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Staying in the Loop

The Commission's role in first reading agreements

Niels Fuglsang and Kim B. Olsen*

Abstract

The codecision procedure has changed radically since its inception in 1992. At first characterised by inter-institutional mistrust, the codecision procedure today is used to settle quick political agreements informally between the Parliament and the Council. This new negotiation culture can be seen in relation to the growing number of informal first reading agreements between the Parliament and the Council, at the expense of the more formalised and time-consuming second and third reading agreements. While this change entails closer cooperation between the Parliament and the Council, it presents serious challenges for the Commission, which has some difficulty acting in this more informal and more political environment.

This paper argues that the Commission's problems are due to its internal organisation being split in two – there is: 1) a highly political 'top' level including the Commissioners, their cabinets and the Secretariat General, and 2) a less political 'bottom' level with more technically-minded civil servants. The Commission now faces a major problem when sending these civil servants to negotiate informally with the politicians in the Parliament: they simply don't speak the language of politics and as a result the Commission runs the risk of being marginalised within the codecision procedure.

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THE COMMISSION'S ROLE IN FIRST READING AGREEMENTS

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Executive Summary

The increasing use of the first-reading agreements in the codecision procedure between the institutions may not be to the European Commission's advantage. This paper argues that the Commission's difficulties with this procedure are due to the dual nature of its internal organisation: there is a highly political 'top' level of Commissioners, their cabinets and the Secretariat General, and a less politically-oriented 'bottom' level with more technically-minded civil servants. The Commission is now facing a major problem when sending these civil servants to negotiate informally with the politicians in the Parliament. They simply do not speak the language of politics, and sometimes lack the necessary skills to defend the Commission's interests in the political negotiations between the three institutions.

Because the civil servants in the Commission are not always able to negotiate effectively within the political climate, the Commission runs the risk of being left out of the loop when the co-legislators choose to seal political deals via quick and informal first reading agreements, as they are now doing more frequently. Although the political echelons of the Commission are aware of this risk, some civil servants still find it difficult to adjust to this new negotiation culture. We would argue that the Commission itself must adapt all parts of its organisation to these new circumstances by thinking and acting more *politically*.[1]

1. The evolution of the codecision procedure

The codecision procedure was established as a legislative measure in the EU in 1992 (Codecision I). It quickly developed into a vital part of the EU legislative process, and the Treaty of Amsterdam in 1997 further extended it to cover additional policy areas (Codecision II). In the most recent Treaty of Lisbon, whose future is somewhat uncertain, the procedure is foreseen to cover 75% of all legislative areas, including the Common Agricultural Policy and the budget. Codecision has thus grown in importance and scope since 1992.

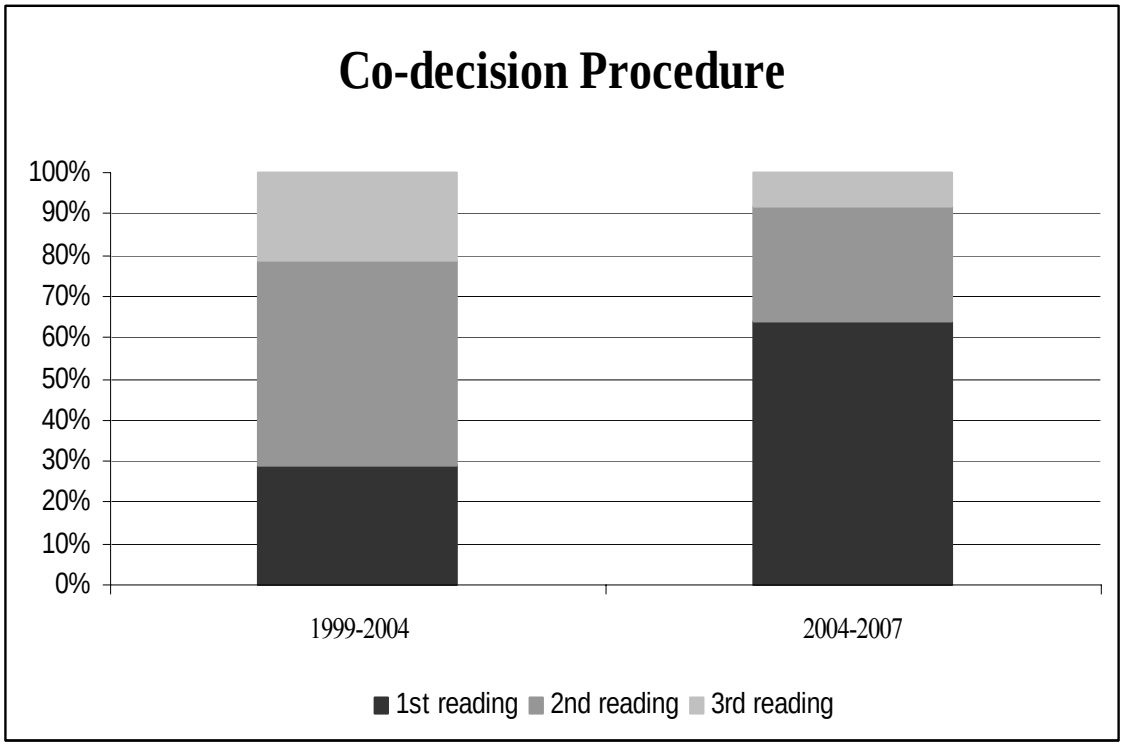
As the extension of this procedure has taken place, there has been a change in the way agreements are made within the codecision procedure. In brief, the number of agreements settled on first reading has risen dramatically in recent years at the expense of those made on second and third reading. This development has a number of implications for the negotiations between the three institutions, the Commission, the Parliament and the Council, since the rules that apply to a first reading are not the same as those that apply to a second or third reading.

[1] This policy paper is based on findings obtained from 14 qualitative, semi-structured interviews with representatives from the three institutions. Besides officials from the Commission's Secretariat General (SecGen), cabinets and DGs, interviews were also conducted with a former chief-adviser of Barroso, high-ranking Parliament officials, MEPs and diplomats both in the Danish Ministry of Foreign Affairs, the Danish Prime Minister's Office and the Permanent Representation of Denmark to the European Union in Brussels.

In the codecision procedure, the legislative process formally begins when the Commission drafts a legislative proposal. Subsequently, the Parliament and the Council negotiate in order to reach an agreement on which amendments should be added to this proposal. For the proposal to become law, the Parliament and the Council must accept each other's amendments. The Commission is often understood as a mediator and a supplier of expert knowledge in these negotiations.

The negotiations can go on up to three readings, during which the Parliament and the Council try to reach an agreement. But if the two legislative institutions reach an agreement before the third reading, the legislation can already be adopted in the second or first reading. As the figure below shows, legislation adopted in the third reading (or the conciliation phase) is more the exception than the rule today, as more agreements are made on first reading. The percentage of first reading agreements has risen significantly since the former Parliament's tenure (28%) to that of the last Parliament (64%).[2]

Figure 1. Percentage of legislative proposals settled on first, second and third reading



Source: S. Kurpas, C. Grøn and P.M. Kaczyński (2008), *The European Commission after Enlargement*: Does More Add Up to *Less*?, CEPS Special Report, CEPS, Brussels.

The fact that the majority of the legislative proposals are now settled on first reading has numerous implications for the way in which agreements are reached – and consequently for the Commission's opportunities to influence these agreements. The table below points out the most important differences between first, second and third reading procedures.

[2] CEPS (2008, pp. 30-31).

Table 1. The three readings of codecision at various stages

	First Reading	**Second Reading**	**Third Reading / Conciliation Phase**
Text that is being negotiated on the basis of	The Commission's legal proposal	The Commission's law proposal + amendments proposed by the Council and the Parliament	Conciliation text between the Council and the Parliament
The timeframe*	No time limit	Max 7 months	Max 2½ months
The voting rules of the Parliament	Simple majority (Majority of the given votes)	Absolute majority (Majority of the overall number of potential votes)	Simple majority
The voting rules of the Council	Qualified majority or unanimity (depending on the opinion of the Commission)	Qualified majority or unanimity (depending on the opinion of the Commission)	Qualified majority
The effect of the Commission's opinion on the Parliament's amendments to the proposal	Effect on the Council's voting rules[3]	Effect on the Council's voting rules	Commission as a broker between the Parliament and the Council
The Commission's formal right to withdraw a proposal	Yes	Yes	No
Formal meetings between the institutions	No	No	Yes

* The timeframe in second and third reading is in some cases dependent on whether the Parliament and the Council extends it.

Source: Own compilation based on Article 251 of the Treaty on European Union, 2006, pp. 153-4.

This tendency both strengthens and challenges the Commission. On the one hand the Commission's position is strengthened by the tendency to make first reading agreements because – in contrast to the second and third readings – the text being negotiated is on the basis of the Commission's original proposal. In the second and third readings the negotiations take place on the basis of the proposal as amended by the two legislative institutions. According to a number of our respondents the agreement is thus likely to be closer to the Commission's original proposal if settled on first reading than on second or third reading, where negotiations revolve around a text that might look very different from the original proposal.

Yet even here things are changing and are not so clear-cut. Some of our respondents pointed out that the Commission now consults the co-legislators even before presenting an official proposal

[3] If the Commission does not support the amendments proposed by the Parliament, the Council can only adopt them unanimously.

to the codecision procedure, in contrast to former practice. This means that the original proposal should not be read as the Commission's preferences only, as to some extent it also incorporates the positions of the Parliament and the Council. So this new dynamic makes it unclear whether or not it is actually of benefit to the Commission that the negotiations revolve around the text in the original proposal, since even this text is likely to have been influenced by the co-legislators.

Another condition that might strengthen the Commission in first – and second readings – is its ability to affect the voting rules that apply when the Council accepts or rejects legislative amendments proposed by the Parliament. If the Commission does not support the amendments, the Council can only adopt them with unanimity.

Finally, the Commission can withdraw its own proposal in first and second readings should it want to, but only as long as the Parliament and the Council do not reach an agreement on the proposal.[4]

On the other hand, first reading agreements are conducted in much more informal settings than the second and especially the third reading agreements, but this entails new challenges for the Commission. Contrary to the conciliation procedure – in which formal meetings between the Council and the Parliament with the Commission as a broker are mandatory – there are no formal meetings between the institutions on first readings.[5] Furthermore, first reading agreements are usually quicker than second and third reading agreements, and since no one automatically asks the Commission what it thinks, it has to be quick to promote its own opinions in the informal procedures in order to influence the laws being adopted.

2. A new negotiation culture

The growing tendency to make first reading agreements is closely coupled with the development of a new negotiation culture in the codecision procedure. On the basis of our interviews, we understand this new negotiation culture as consisting of the following three elements, which together contribute to the increase of first reading agreements.

1) *A growing openness and trust between the three institutions.* This development is brought about by the fact that the institutions are now more used to working with each other than they were in the early years of the procedure. The institutions now contact each other earlier in the legislative process than before, where they would only negotiate face to face in the conciliation procedure. The Parliament has gained respect from the Commission and the Council, who have come to understand that the Parliament is an active and reliable negotiation partner. This was particularly evident in the negotiations on the Service Directive and the REACH-directive.

2) *More informal negotiations between the institutions*. Where the contact between the institutions in the early years of the codecision procedure was mainly formal, as it took place in the third reading/conciliation phase, it is now mainly informal and ad hoc. As mentioned above, there is no formal way of coordinating opinions on first reading so the institutions mainly negotiate via informal meetings, telephone and e-mail.

3) *A growing tendency to make political deals.* There is a growing tendency to make political deals between the Parliament and the country holding the rotating presidency in the Council.

[4] Our respondents in the Commission agreed that politically it would be very costly for the Commission to withdraw a proposal once the Parliament and the Council have reached agreement. The Commission will not usually consider this option.

[5] The meetings in first – and second – readings are instead conducted as informal 'trilogues' between the institutions. A joint declaration between the institutions from 2007 (European Union, 2007) lays down some codes of conduct concerning the trilogues, though none of these are formally binding.

The changing presidencies have over the years also come to see the Parliament as a reliable negotiation partner and increasingly – as soon as the Commission has made a proposal – make bilateral and informal contact with the rapporteur in the Parliament to reach a quick deal that satisfies the wishes of the Council's presidency and the political ambitions of the rapporteur at the same time. The ministers of the changing presidencies often find it more convenient to talk directly with the rapporteur without involving the Commission. The rapporteurs and the ministers in the presidency are all politicians, unlike the more technical civil servants in the Commission who sometimes lack a political sense of the situation. The Commission is thus not always invited to these brief meetings, which usually take place during the first reading.

3. Implications for the Commission

All in all, the growing tendency towards first reading agreements and the development of a tightly-knit negotiation culture has major implications for the Commission's role in the negotiation process. The development demands that the Commission act more *politically*. In view of the fact that more agreements are reached as political deals between the country holding the rotating presidency and the rapporteur, the Commission has to be politically-minded, understanding which political interests are at stake and making sure that its own initiatives are in line with these political interests. This also implies that the Commission has to act quickly and flexibly in an informal environment: taking the initiative in meetings, setting the agenda and promoting its own opinions. The Commission has to 'stay in the race' as no one else will ensure its place there.

According to a number of our respondents – both inside and outside the Commission – the Commission has lacked this ability to stay in the race of late. At times the Commission has even been left out of important legislative proposals because it failed to act politically and be proactive in the informal phases of the negotiations. According to the Secretary General of the Parliament, Harald Rømer, this was recently the case in the adoption of the afore-mentioned REACH-directive and the Service Directive:

> What happens here is that the Parliament and the Council [rewrite the proposals of the Commission] together. If we look at the two big cases, 'REACH' and the 'Service Directive', they were in many perspectives made radically different from what the Commission originally had proposed.

4. The reason for the Commission's troubles

As stated above, one reason for the Commission's inability to act politically can be found in its dual internal organisation. The top political level consists of the Commissioners, their cabinets and the Secretariat General (SecGen), including the committee called GRI (Groupe des Relations Interinstitutionnelles) that coordinates the Commission's inter-institutional relationships in the codecision procedure. The bottom level includes the civil servants in the Directorates-General (DGs).

As the political level is generally aware of the need for the Commission to act politically, the Services' primary focus is on the practicalities of the legislative proposals. There are many politically-oriented civil servants working in Directorates-General, nevertheless in principle, these two modes of thinking do not always merge into an ability to act as a corporate entity, especially with the increase of first reading agreements. An employee in one of the commissioner's cabinets expresses the problem thus:

> … to be perfectly honest, we sometimes fail because our people don't understand the political game down in the detail. They understand all the technical details, but the

> political side of it, and how to act in the European Parliament, and how to act towards the MEP's, is not always the Commission's force.

The two levels tend to deal with law-making from different angles. This compounds the Commission's capacity to (re)act as a corporate actor and adapt strategically and coherently to the change in the negotiation culture – simply because different levels in the organisation perceive the situation in different ways and react differently as a result. Even though the top levels of the hierarchy have the political understanding required, they cannot control each and every bilateral contact between an employee of the Commission and, say, an MEP. As a result, the Commission risks throwing itself 'out of the loop' in the legislative process.

Conclusion

The Commission's troubles with first reading agreements: its failure to adapt to the more political and informal environment, cannot be solved by giving orders or introducing sanctions. **The lower technical level in the Commission, which makes up the majority of the Commission's employees, must learn to think politically instead.** We believe that this calls for a cultural change within the Commission. The Secretariat-General has taken some steps in this direction by publishing a guide with advice for civil servants to be more active and take initiative in the informal stages of the negotiations. This guide states, for example:

> There is nothing to stop the Member of the Commission in question from taking the initiative of convening a trilogue, where necessary, in which case it will be held on Commission premises. (Commission, 2008)

However, even though the civil servants interviewed at the technical level had heard of this guide, none of them had read it. If a cultural change that stresses the importance of thinking and acting politically is to take place, the SecGen must make sure that the message is heard. Publishing guides is not the only way to convey this message. Arranging appropriate training is crucial for the successful improvement of administrators' skills.

As an alternative, some would suggest a redefinition of the Commission's role and main targets. With a more efficient and active Parliament, which has proven trustworthy in difficult negotiations, the Commission's role may *over time* evolve from that of solely technical adviser to political player and mediator between the political actors (i.e. the Parliament and the Council). In a recent interview the President of the Commission, José Manuel Barroso, emphasised the Commission's "technical charisma" saying that:

> … the compromises between the two institutions that hold most power are prepared by the Commission's services, owing to their technical expertise in the different dossiers. (Riccardi, 2009)

Furthermore, President Barroso rejected the idea of competition between the three institutions and had always been in favour of their respective autonomy. He argued that the EU as such can only be strong if all the institutions work towards the same objectives.

Our investigation is in line with the understanding that the negotiation culture in Brussels is now much more open than ever before. Yet our interviews with representatives from the different institutions gave no sign of a more consensus-seeking climate; the relative power of each institution is still coveted.

Barroso's thoughts can therefore be interpreted in two ways: either the President thinks that Europe's common future is best served by complete loyalty between the institutions, leaving no room for disagreements or competition between institutions. Or he has realised that the Commission's relative position in the so-called inter-institutional triangle has been seriously weakened in recent years, and therefore wants the institutions to aim for the same goal in order

to cover for the Commission's loss of political ground. If the latter interpretation is valid, those politically-sensitive and politically-responsible actors in the Commission should consider how the institution can regain its position by adapting to the new circumstances and thinking and acting more politically.

If there is no change in the Commission's political stance, and with an increased number of first-reading agreements, we are likely to witness a further weakening of the institution's political standing vis-à-vis the Parliament and the Council.

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With the conclusion of the Convention, CEPS and other participating institutes decided to keep the network in operation. EPIN has continued to follow the constitutional process in all its phases: (1) the intergovernmental conference of 2003-2004; (2) the ratification process of the Constitutional Treaty; (3) the period of reflection; and (4) the intergovernmental conference of 2007. Currently, EPIN follows (5) the ratification process of the Lisbon Treaty and – should the treaty enter into force – (6) the implementation of the Treaty.

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