers conferred by the Treaties on the co-legislators”. The implementation of Article 17 TEU had been a long-standing request of the Parliament in its efforts to secure greater involvement in programming.

The first joint declaration was signed in 2016 by the Presidents of the three institutions and covered the legislative priorities for 2017. The second Joint Declaration, signed in 2017, took account of the fact that the end of the legislative term was approaching, and therefore included priority files for both 2018 and 2019.

During the negotiations on the JD 2018-19, Parliament insisted on a number of files that covered very important issues and on which “progress was also needed” which have been added in a second part of the working document.

To monitor the progress of the legislative proposals, the Presidents of the three institutions agreed to meet regularly (2/3 times per year), allowing them to raise and discuss issues at the highest level. To prepare these meetings, the EP President consults the committee Chairs in the framework of Conference of Committee Chairs meetings. The institutions monitor the files in the monthly ‘Groupe de Coordination Inter-institutionnelle (GCI)’ based on a common Joint Declaration Tracker document.

Joint Declaration in numbers

In total, for the 2017-2019 period, the three institutions jointly identified 90 priority legislative files (59 for the year 2017; 31 for the years 2018/2019). With 15 of the initial files adopted and finalised in 2017, the remaining 44 were carried over and included in the Joint Declaration for 2018-2019, which therefore covered 75 legislative proposals of importance for attaining the Union’s policy objectives; those included in the second Joint Declaration were to be given “priority treatment to ensure substantial progress and, where possible, delivery, before the elections in 2019.” At the end of the term, only 23 procedures were not yet concluded, many of them related to the reform of the EU’s migration and asylum policy.

It is important to note that being assigned the 'JD status' did not necessarily mean that a file would be dealt with in an accelerated manner; the urgency, political sensitivity, and/or content of a given file were (as for any legislative procedure) the most important factors in determining its pace.

In fact, comparing with the overall numbers for negotiated and concluded files under the 8th parliamentary term, JD files took on average longer (approximately 25 months compared to 20 months) and required more trilogues (over 5 per file compared to an overall average of just under 4). Of course, priority files are frequently the politically most important, difficult or controversial.

The fastest procedure for a JD file was the 'Statute and Funding of European political parties and European Political Foundations' (2017/0219 (COD)), which took 8 months; the longest procedure was 'Trade Defence Instruments' (2013/0103 (COD)), which took 62 months.

It is worth noting that the committee distribution of responsibility for JD procedures broadly mirrors the general OLP workload under the current Parliament (and therefore also the priority policy areas already identified under the 8th term): for the 2018-2019 period, the LIBE committee had the largest share of JD files (although many of these have not been concluded), followed by ECON and ITRE, then ENVI and TRAN.

The Joint Declaration is agreed once per year, and it is not updated or amended in between. Therefore a number of key legislative proposals, which could not be foreseen in advance or the timing or specific content of which was uncertain, were tabled by the Commission after the approval of the Joint Declaration for 2018-2019 and could not be included in it (e.g. European Border and Coast Guard (2018/0330A (COD)), Terrorist Content Online (2018/0331 (COD)) or the MFF sectoral programmes).

First assessment

The two Joint Declaration exercises have already demonstrated that they help to focus resources on some of the key files that advance the EU's priorities.

Parliament – together with the Council – thus helped to advance important legislative priorities, such as to implement a connected Digital Single Market or ambitious proposals linked to the Energy Union and climate change policies.

In order for the Joint Declaration to really deliver, the Parliament needs to be fully involved as an agenda setter when it comes to determining the EU's priorities. In particular, the Parliament's legislative initiative reports will need to be taken into account in the process.

Another point that has been raised by the Parliament in this context is the importance of ensuring that legislative proposals are subject to impact assessments. This is particularly the case for Joint Declaration files, in line with the commitment in the IIA BLM, which foresees that as a general rule they should be accompanied by an impact assessment. The Parliament regrets the fact that this was not the case for approximately one-third of the Joint Declaration proposals.

6.2. Simplifying secondary legislation in inter-institutional negotiations

At the end of 2018, after three political meetings under three successive Presidencies, the Parliament (represented by its negotiators Mr Szájer and Mr Corbett), the Council and the Commission agreed a set of non-binding delineation criteria for the use of delegated and implementing acts (which are based on Articles 290 and 291 TFEU). The three institutions had committed to doing so in the Inter-Institutional Agreement on Better Law-making (IIA BLM).

The non-binding criteria for the application of Articles 290 and 291 TFEU are intended to guide the co-legislators during legislative negotiations, and help them to determine when delegated or implementing acts should be used. The expectation is therefore that they will finally help to resolve one of the more difficult issues that the co-legislators regularly disagreed on during inter-institutional negotiations on OLP proposals.

Indeed, the choice between delegated and implementing acts continued to be very contentious during the 8th term, as the Council persisted in its opposition to the use of delegated acts. Even after the Parliament and the Commission in the framework of the IIA BLM (which entered into force in April 2016) introduced additional guarantees for the Council regarding the consultation of Member States' experts, important differences remained.

The recently agreed non-binding criteria outlines general principles (freedom of the legislator; importance of case law and adaptation to new jurisprudence; no delegation of essential elements) and detailed criteria, describing some key features of both delegated and implementing acts, in order to render the distinction between them clearer. It also provides guidance on the crucial distinction between supplementing and implementing a basic act.

The agreement was endorsed by the three institutions (by decision of the Conference of Presidents on 14 March 2019 for the Parliament) and was [published in the Official Journal](#) on 3 July 2019. The three institutions agreed to keep the criteria under review, particularly in the light of developments in the case-law of the Court of Justice. This is therefore an issue that the next Parliament will deal with.

In parallel to the negotiations on delineation criteria, Parliament (with the JURI committee in the lead) worked on the alignment of still existing Regulatory Procedure with Scrutiny (RPS) provisions in legislative acts adopted before December 2009 to the requirements of the TFEU (notably their replacement by delegated acts). The Commission proposals (of December 2016) covered a total 171 acts to be aligned to Articles 290 and 291 TFEU. Between February 2018 and March 2019, the co-legislators were able to agree on approximately one-third of the less controversial acts (2016/0400A (COD)). They decided to split the legislative procedure, enabling them to adopt the acts agreed; inter-institutional negotiations on the remainder of the proposals will continue after the European elections.

7. Conclusions

In many respects, there was a large degree of continuity during the 8th Parliament. With a large number of OLP proposals carried over from the previous term, the fact that the Juncker Commission took some time to start presenting legislative proposals made very little difference to the rhythm and rate of Parliament's legislative activity. All parliamentary terms are cyclical in nature, with legislative activity picking up on all fronts and in all institutions as the 5-year period progresses. The legislative work builds up almost naturally as the months and years advance, with increasing pressure to finalise as much as possible towards the end of the term.

The 8th Parliament was, from that perspective, similar to the previous ones. But in many other respects, it was also a period of change and adaptation; partly due to the Commission's new legislative approach, partly also due to external circumstances (and sometimes both factors together).

There were, in general, **fewer Commission proposals** over the five-year period. But, when they did come, they were frequently **'bigger' and cross-policy** in nature: Parliament adapted accordingly, applying the joint committee procedure (Rule 58) or associated committee procedure (Rule 57) more often than in the past – but with the added layer of complexity that this brings to legislating, both within Parliament (increased challenges of committee coordination) and in relations between the institutions, particularly during negotiations.

Many **Commission proposals arrived towards the end of the legislative term**. While it is not uncommon for the Commission to table more proposals during the penultimate year of a parliamentary term, circumstances made matters more difficult this time. These included approximately **35 MFF sectoral proposals** (many of them 'merged' proposals), which were tabled only one year before the EP elections, and considerably later than originally planned. Although the Conference of Committee Chairs dealt with decisions on committee competences in record time - and despite the intense political pressure to move quickly - there was little hope of concluding the files in the short time available, also taking into account that there was no agreement on the figures. In addition, the Commission tabled a series of **last-minute Brexit-related proposals** on which the Parliament had to act within weeks before the originally scheduled date (end of March 2019) of the UK's departure from the Union. Parliament's ability to fully uphold its legislative prerogatives was put to the test but it succeeded in legislating effectively in these difficult circumstances. Legislating well on complex and politically sensitive proposals takes time, both within the Parliament (preparing the EP position) and subsequently in discussions with the Council.

The 8th legislative term also confirmed that **early stage agreements (at first and early second reading) are now the norm at EU level**. With – for the first time ever – no conciliations at all, and only four full second readings (adopted at the start of the

term), negotiating early in the legislative procedure has become the standard practice for the co-legislators. Of course, one cannot rule out changes to this pattern, but this trend has been visible for many years now, and rules and procedures have been adapted accordingly.

This is particularly true in the Parliament, which has always sought to address concerns about **transparency and political accountability**. The **overhaul of its Rules of Procedure**, which entered into force in January 2017, was a further step along these lines. While EP negotiating mandates and the names of Parliament's representatives in negotiations have for some time now been made publicly available, the most recent changes to the Rules for entering into negotiations ensure that all **committee decisions to negotiate are announced and undergo a plenary check**. This increases the visibility of forthcoming negotiations and of Parliament's mandates, and enables Members or political groups to request greater plenary scrutiny: to approve or not the committee decisions to negotiate, and even to amend committee mandates, if a plenary majority so wishes.

The **revised 2016 Inter-Institutional Agreement on Better Law-Making (IIA BLM)** introduced a number of improvements to relations between the Parliament, the Council and the Commission. This activity report covered the two which have had the most direct impact on the ordinary legislative procedure. The first one is increased cooperation in the area of legislative programming, via the **Joint Declaration** - with the implementation of Article 17 TEU a long-standing request of the Parliament. As the numbers demonstrate, this innovation is clearly not about accelerating legislative procedures; indeed, legislative proposals included in the Joint Declaration generally take longer, and, on average, require more trilogue negotiations, mainly because such files are among the most politically sensitive. But the Joint Declaration status helps to focus minds on policy areas that are of greatest concern to citizens, and give Parliament's committees a more prominent role in determining those legislative areas where additional political, administrative and logistical efforts are most needed.

The second improvement concerns the **delineation criteria on delegated and implementing acts**, which the three institutions agreed late in the term. They will apply under the next Parliament, with a view to helping to resolve the long-standing institutional, political and legal conflicts that have hampered the smooth adoption of many legislative acts.

More generally, it is inevitable that **relations between the institutions** shift during a five-year period. The Juncker Commission portrayed itself from the outset as more political. While this has had the advantage of providing some impetus to achieving certain policy objectives, it has also led to the Commission adapting its role at stages of the legislative procedure which are the preserve of the co-legislators. This is sometimes felt in the Commission's approach to the Joint Declaration. And it is also sometimes apparent during trilogue negotiations: the Commission's commitment to proposing compromises and resolving disputes between the Parliament and the Council has always been a key feature of legislative negotiations, and it should continue to play the role of honest broker and facilitator during such three-way discussions.

Tabling many **proposals late in the term** also has an impact on the manner in which the Parliament is able to work. Parliament has a duty to provide quality legislation; and – while acknowledging that certain acts require swift adoption - its legislative prerogatives should never be limited. Part of the solution would be to keep the Parliament better informed during the preparatory phases of legislative proposals.

In parallel, and particularly towards the end of the parliamentary term, there has been a **noticeable rise in the level of representation of the Commission in inter-institutional legislative negotiations**: Directors-General or even Commissioners have appeared more regularly. Depending on the file under discussion, the types of issues at stake, and the stage in the negotiations, this can be beneficial, and has generally been viewed positively by Parliament's negotiating teams.

A **similar trend was also visible on the Council side**: increasingly, Presidencies have been represented in legislative negotiations by the Permanent (or Deputy Permanent) Representative; and sometimes at Secretary of State or Ministerial level. Again, this can contribute to a form of political momentum, and help to overcome some of the more important political hurdles. Still, there have been a number of cases under the 8th term where the Presidency nevertheless failed to get Coreper approval for provisional agreements reached with the Parliament.

As regards the roles of the three institutions when it comes to making legislation, the IIA BLM recalls that **Parliament and Council are on an equal footing**. The Commission, on the other hand, undertakes the role of facilitator in the process and is under an obligation to treat both co-legislators equally when doing so, in terms of access to information and during legislative negotiations, the ultimate aim being that each of the institutions plays a complementary role in line with the principles of sincere cooperation, transparency, accountability and efficiency.

In Parliament, a **first assessment of the revised Rules of Procedure for entering into negotiations** is broadly positive: most committee decisions to negotiate (approximately 90%) are approved without any intervention by the plenary. The visibility of the committee mandates has undoubtedly increased, as has their 'ownership' by the plenary, thanks to improved oversight and scrutiny of the committees' work before negotiations with the Council begin.

Concerning the **dynamics of the inter-institutional negotiations** themselves, **Parliament's negotiating teams** have generally worked effectively. However, during the latter stages of the 8th parliamentary term, Parliament's negotiating teams would all too regularly be faced with **Council mandates with limited margin of manoeuvre**: the Parliament must therefore continue to defend its position in order to strike the right balance between the various interests at stake.

As the 8th term draws to a close, the conclusions and lessons learned as described above might help to guide the next Parliament's future legislative activities: drawing attention to the strengths and weaknesses of the system, helping the Parliament to defend its rights and prerogatives, contributing to a fair balance between the three institutions, and enabling the adoption of good legislation.

More information

[OLP Handbook](#)

The Legislative Affairs Unit's OLP Handbook contains more information on the ordinary legislative procedure and inter-institutional legislative negotiations.



[DIAs handbook](#)

More information on delegated and implementing acts can be found in the Legislative Affairs Unit's DIAs Handbook.



[Statistics](#)

Latest statistics on the ordinary legislative procedure, such as adopted OLP files by committee, stage of adoption of OLP files, and average duration of OLP procedures, are available on Parliament's internet page on the ordinary legislative procedure.



[LEX acts: concluded and signed files](#)

Parliament's internet page on the ordinary legislative procedure includes information on OLP files adopted and signed, updated monthly.

