

# How to Negotiate under Co-decision in the EU Reforming Trilogues and First-Reading Agreements

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## Executive Summary

The Constitutional Affairs Committee is currently reviewing the European Parliament's Rules of Procedure to increase the effectiveness, transparency and inclusiveness of first-reading agreements under co-decision. This CEPS Policy Brief takes a stand as to which rules should be adopted to achieve these objectives. Given the steep rise of early agreements and Parliament's role as a guarantor of EU legitimacy, we place a premium on inclusiveness and transparency. The rules suggested are designed to maintain efficiency for technical proposals, facilitate effective decision-making on urgent files and increase the overall legitimacy of legislative decision-making in the EU.

The Policy Brief makes a number of recommendations.

To streamline the practice of co-legislation across committees, key parts of the Code of Conduct for Negotiating in the Context of the Ordinary Legislative Procedures should be incorporated into Rule 70 of the Rules of Procedure.

Committees should decide on a negotiation mandate, which should take the form of amendments to the legislative proposal. Based on the rapporteur's reasoned opinion, the committee should vote on whether an early conclusion

should be sought, and on whether the file, depending on its importance, should or should not be discussed in a plenary session (following the Council's practice of classifying files as B or A points, respectively). If a first-reading agreement is attempted, the decision to open negotiations and the mandate should be passed on to committee chairs and presidents. On A points, the plenary should be informed; on B points – or at the plenary's own request – the item should be debated, potentially amended and eventually voted on.

After agreement on the mandate, the European Parliament's team should take up negotiations in trilogue. Each political group should have the right to be represented on the team, led by the committee chair or one of the vice-chairs. The negotiation progress – and possible updates of the mandate by committee – should be traceable through systematic feedback and access to documents and reports. The committee would vote on the legislative compromise before passing it on to the plenary; before sending the European Parliament's position to the Council, the plenary would then adopt the compromise or de facto reject it by adopting additional amendments.

Accordingly, the efficiency gains of first-reading agreements would be preserved for technical dossiers, and swift adoption made possible for

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political but urgent files. Yet political files – as B points – would end up twice on the plenary’s agenda, with one opportunity for substantive input and amendment of the draft text. Notwithstanding the absolute majority required at that stage, going to a second reading would therefore become more attractive.

These suggestions would swing the power pendulum back to the plenary and ensure adequate inclusiveness and transparency, while safeguarding effectiveness. They strike a balance between the objectives set out by the Conference of Presidents without being too restrictive to be sustainable. By embracing these reforms, Members of the European Parliament would increase the quality of early agreements and the legitimacy of EU policy-making.

## Introduction

In April 2011, then European Parliament (EP) President Jerzy Buzek invited the Constitutional Affairs Committee (AFCO) to review Parliament’s rules on co-legislating at a first reading under co-decision. The reform was to make “the procedures more effective, more transparent and more inclusive”.<sup>1</sup> In 2009, Parliament had adopted Rule 70 of the Rules of Procedure and the Code of Conduct for Negotiating in the Context of the Ordinary Legislative Procedures as Annex XXI (then Annex XX) to bridge the tension between efficient negotiation and transparent lawmaking. A mere three years later, the rules are again up for debate.

At a crucial stage in the debate, this Policy Brief critically assesses both the status quo and the suggested reforms against three benchmarks of legitimate decision-making: efficient lawmaking, transparent legislation, and visible and inclusive deliberation.<sup>2</sup> Mindful of the EU’s need for

<sup>1</sup> European Parliament, Committee on Constitutional Affairs, *Working Document on Revision of Rule 70 of Parliament’s Rules of Procedure on Interinstitutional Negotiations in Legislative Procedures*, PE472.201v01.00, 14 September 2011.

<sup>2</sup> The assessment is based on the proposals made in three AFCO documents: *Working Document on Revision of Rule 70 of Parliament’s Rules of Procedure on Interinstitutional Negotiations in Legislative Procedures* (ibid.); the first *Draft Report on Amendment of Rule 70 of Parliament’s Rules of Procedure on Interinstitutional Negotiations in Legislative*

effective policy responses, the brief places a premium on transparency and inclusiveness. These norms spurred the promotion of Parliament to a genuine co-legislator in 1993, and they should guide the rules and practice of legislative decision-making. If the routine use of early agreements continues, transparency and inclusiveness can only be protected through a tighter regulation of negotiations at the first reading.

This Policy Brief thus calls for the following reforms:

- to enhance visibility, enforceability and consistent implementation, key provisions of the Code of Conduct should be incorporated into Rule 70,
- to strengthen transparency and accountability, political representation in trilogues and information flows between trilogues and committees must be guaranteed,
- to bolster the inclusiveness of decision-making, the plenary should be involved in the decision to attempt an early agreement and in mandating the EP’s negotiating team and
- to preserve effectiveness, a distinction should be made between plenary involvement on political and on technical files.

## 1. The current reform: Questions and stakes

The current reform is taking place against the skyrocketing of first-reading agreements, increasing from 28% in the 5<sup>th</sup> EP to 77% in the present legislative term<sup>3</sup> (Table 1). Early agreements<sup>4</sup> promote efficiency and

*Procedures*, PE473.959v01-00, 27 October 2011; and the second *Draft Report on Amendment of Rule 70 of Parliament’s Rules of Procedure on Interinstitutional Negotiations in Legislative Procedures*, PE473.959v03-00, 8 March 2012.

<sup>3</sup> For a comprehensive analysis, see Christine Reh, Adrienne Héritier, Edoardo Bressanelli and Christel Koop, “The Informal Politics of Legislation: Explaining Secluded Decision-Making in the European Union”, *Comparative Political Studies*, 2013, forthcoming (<http://cps.sagepub.com/content/early/recent>).

<sup>4</sup> Files adopted at an early second reading are also called ‘early’. This brief focuses on first-reading agreements because of their sheer volume, and because early second-reading agreements pose fewer democratic challenges:

interinstitutional compromise. More than 1,000 acts have been adopted under co-decision since 1999; the average length of time has gone down to 19 months; and the EU has responded swiftly to urgent policy problems, including climate change and financial supervision. Yet, early agreements are negotiated before Parliament adopts its opinion at a first reading, and they rely on deals struck in trilogues behind closed doors. Actors within and outside Parliament have expressed concerns about the lack of transparency and open debate – as put most recently by EP President Martin Schulz in his inaugural speech: “If our Parliament is to become more visible, if greater attention is to be paid to its views, a rethink on the issue of first-reading agreements is also essential”.<sup>5</sup>

Table 1. Co-decision files adopted in the 6<sup>th</sup> and 7<sup>th</sup> European Parliament

|                          | 1 <sup>st</sup> reading |                     | Early 2 <sup>nd</sup> reading |                     | 2 <sup>nd</sup> reading |                     | Conciliation       |                     | Total              |                     |
|--------------------------|-------------------------|---------------------|-------------------------------|---------------------|-------------------------|---------------------|--------------------|---------------------|--------------------|---------------------|
|                          | 6 <sup>th</sup> EP      | 7 <sup>th</sup> EP* | 6 <sup>th</sup> EP            | 7 <sup>th</sup> EP* | 6 <sup>th</sup> EP      | 7 <sup>th</sup> EP* | 6 <sup>th</sup> EP | 7 <sup>th</sup> EP* | 6 <sup>th</sup> EP | 7 <sup>th</sup> EP* |
| <b>Number of files</b>   | 321                     | 151                 | 42                            | 16                  | 61                      | 21                  | 23                 | 7                   | 447                | 195                 |
| (%)                      | 72                      | 77                  | 9                             | 8                   | 14                      | 11                  | 5                  | 4                   | 100                | 100                 |
| <b>Duration (months)</b> | 17                      | 16                  | 27                            | 24                  | 34                      | 33                  | 45                 | 29                  | 22                 | 19                  |

\* Until 14 March 2012.

Source: EP website, “Conciliations and Codecision, Statistics on concluded codecision procedures (by signature date)” ([http://www.europarl.europa.eu/code/about/statistics\\_en.htm](http://www.europarl.europa.eu/code/about/statistics_en.htm)).

Against this backdrop, Rule 70 and the Code of Conduct are now subject to review; their reform was launched by the Conference of Presidents (CoP), following input and analysis from

reliance on trilogues notwithstanding, they are debated and voted on in a plenary session at the first reading.

<sup>5</sup> See European Parliament, “Inaugural speech by Martin Schulz following his election as President of the European Parliament”, Strasbourg, 17 January 2012 ([http://www.europarl.europa.eu/the-president/en/press/press\\_release\\_speeches/speeches/sp-2012/sp-2012-january/speeches-2012-january-1.html](http://www.europarl.europa.eu/the-president/en/press/press_release_speeches/speeches/sp-2012/sp-2012-january/speeches-2012-january-1.html)). For an early analysis, see Henry Farrell and Adrienne Héritier, *The Invisible Transformation of Codecision: Problems of Democratic Legitimacy*, SIEPS Report 7 (2003), SIEPS, Stockholm (<http://www.sieps.se/sites/default/files/9-20037.pdf>).

committee chairs and the secretaries-general of political groups. Triggers for reform include concerns about the inferior legal status of Annex XXI compared with Rule 70, contradictions between the two sets of rules and inconsistent implementation of the Code across parliamentary committees. Within Parliament, committees and rapporteurs seem empowered at the expense of political groups and the plenary; vis-à-vis the outside, visible political contestation is seen to be lacking where the plenary acts as a mere rubberstamp.

AFCO began to debate the reforms in October 2011. The need to incorporate (key elements) of the Code of Conduct into Rule 70 seems to be agreed. Such a move would be commendable. It would make the existing rules more enforceable as well as more visible within and outside Parliament.

Yet, a number of challenges fuel continued controversy within and among political groups: first, the appropriate balance between efficient interinstitutional negotiation and transparent legislation; second, the potential reallocation of political power between parliamentary committees and the plenary; third, the tension between the rights of minorities and the majority within Parliament; and fourth, the repercussions for Parliament’s bargaining position vis-à-vis its co-legislators, the Council of the European Union and the European Commission.

Whether the current reforms will be an exercise in tinkering or a watershed depends on the response to two key questions:

- What role should the plenary play in deciding to open negotiations at the first reading and in mandating the EP’s negotiating team?
- How can adequate representation in trilogues be guaranteed, and how can information about trilogue negotiations be obtained?

## 2. Three benchmarks of legitimate decision-making

In addressing these questions, this brief does not start from an a priori positive or negative assessment of first-reading agreements, but recognises their complexity.

First, while concluded ‘early’, such agreements are not necessarily fast or ‘rushed’. Time limits do

not apply at this stage, and research shows that the first readings of salient and contested early agreements take longer than those of similar files agreed at a later stage.<sup>6</sup> This finding suggests that the analysis of important dossiers is not cut short. Second, while pre-negotiated behind closed doors, early agreements are debated publicly in committee and require a (simple) parliamentary majority for their adoption. Core standards of delegation and democratic representation are therefore met. Still, hinging upon agreement among the co-legislators before a first debate and vote in the plenary, early agreements do challenge key norms of parliamentary democracy: visible political contestation, the public justification of policy and transparency as a precondition for accountability.

Given the co-legislators' explicit commitment to early conclusion,<sup>7</sup> these norms can only be protected by the tighter regulation of trilogue negotiations. Any such regulation has to balance the three benchmarks of legitimate decision-making that underlie AFCO's reform mandate: effectiveness, transparency and inclusiveness.

**Efficient lawmaking** 'delivers the goods' and delivers them fast. Even so, policy goals can only be attained through effective implementation if speed is complemented by acceptability. Only then can efficient decision-making enhance the EU's output legitimacy by responding to those pressing political, economic and social policy problems that member states cannot solve in isolation.

**Transparency** allows actors within and outside the EU institutions to follow the legislative process, through access either to the negotiations and/or records and documentation. Openness is not merely a virtue of parliamentary democracy; it is also a precondition for accountability. Only where stakeholders – citizens, civil society and national parliaments – can clearly identify the positions taken, can they assign responsibility for

<sup>6</sup> Dimiter Toshkov and Anne Rasmussen, *Time to Decide: The Effect of Early Agreements on Legislative Duration in the EU*, European Integration Online Papers 2012, forthcoming.

<sup>7</sup> European Parliament, Council and Commission, Joint Declaration on Practical Arrangements for the Codecision Procedure, OJ C 145, 30.6.2007, pp. 5-9.

legislative outputs, scrutinise the legislative process and hold the legislators to account.

**Inclusiveness** allows for the representation of all interests within and outside the EU institutions in the legislative process. Inclusiveness also demands that policy proposals are publicly contested, deliberated and justified. As such, this norm underlies pluralist interest representation, minority rights and the accommodation of diversity; it also bolsters visibility and problem-solving through the public consideration of all relevant arguments.

First-reading trilogues enhance efficiency and problem-solving capacity. In the face of public concerns about the EU's ability to deliver, this is commendable. At the same time, trilogues challenge transparency and inclusiveness: the circle of decision-makers is restricted; negotiations take place behind closed doors; documents are not readily available; and the plenary must rubberstamp the compromise between the EP and Council to allow conclusion at the first reading. Where trilogues are used, Parliament – the EU's only directly elected institution – should uphold transparency and inclusiveness in its internal rules of co-legislation.

The following discussion considers how the current reform proposals can contribute to this aim.

### 3. How should first-reading agreements be struck?

Clear and enforceable rules of co-legislation are imperative. Yet, reform is a tightrope walk to over-regulation, which could push actors into new informal arenas outside the reach of regulation. Thus, effective and sustainable rules must not constrain negotiators unduly.

With this in mind, four critical issues structure the negotiation of a first-reading agreement:

- 1) opening negotiations with a view to a first-reading agreement;
- 2) the negotiation mandate;
- 3) the composition of the negotiating team; and
- 4) feedback to committees, groups and the plenary.

In taking up the reforms suggested below, Members of the European Parliament (MEPs) could (re-) structure political contestation so as to

make the EU's legislative process more visible for citizens and to strengthen the legitimacy of supranational policy-making.

### 3.1 *Opening negotiations with a view to a first-reading agreement*

This issue pits supporters of first-reading agreements against their opponents: the higher the threshold for opening negotiations, the less attractive first-reading agreements become.

#### *Assessing the status quo*

Rule 2 of the Code of Conduct suggests that opening negotiations at the first reading "shall be a case-by-case decision", "politically justified" either by the uncontroversial, technical content of the legislative proposal or by political circumstances, such as urgency and priorities. Following a presentation by the rapporteur, the committee shall take the decision.

Practice differs across committees, and attempting an early conclusion is now a rule rather than an exception. Political justification suffers if a specific vote in full committee does not take place. Where negotiations start before the formal vote on a mandate, MEPs – and committee backbenchers in particular – can feel sidelined by the negotiating teams and by a rapporteur's 'solos'.

It is **efficient** not to consult or inform the plenary about the decision to attempt an early conclusion. Relatively shielded from close monitoring and media attention, negotiators can work 'under the radar' with greater flexibility. In contrast, consulting the plenary would cost time and resources.

In terms of **transparency**, the Code's criteria for the decision to attempt an early conclusion are unspecific. Where this decision is not debated and voted on consistently across committees, MEPs from small political groups need to invest scarce resources to obtain information about the decision and to follow each file.

**Inclusiveness** depends on the case. Some committees are very consensual and inclusive. Yet, MEPs' opportunities to voice their opinions should not vary across committees or depend on the goodwill of the negotiators. At present, MEPs are sometimes left in the dark on trilogues that

have started, and the plenary is not systematically informed.

#### *Recommendations for reform*

Currently, efficiency clearly takes precedence over transparency and inclusiveness, although parliamentary decision-making should attach greater significance to the latter. This leads to the following recommendations:

- Committees are best placed to decide whether a first-reading agreement is desirable. Here, experts know for example whether an early agreement would be instrumental to facilitate a package deal. For the sake of transparency and inclusiveness, the rapporteur should clearly justify the quest for an early conclusion in committee, followed by a compulsory vote. This would incorporate Rule 2 of the Code of Conduct into the Rules of Procedure, but make public justification and a vote mandatory.
- Plenary involvement is a remedy only where the rapporteur, there too, justifies the decision. Involving the plenary without justification and debate would amount to mere symbolism. To safeguard efficiency, the plenary should thus be more narrowly involved: the President should simply announce the committee, rapporteur and file on which negotiations have started. This requirement should be complemented by a public registry of all the ongoing trilogues. While maintaining effectiveness, this reform would broaden information about ongoing negotiations and early agreements within and outside Parliament.
- Beyond information, the plenary should only be involved in highly political cases, where the decision to open negotiations should be coupled with a debate and the opportunity to amend the mandate.

### 3.2 *The negotiation mandate*

The mandate's origin and form touches upon the key questions of delegation and control. Should the plenary have a prerogative to mandate Parliament's negotiators in trilogue?

### *Assessing the status quo*

According to Rule 70(2) a mandate, orientations or priorities should “in principle” be adopted by majority in committee. By contrast, Rule 4 of the Code of Conduct stipulates that amendments are adopted in a plenary session or by committee. Guidance without a vote is reserved for “exceptional” cases. This is a woolly set of rules, and accordingly, the mandating practice differs across committees.

With few exceptions – including the financial supervision package, where plenary amendments were the basis for negotiations – the role for the plenary or indeed for political groups at the first reading is very limited. Both only approve or reject an agreement *ex post*. Where they choose to amend, the compromise between Parliament and Council breaks down, and the file cannot be adopted at the first reading. This implies a strong, intra-parliamentary power shift to the committee and its negotiators. Even at the committee level, rank-and-file MEPs are disadvantaged vis-à-vis the negotiating (shadow) rapporteur(s) and have trouble holding them to account. This problem is particularly acute where mandates are broad.

The current practice is **efficient**. Loose mandates give negotiators flexibility, allowing for a compromise-oriented, problem-solving approach. A mandate in the form of amendments is more rigid, but could help focus the negotiations. Plenary involvement would cost time, not least owing to long intervals between sessions, while the Council can flexibly put items on the agenda of the frequent meetings of the Committee of Permanent Representatives (COREPER).

**Transparency** calls for a clearly defined mandate that allows the negotiators, other MEPs and the public to assess outcomes against objectives. Detailed and specific debates on the issues at stake require that MEPs and political groups publicly justify their positions and priorities. This could ensure greater visibility and deliberation. As plenary debate in the case of a first-reading agreement often amounts to mutual backslapping rather than controversy about political differences, there is a serious transparency concern with potential repercussions for Euroscepticism: the absence of visible political differences facilitates blaming ‘Brussels’ and gives column inches and airtime to fringe groups.

When it comes to **inclusiveness**, political groups and the plenary have limited input into the negotiations until a later stage, when, in the case of a first-reading agreement, the ship has already sailed. This makes the case for earlier plenary and thus groups’ involvement on politically salient proposals. In such instances, the plenary should be involved beyond being informed about the opening of negotiations (see above).

### *Recommendations for reform*

First-reading agreements have shifted power towards committees. To increase inclusiveness and transparency, there needs to be a rebalancing by granting the plenary earlier influence over the negotiations. The key questions then become which files are debated in the plenary session, and who selects them. Given the inherently political nature of this decision, the most appropriate body would be the CoP. But other levels in the parliamentary hierarchy, such as the responsible committee, the Conference of Committee Chairs (CCC) and the plenary, will arguably seek to protect their turf.

- Mandates themselves should take the form of amendments rather than guidelines, allowing better monitoring by outside groups, as well as MEPs in and beyond the committee. This is a precondition for holding negotiators to account.
- We back a proposal launched in AFCO, mirroring the Council’s practice of classifying files as A or B points. B points are politically salient or sensitive files whose mandates need to be discussed further, ultimately in the plenary. As the file is passed through the hierarchy to the plenary, the CCC and CoP – and eventually the plenary itself – could recategorise it. The change would be transparent and justified. This would respect the authority of leadership, and safeguard the rights of associated committees (Rule 50, Rules of Procedure) and minorities. The procedure would align the co-legislators’ procedures; it would be inclusive and transparent but allow coping with a high workload efficiently.
- To ensure transparency, the plenary would be informed about all plans to start trilogues (A points). It would be more substantially

involved on B points. A points could be amended in order to recategorise them as B points for debate and substantive changes. The threshold for recategorisation and amendment should be equivalent to the current one at the first reading (i.e. a committee, a group or 40 MEPs). This at-request-only involvement would strike a balance between minority rights and effective parliamentary conduct.

- It is crucial that plenary involvement should include debate and the possibility to amend the proposal. Plenary involvement is only a means to the ends of inclusiveness and accountability, and these ends can only be achieved if deliberation, contestation and thus visibility are facilitated. The closed vote on a mandate, as foreseen in Amendment 5 in the second *Draft Report* (see footnote 2), should be dropped, as it would result in the plenary rubberstamping many mandates without debate. Instead, a vote should always be coupled with a debate and the possibility for amendment (see Amendment 6, second *Draft Report*).

In practice, this procedure dis-incentivises the use of first-reading agreements. Actors would be encouraged to refrain from early conclusion on politically sensitive files, and democratic accountability would be affirmed. Thus, it combines the best of all worlds: for urgent, but sensitive files, a first-reading agreement with plenary involvement would be possible, increasing legitimacy; for technical files, the present *modus vivendi* would largely be upheld, ensuring efficiency; and finally, other politically controversial files would be pushed back to a second reading.

### 3.3 *The composition of the negotiating team*

Given the restriction and seclusion of trilogues, the question of representation goes to the core of democratic concerns about first-reading agreements.

#### *Assessing the status quo*

There is no provision on composition in Rule 70; according to Rule 3(1) of the Code of Conduct “[a]s a general principle, political balance shall be respected and all political groups shall be

represented at least at staff level”. Trilogues have been broadened since 1999. Shadows and staff of political groups are mostly invited, and committee chairs often attend. Still, the composition of the negotiating team varies with files, committees, the rapporteur’s party, experience and trust, and the cohesiveness of the committee’s position.

The current practice is **efficient**. Committees can tailor the negotiating team according to expertise, cohesiveness and interinstitutional contestation. Not all files require a representative (and hence a large) team; where the committee is consensual and where a file is uncontested, MEPs should use their resources more effectively. In addition, compromise is not necessarily facilitated by a large EP delegation, which can challenge coherent representation vis-à-vis the Council.

In view of **transparency**, the status quo is problematic. Where the team’s composition varies between files and committees, it is difficult for actors within and outside Parliament to know who represents them in trilogue, to identify access points, to assign responsibility and to hold de facto decision-makers to account. This challenge is the more severe the more restricted the circle of MEPs briefed about the negotiation process and the more frequently this briefing takes place in camera (see below).

**Inclusiveness** is not guaranteed. Where decisions are de facto taken in trilogue, only attendance in this forum can fully protect minority rights. This is particularly true for small political groups. They hold fewer rapporteurships, and lose a channel of influence where the plenary rubberstamps at the first reading. Yet where the mandate is clear and publicly debated (see above), and where regular and comprehensive feedback is given to the whole committee, the challenge to intra-parliamentary inclusiveness is less severe (see below).

#### *Recommendations for reform*

Accountability requires that trilogue negotiators can be scrutinised; inclusiveness demands that minority rights and open debate are protected. Attendance in trilogue should be regulated systematically rather than be determined ad hoc, and the EP’s negotiating team should be politically balanced.

- The restriction of trilogues is less problematic than the variation of their membership. A democratic legislative process needs visible and predictable chains of delegation. Rank-and-file MEPs and the public must know who represents Parliament (and their interests) vis-à-vis the Council at a first reading, and having to search this information anew for each case puts an undue strain on resources. A reformed Rule 70 should therefore clearly define the composition of the EP's negotiating team.
- Coupling the decisions on composition and opening negotiations is flexible but insufficiently protects inclusiveness. Access and scrutiny are only guaranteed where all groups attend trilogues, at the level of coordinators, shadows or staff. Building on Rule 3 of the Code of Conduct, Rule 70 should mention "political balance", un-hedged by formulations like "[a]s a general principle" or "as appropriate". Yet to balance inclusiveness and an efficient use of resources, the rule should solely relate to invitation: groups should have the right, not the obligation, to be represented in trilogue.
- Leadership by the committee chair, as suggested in the second *Draft Report* (see footnote 2), would strengthen transparency further. Committees are the lynchpins at the first reading, and hence they should check trilogues. While the rapporteur should negotiate, the chair is best placed to represent the committee as a whole, and as such s/he should be tasked with leadership and reporting back. Given the volume of trilogues in co-decision committees, these tasks can be delegated to a vice-chair.

### 3.4 *Feedback to committees, groups and the plenary*

Trilogues take place behind closed doors. The questions of who is briefed about the negotiation and how therefore affect a core standard of democratic lawmaking: openness.

#### *Assessing the status quo*

Rule 70 has no provision on feedback; Rule 6(1) of the Code of Conduct prescribes that "[a]fter each trilogue, the negotiating team shall report back to

the committee" and "make all texts distributed available". Nevertheless, political groups, civil society and national parliaments are concerned about their ability to follow – and influence – the first readings.

In practice, after each trilogue, feedback is given to shadow rapporteurs and the staff of political groups, often in writing. But often the full committee is briefed only after several rounds of negotiations. Depending on the sensitivity of information and time constraints, feedback is given to coordinators alone or it is offered in camera.

This is commendably **efficient**. Restricted reporting is mandatory under time pressure; it is also necessary to preserve the discretion and trust required for the give-and-take between the Council and Parliament. Once briefed, shadows and coordinators can provide feedback to their groups, thereby assuring information flows. More limited feedback thus promotes agreement and saves parliamentary resources.

**Transparency** raises concerns. A precondition for accountability, the ability to follow the legislative process is key in a parliamentary democracy. In the case of a first-reading agreement, committees finalise the legislative work without further amendment by groups or the plenary. To alleviate information asymmetries, to control negotiators and to scrutinise the legislative compromise, they must be informed about trilogues and have access to documentation.

In view of **inclusiveness**, the current practice is equally problematic. Trilogues take place behind closed doors, and at the first reading the plenary mostly rubberstamps. The committee, therefore, is the only forum in which to express interests, advance arguments and provide public justification. This is not just a core demand of democratic lawmaking. The negotiating team's mandate can only be updated on the basis of full information about the process.

#### *Recommendations for reform*

Co-decision was introduced to make EU legislation more open and visible, and thus access to information is paramount. If information cannot be obtained through physical access, then comprehensive feedback, which is consistent across all committees, must be ensured.



- To demonstrate that the EP takes openness seriously, and to signal the importance of information, access and scrutiny at all stages of the legislative procedure, Rule 70 should expressly regulate information flows from trilogues to committees.
- At the first reading, committees are key to check political power and provide deliberation. Feedback should be given to the full committee, and documents used in trilogues should be circulated. Briefing a restricted circle of a chair, shadows and coordinators is insufficient. To ensure transparency outside and within Parliament, a public registry of all trilogues should allow actors to keep track of negotiations, and reporting back should, wherever possible, take place in an open meeting rather than in camera. Effectiveness may call for discretion in an ongoing negotiation, but once an act is adopted, all documents should be publicly accessible.

Feedback is a two-way process offering an opportunity to raise new arguments and to justify policy objectives. Guaranteed feedback therefore protects inclusive debate, and makes updates to the team's mandate transparent within and outside Parliament – a precondition for the effective scrutiny of the legislative process.

- Given its key role at the first reading, the committee should debate and vote on any compromise reached between Parliament and Council. It should be the committee – not a restricted group of actors – that tables the compromise in the plenary session. Rubberstamping by the plenary at the first reading can only be justified where the full committee takes a public decision on the legislative compromise.



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