

House of Lords European Union Committee  
Inquiry into the Implications of Codecision for National Parliamentary  
Scrutiny

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*1. Introduction*

The focus of this evidence is upon the evolving operation of the codecision procedure and the implications of the increased use of informal meetings and early first and second-reading agreements, referred to below as fast-track procedures. There is no doubt that the increasing 'informalisation' of EU policy-making under codecision raises a number of challenges for accountability and transparency within the EP and Council, which makes it harder for national parliaments to scrutinise effectively decisions made at the European level. Meetings are held behind closed doors with only a few key actors involved and there are often serious time pressures placed upon all parties. Consequently, the institutional forums that are supposed to debate and scrutinise decisions at the European level - the European Parliament's plenary and meetings of the competent Council of Ministers - are being used to rubber stamp agreements negotiated by a select few. Under these circumstances there is often little if any scope for national chambers to scrutinise or shape government decisions beyond the initiative and proposal phases of decision-making.

*2. The Codecision Procedure*

Under codecision (Article 251 TEC) the European Parliament (EP) has up to three readings of legislation, the opportunity to reject legislative proposals and a right to face-to-face negotiations (conciliation) with the Council when the two sides cannot agree. The conciliation process is conducted by equal size delegations from the EP and Council (up to 27 delegates from each) with the Commission present as an interlocutor and facilitator of agreement.

3. The procedure has evolved considerably since its inception in 1993 through the development of informal norms, some of which have been formally institutionalised via Treaty revisions in 1999; via internal rules changes; and via inter-institutional agreements between the Commission, Council and the Parliament. The principal reforms of interest to this committee have been:-
- The increased use of informal meetings as a means to reach agreement
  - The development of fast-track first-reading and second-reading agreements.

*4. The Use of Informal Meetings*

It rapidly became apparent that conciliation committee meetings were not the best negotiating forums, not least because of the size of the delegations. Moreover, only a few people within a meeting have the requisite knowledge to be able to make a meaningful contribution to the negotiations. Consequently

the EP and Council have, over the years, developed a system of informal meeting known as *trilogues* where a few key personnel meet to hammer out a compromise agreement that is subsequently endorsed by the committee. The full conciliation committee tends to be reserved for endorsing agreements taken by the *trilogue* and for discussion of issues that have been difficult to resolve.

5. Whilst the development of these informal norms has increased the efficiency of decision-making, it has also made the process less transparent. There is little or no scope for national parliamentary committees to exercise scrutiny over these private negotiations – the time deadlines involved (a conciliation committee has to be convened within six weeks of the Council's opinion on the EP's second reading and must reach agreement within six to eight weeks) means that there is little or no opportunity for national governments to report back to national parliaments. However, if a proposal goes all the way to conciliation there is the opportunity throughout the legislative process to track what has been decided and potentially to feed into the process via national delegations in COREPER or via national MEPs.
6. Another point worth noting is that the wording of the Amsterdam Treaty which provides the basis for the current operation of the procedure was deliberately drafted to preclude the possibility of the EP introducing into the negotiations matters that had not been covered by its second-reading amendments. However, the ECJ ruling in the IATA case (Case C44/04) opened the possibility for items to be introduced into the conciliation discussions that have not previously been the subject of EP 2<sup>nd</sup> reading amendments, thereby potentially widening the scope of discussions and further limiting the ability of national scrutiny committees to exercise genuine oversight.
7. *The development of fast-track procedures at first and second reading.*  
The fast-track procedure under codecision is increasingly being used at first and second reading. The fast track process at first reading was introduced in 1999 to speed up decision-making particularly on policies where there was no substantial disagreement between the EP and Council or where the proposals concerned were merely technical, for example, recasting directives with no substantive policy implications.
8. However, over time the fast-track first-reading procedure has been used more extensively, particularly in the current 2004-2009 session of the EP. The EP's own figures show that the process was used in 28% of cases between 1999 and 2004, but that increased to 63% of cases between 2004 and 2006. The fast-track first-reading procedure is being used on complex and controversial packages of legislation such as the recent Climate Change Package agreed in December 2008. There is anecdotal evidence of increasing pressure from states holding the Presidency for the fast-track procedure to be used on dossiers for which they wish to take credit.
9. Similarly the EP has now developed a norm of using fast-track second reading procedures or 'early agreements'. This process has been used increasingly

since 2004, accounting for 15% of codecision cases between 2004 and 2006. I anticipate that figure will be much higher once the figures from 2007-2009 are calculated at the end of the current session. In research I have conducted with colleagues at the University of York (Professor Neil Carter and Dr Nicholas Worsfold) investigating environmental policy we found that 31% of the cases that we have analysed between 2004 and November 2008 were concluded via fast-track second reading agreements.

*10. How does the fast-track procedure operate?*

Under the fast-track first-reading procedure the committee's report is taken as a mandate for negotiations with the Council. There is a joint declaration between the institutions spelling out how these negotiations should be conducted and the EP has its own rules outlining best practice. Nevertheless, committees and rapporteurs take different approaches. Generally speaking the committee rapporteur and shadow rapporteur are delegated responsibility for conducting negotiations with the Council. The Council in turn delegates responsibility for conducting negotiations to Presidency representatives. The Presidency follows discussions on the relevant dossiers in the EP committee and once the report has been adopted by the committee, the Council's representatives open informal negotiations with the EP's rapporteur. The two sides negotiate a compromise which is then endorsed by the Council and submitted to the EP's plenary normally as a block of amendments that are endorsed. In essence the process misses out the formal step of the EP's plenary adopting the committee's report and amendments to that report. It raises the prospect of some viewpoints in the EP not being heard and it also potentially reduces the scope for national delegations in Council to feed into the process, as it is the Presidency that takes responsibility for conducting negotiations. There is pressure placed upon both EP and Council delegates to agree within tight timeframes.

11. Under a fast-track second-reading procedure the EP adopts its first-reading opinion and then opens negotiations with the Council before the Council has formally reached its common position. The final text agreed between the EP and Council delegation is then recommended to the EP's plenary for a second reading which simply endorses the product of the negotiations. As with the fast-track first-reading procedure there is scope for pressure to be placed upon national delegations to reach agreements under a very tight timetable, with limited scope for discussion.

*12. What are the implications of the wider use of these procedures for scrutiny by national parliaments?*

The question as to the impact of the increased use of these procedures is entirely dependent upon the norm of scrutiny currently employed. If scrutiny normally takes place at the stage at which the Commission proposes legislation with little further input as the legislative process unfolds (as is often the case in the UK) then the development of these new informal norms under codecision will have limited, if any, impact. If, however, national scrutiny committees wish to track the progress of some dossiers, the use of fast-track procedures will make doing so more difficult, but not impossible. National scrutiny committees have two principal means by which they can be

kept informed of the progress of negotiations via the European Parliament or via the Council.

*13. Tracking proposals via the EP*

National scrutiny committees that wish to track proposals subject to fast-track procedure at first reading will inevitably have to focus upon the discussions within the EP committees concerned, as it is the committee report that is taken as the mandate for negotiation with the Council. The EP's committees in turn could and should think about how they can make those discussions more accessible to a wider public by, for example, publishing more detailed records of meetings and roll-call votes. National scrutiny committees may wish to discuss with the EP ways in which they can be kept routinely informed of progress via, for example, committee secretariats. The EP has created a new directorate in its secretariat with responsibility for relations with national parliaments, which may offer a medium for communication with national scrutiny committees and the national parliamentary offices based in Brussels.

*14. Tracking proposals via the Council*

National scrutiny committees may wish to request that when proposals are made that the government informs them if the dossier is likely to be the subject of a fast-track first reading procedure and of the likely implications for the government's position.

15. They may wish on controversial proposals to push their governments to ask for longer decision-making processes so that they can scrutinise decisions taken at first and second reading. There is currently a very real risk of national delegations being rushed under both fast-track approaches to sign up to an agreement where there has been little scope for wider discussion within the Council. Committees may also wish to consider asking their governments to feedback information on the progress of dossiers in the EP's committees and their likely position on the amendments under discussion.

*16. Conclusion*

The inevitable problem faced by national scrutiny committees concerns the timetables for response and the ability of national delegations to shape the final legislative proposal. EU legislation is the product of a compromise between 27 states, the voice of an individual state is now more likely to be drowned out and the pressure to agree quickly with limited discussion can limit the scope of national scrutiny committees to shape proposals beyond the initial proposal stage. Committees should then consider other means by which they scrutinise EU legislation; for example, by using and building upon their existing links with the EP to be able to track legislation particularly when it is at the committee stage.