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A living legislature: The EP as an ordinary legislator

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INTRODUCTION

“What role do norms play in political change, whose norms matter, and how do we know they matter?” These questions have come back on the research agenda of political science and international relations scholars in the last two decades (March and Olsen 1989; Krasner 1988; Ruggie 1993; Finnemore and Sikkink 1998). As norms have regained a prominent place on the research agenda, calls have emerged to explore more systematically the link between social context and rationality (Finnemore and Sikkink 1998). Scholars from various theoretical traditions have highlighted the possibility of cooperation between rationalist and sociological-constructivist paradigms and have outlined research strategies and methodological approaches (Jupille, Caporaso and Checkel 2003). This paper explores possibilities of cooperation between rationalist and sociological insights by examining the institutionalization of legislative powers in the European Parliament (EP). By this, we refer to the social processes unfolding as the EP goes from being a *de jure* legislator (in virtue of its constitutional empowerment in successive EU treaties), to *becoming a living* legislator (in virtue of its everyday engagement in EU ordinary legislation subject to the so-called co-decision procedure). Between 1994 and 2014, the number of policy areas constitutionally subject to co-decision was multiplied by five, putting the EP on par with the Council of Ministers (‘Council’) in a broad range of domains ranging from highly redistributive types of policies such as the Common Agricultural Policy to technically arcane policies in the domain of financial regulation and harmonization. During the course of the 7th term, the EP had passed 488 legislative acts under co-decision (European Parliament, 2014a). In legislating, Members of the European Parliament (MEPs) develop and mobilize a collection of norms, which regulate their collective behavior while infusing it with purpose. In this paper, we are interested in tracing and explaining this developing body of norms, drawing on the rich theoretical scholarship on norms.

Investigating the institutionalization of the EP’s legislative power is intrinsically important as it pertains to the evolving dynamics of regional and global governance. The EP’s legislative empowerment is a key and unprecedented development in regional governance. Quite uniquely in a comparative perspective, it lays the foundations of a new kind of parliamentary order developing across borders and involving several levels of political jurisdiction. This emerging “multi-level parliamentary field” is centered on the Council of Ministers and the EP, and embedded in a broader web of ties between EU-level legislators and the EU’s 28 national parliaments (Crum and Fossum 2009; Rose 2013; Rittberger and Winzen forthcoming). Understanding the working and institutionalization of this new kind of parliamentary order is not just relevant for scholars of EU politics, but more broadly for scholars of regional and

global governance. As a result, directly-elected MEPs have a direct say in how global regulation in a broad range of domains is 'implemented' in Europe and they may now influence global negotiations through shaping the EU position over the long-term and exercising their power of consent. Such developments would have been hard to predict only ten years ago, and they are certainly not something that observers of global governance would have anticipated. Global governance has often appeared to be the more or less an exclusive playground of executive and judiciary governmental officials, leaving parliamentary actors as the losers (Slaughter 2004).

Furthermore, investigating the institutionalization of the EP's legislative powers is theoretically important for it will help us address questions of theoretical dialogue that are on the frontier of the current research agenda. On the face of it, the emergence of 'in-house' EP norms of law-making is unlikely to happen. The legislative empowerment of the EP has generated an intense rivalry between Council and the EP. After an initial period of regular power contests, the two legislators have found a *modus vivendi* in trilogues, i.e., informal meetings between representatives of the EP, Council, and Commission with a view to adopt early agreements and thus facilitate the legislative coordination. These elements lend *prima facie* credibility to arguments about the development of a thin, or strategic normative environment. In this environment, collective action problems would drive institutional innovation and efficiency calculation as a basic logic of individual as well as collective behavior. If norms developed at all, they would originate in the inter-institutional interactions underpinning trilogues, and be largely shaped by the Council's diplomatic culture and internal power structure. The reason for this is that trilogues are now used on a broad scale and take place in a secluded setting—two elements (institutional density and insulation) that are known to facilitate the development of trust and socialization.

However, the emerging scholarly literature illuminating these questions does not point to a clear, let alone complete, picture. What we have instead is an emerging debate between two positions. On the one hand, we have a 'realist' position indicating that Council diplomacy has tamed EP power (Jacqué 2009; Burns et al. 2013; Ripoll Servent 2011; Reh et al., 2013). This view is underpinned by a combination of rationalist and sociological-constructivist arguments. On the other hand, we have a 'public politics' position pointing to the development of endogenous norms of legislative behavior and elements of a collective identity of the EP as a 'normal' parliament (Roederer-Rynning and Greenwood 2015). This view is more squarely embedded in the sociological-constructivist tradition although it leaves room for a dialogue with rationalism. This debate raises a series of important questions. To what extent do MEPs feel bound by norms of law-making? What are these norms? Who promotes them and how? Who adopts these norms and through what mechanisms are they transmitted? What is the logic of norm-compliant behavior? Furthermore, we need a more systematic examination of these questions. Norm promotion and diffusion takes time; and it is not an even or irreversible process. Therefore, we need to incorporate time and a comparison of practices across EP committees.

Our aim with this paper is to provide more systematic evidence on the institutionalization of the EP's legislative powers and to probe the respective ability of rationalist and sociological-constructivist frameworks to illuminate observed empirical patterns. Our working assumption

is that neither framework fully explains what is going on and that we need to rely on a combination of insights from these two perspectives. Prospects for a theoretical synthesis probably lie in developing a framework that allows for theorizing sequences with different logics (institutionalization over time) and, or specifying domains of application for the respective theories at a given point in time (institutionalization across EP committees).

We proceed in three steps. First, we offer an overview of the EP as a legislator, including a concise review of how the EP's legislative remit has increased in successive EU Treaties (constitutional basis), how this has translated in everyday policy-making (legislative record on co-decision over time), and how various EP committees are involved in joint-legislating (the distinction between so-called 'legislative' and 'non-legislative' committees). Second, we specify the rationalist and the sociological-constructivist images of EP behavior in law-making, focusing on distilling key assumptions and their evidentiary implications (Lewis 2003; Jupille, Caporaso, and Checkel 2003). These theoretical sketches allow for sketching out a broad range of ideal-types of EP behavior ranging from: a strategic behavior displaying little evidence of normative density; a realist behavior attesting to the pull of inter-institutional norms; and a public politics behavior attesting to the pull of intra-institutional (in house) norms. Third, we set out to probe the usefulness of these analytical sketches based on interview and documentary data. Reality, as mentioned, is likely to display various mixes of rationalist and sociological-constructivist logics, and the ideal-types delineated in the theoretical part. We structure our empirical investigation around a time dimension (process tracing of the reform of the EP rules of procedure leading to Rule 73 and 74) and a cross-committee comparative dimension as a way to probe the domain of application of different theories (scope condition).

THE EP AS AN ORDINARY LEGISLATOR

The EP is a unique exemplar of a supranational parliament endowed with a real legislative function (Rittberger 2005). The transformation of the EP from a 'talking shop' into 'a working parliament' with legislative powers started with the Single European Act (1987) and the introduction of a proto-legislative procedure involving the EP ("cooperation" procedure) and picked up pace in the 1990s with the introduction and normalization of the co-decision procedure, today called the ordinary legislative procedure. Four indicators sum up this transformation. First, the number of policy areas subject to co-decision was multiplied by 5, from 15 to 85, between Maastricht (1993) and Lisbon (2009). Second, over the same period, the number of co-decision files adopted by the EP and Council almost tripled over the same period—from 165 in EP4 to 488 in EP7. Third, as the volume of legislation increased, the legislative process de facto became a single-reading process, with 85% of all co-decision files adopted in first reading in EP7, as opposed to 29% in EP5, when the EU Treaties first opened up the possibility to conclude co-decision files in first reading. The 'critical tipping point' (Héritier and Reh, 2012) was reached during EP6 (2004-2009), where by mid-term half of all legislative files were adopted through early legislative agreements. Fourth, with the EU legislation now being increasingly adopted in first reading, trilogues have become a permanent feature of the EU legislative process. Trilogues have no reference in EU Treaties. They are informal inter-institutional negotiations between the representatives of the EP, the Council, and the Commission with a view to adopting a co-decision. They first emerged after the 1992

Treaty of Maastricht as an informal mechanism aimed at facilitating agreement during the ‘last chance’ stage of conciliation between the EP and the Council. They grew into more general use when ‘both the Parliament and the Council quickly recognized that the plenary meetings of the Conciliation Committee were unsuited to striking deals and compromises’ (European Parliament, 2013, p.4). In EP7, 1541 trilogues were held for a total of 488 adopted co-decision files (European Parliament, 2014b).

This transformation affects the daily policy output and practices of the EP as well as its organization. Co-decision legislation has become a significant part of the EP’s activity. A testimony to the dynamism of co-decision, all EP committees in EP7 (except for PETI) had co-decision files, even though the legislative reality they dealt with was very different (table 1).

- Eight committees were *routine legislators*: these committees produced a high volume of legislation (represented in dark shade in table 1), accounting for more than 75% of all EP7 adopted co-decision files. Interestingly, routine legislators include both newcomers to co-decision (LIBE; INTA) as well as established players (ENVI, ITRA, TRAN, IMCO, ITRE, and ECON). To this core group, one may add four committees (in light shade in table 1) dealing with co-decision somewhat less regularly and accounting for 18% of all EP7 adopted co-decision files: these include both newcomers (AGRI, PECH) and established players (EMPL, REGI).
- A fairly large group were *exceptional legislators*: these seven committees dealt with co-decision on an exceptional irregular basis (5% of all EP7 co-decision files).

All EP committees relied on informal trilogues; but ECON clearly emerged as the single-largest consumer of trilogues, accounting on its own for more than 20% all trilogues held in EP7.

Table 1 here

The organization of the EP legislative process is structured around the committees and a few other political and administrative bodies, some of which have grown over time as a result of the EP’s effort to provide its members with technical and political support in the legislative process.

The **EP’s standing committees** have been called the ‘legislative backbone’ of the EP (Westlake 1994, 191). Once the plenary has referred a Commission legislative proposal to a committee (then called ‘lead committee’), it is within the lead committee that EU legislative proposals are first debated, EP amendments drafted, and the negotiating mandate voted, before the opening of inter-institutional negotiations with Council and Commission representatives.¹ Key actors in EP committees have traditionally been the Rapporteur, the committee member designated to draw up the committee’s legislative report and the political coordinators, who coordinate the political groups’ position within the committees and provide the political glue holding the committee’s position together. Recently, the November 2012 reform of the EP Rules of Procedure strengthened the role of the committee chair (or designated vice-chair) by

¹ The exception of a plenary endorsed mandate, under Rule 74 of the EP Rules of Procedure is discussed later, as well as provision for associated (Rule 54) and joint committees (Rule 55).

making her/him a *de jure* member of the EP negotiating team in trilogues (Rule 70 continued as Rule 73 in EP8) and providing for the possibility of involving the plenary in the adoption of the negotiation mandate (Rule 70a, continued as Rule 74 in EP8). This reform specified and made binding the *Code of Conduct for Negotiating in the Context of Codecision Procedures*, concluded at the end of the sixth term, and established as an Annex (XX) to the Rules of Procedure (Héritier and Reh 2012).

Besides the standing committees, two other political bodies structure the legislative process of the EP. The **Conference of Presidents (CoP)** is the creature of the EP's political groups. It is composed of the President of the EP and the chairs of the EP's political groups and its core responsibility is to “manage” the “political aspects of its activities, including the organization of Parliament's work...” As regards the internal work of the EP, the CoP may thus initiate parliamentary reform, arbitrate as last resort in disputes between committees, etc. The **Conference of Committee Chairs (CCC)** is composed of the chairs of all EP standing and special parliamentary committees. It meets once a month in Strasbourg. Its role is to “monitor the progress of work in committees, and ensure cooperation and coordination between them. It also submits recommendations to the CoP regarding, inter alia, the draft agenda of forthcoming plenary sessions” (European Parliament 2014a, 29). Interviewees regularly described the meetings of the CCC as a source of tedium rather than inspiration.

On the administrative side, the **committee secretariats** are a key legislative resource. Under current EP rules, secretariat members are required to move twice in their first seven years, and once thereafter, which provides for both a loss of institutional memory, as well as an influx of new experiences. Furthermore, the horizontal **Conciliations and Codecision Unit (CODE)** of the EP, currently 6 administrators and 6 assistants, assists the committees with procedural strategic advice. This involves supporting measures like intranet documentation offering guidance for those engaged in organizing and conducting trilogue meetings, informal but regular learning networks, and (new to EP8) the establishment of ‘project teams’² to support members involved in trilogues, including assignment of designated personnel from CODE to each legislative file to act in an advisory capacity where needed. Finally, the **unit for coordination of legislation (CORDLEG)** of roughly equivalent staff serves the CCC while coordinating the workflow of EP committees. For the first time at the end of EP7, it published summary statistics on various aspects of the committee's legislative work, including trilogue activities, challenges of referral decisions, organization of public hearings, etc.

In a subsequent section, we examine the role that these actors have played in producing, diffusing, and institutionalization norms of legislative behavior among MEPs. Next, we turn to the conceptual framework of our analysis.

NORMS AND THE INSTITUTIONALIZATION OF THE EP's LEGISLATIVE POWER

² These involve a list of names drawn from a committee secretariat, lawyer-linguists, members of the research services, as well as CODE members.

Norms are generally described as prescriptions of social role, i.e.: rules or standards of behavior ‘in terms of rights and obligations’ (Krasner 1983, 3) (“do’s” and “don’t do’s”), applying to specific situations involving two or more actors orienting themselves towards one another. These rules may be informal (uncodified), or they may be written down in an enforceable document (codified); the point, however, is that norms need not be codified in order to produce behavioral effects. Finally, norms ‘isolate single standards of behavior’ whereas institutions are collections of norms (Finnemore and Sikkink 1998, 891). This general description helps distinguish norms from cognate concepts (law, philosophical teachings, individual life rules, institutions, etc.) but it is theoretically ambiguous because it fails to specify the nature of these rules and the logic of their effects. Inspired by Lewis’s 2003 analysis of “everyday decision-making” in COREPER and Finnemore and Sikkink’s “lifecycle of norms”, we spell out the key assumptions of the rationalist and sociological-constructivist paradigm, specify implications at different phases of the lifecycle of norms (emergence, diffusion, and internalization), as well as the evidence that would substantiate these assumptions.

In the rationalist view, norms are understood broadly as coordinating devices, or instruments that facilitate social interaction (Ullmann-Margalit 1977; Schelling, 1960; Stein 1990; and Binmore 1994). Social interaction is not always possible, let alone smooth or optimal, due to various collective action problems. Norms allow for the possibility of social interaction by addressing these problems and lowering the cost of transactions. This perspective is therefore more interested in the form than in the content of norms (Florini, 1996)—i.e., the “what for?” of norms rather than their “what?” It sees norms as exogenously given (or “preset”: Lewis 2003), meaning norms are fixed, and are determined by a standard, which is external to the content of social interaction, namely utility or function. This does not mean that rationalists cannot operate with normative change: iterative games can integrate new preferences and information transfers, and therefore evolving norms. However, these approaches cannot explain, and are not interested in explaining, how and why norms change and arise, and why among functionally-equivalent norms some are preferred over others (Finnemore and Sikkink 1996; Florini 1996). Finally, this perspective captures the behavioral effects of norms through the logic of consequence: actors follow the rules because it is in their interest to do so and they expect particular rewards.

Sociological-constructivist views, by contrast, adopt a narrower approach to norms by reserving the term exclusively for *legitimate* standards of behavior. Social interaction, in their view, is embedded in identity and produces meaning. Norms regulate behavior by producing *legitimate* prescriptions, or “standard of appropriate behavior for actors *with a given identity*” (Finnemore and Sikkink 1996, 891; our emphasis). The fact that standards are embedded in “a given identity” circumscribes the “realm of conceivable behavior” (Florini 1996, 366; Katzenstein 1996). Norms are endogenously constructed, meaning “interaction and the exchange of view can lead to the creation of new... roles” (Lewis 2003, 107). Persuasion and socialization are the two key mechanisms involved; but sociological approaches inspired by new institutionalism also point to the role of preconscious mimesis.

These views imply different predictions for the emergence, diffusion, and internalization of norms, which can be summed up in the following table (table 2).

Table 2 here

Equipped with these lenses, it is safe to assume that EP behavior in ordinary legislation may reflect a variety of logics. This makes sense given the highly decentralized nature of the EP and the diversity of EU policy-making modes and contexts. Investigating EP norms is not easy in practice, however, given the informal and secluded character of ordinary law-making (trilogues) and the possibility that much knowledge on norms is tacit. Our research strategy combines interpretive and process-tracing methods. We “access” data by talking with a broad range of ordinary law-makers—in the EP as well as in other institutions, and a close reading of relevant documents. In the 2014-2015 period, we conducted more than 40 interviews with trilogues as the main focus: six with MEPs (of which five with committee chairs), 16 with committee secretariats, four with other DG IPol officials, three with Commission civil servants, 10 with Council civil servants and two with members of national permanent representations. Typical of the interpretive method, we “brought back ... copious interview ... observational notes and ... notes on documents” (Yanow and Schwartz-Shea 2006, xix). These were especially useful to chart normative contexts. We supplemented these with a close reading of relevant documents including minutes of CCC meetings, CoP meetings, and Council meetings, in order to trace norm development over time.

A LIVING LEGISLATURE

From the start, trilogues were a matter of collective reflection and debate in the EP. Within a decade, this reflection led to a series of steps to regulate this practice, culminating in November 2012 with the reform of the EP Rules of Procedure. The result *‘codify[ed] to a large extent existing practices in committees’* (European Parliament, 2014a, p.23). A key issue throughout the reform process had become the variation of practice in use of the Code across committees (European Parliament, 2013), and the task had in part become one of formalizing best practice from norm entrepreneurs. New features involved: a formal committee decision to open informal negotiations; the inclusion of the Committee Chair (or designated Vice-Chair) in the negotiating team; and the possibility of involving Plenary in the preparation of a mandate (Rule 70a).³ By 2012, when the new provisions came into effect, a process of formalization into rules with a binding status had been completed, ensuring improved flows of information between the EP negotiators and the Committee as well as the political groups. The following analysis charts the historical path of reform (process tracing) and explore to what extent EP committee practices have converged around a distinct set of norms (EP committee comparison).

Emergence of norms: The “tipping point” of the 2012 reform of the Rules of Procedure

At an early stage, there were anxieties within the EP that secluded inter-organizational bargaining would require it to leave behind the traditional strengths of a legislature in contested discourse, and enter the potential entrapment of the Council’s web of quiet diplomacy. There was also a central tension that trilogues would result in a strong asymmetry between largerun

³ The *Guerrero Salom* (Rapporteur, S&D) amendments, adopted in November 2012. In the current (8th) EP term, Rule 70(a) became Rule 74.

and smaller parties, because the larger parties take the lead on the overwhelming majority of legislative files, with the Rapporteur left unsupervised to bargain with the Council Presidency and re-present outcomes as a *fait accompli* in the EP. This central cleavage crystallized when the group of Vice-Presidents responsible for oversight of co-decision within the EP first raised the issue formally in 2001, resulting in the establishment in 2004 of a set of best practice *Guidelines for First and Second Reading Agreements under the Codecision Procedure*, aimed at some degree of oversight through committee political coordinators, but ‘riddled with compromise formulations’ (Héritier and Reh, 2012, p.1145) and no mechanisms of enforcement. According to the key official in the Council during this period, ‘the guiding principles remained sufficiently vague to allow the practitioners of codecision the necessary degree of flexibility and discretion’ (European Parliament 2013, p.4).

The momentum of parliamentary reform was irresistible for an EP seeking to press its claims as democratic champion (table 3). Sometimes, the vote in plenary took place too soon after the vote in committee in order to allow for full discussion, indicating that trilogues had been conducted before an official committee mandate was in place. Internal discontent with the lack of regulation was evident (Huber and Shackleton 2013); it was only a matter of time before this would attract external criticism.⁴

Table 3 here

The **CoP** was the arena in which the decision to set in motion a reform process was taken, in 2007. This process was led by MEP Roth-Berendt, a senior MEP⁵ within a Working Party from the Committee on Constitutional Affairs (AFCO) on the basis of drafts prepared by the co-decision unit (CODE) of the EP (Héritier and Reh, 2012), to negotiate and deliver to the CoP a series of recommendations for revision to the EPs Rules of Procedure. The result was a ‘more binding and precise’ (Héritier and Reh, 2012: p.1148) *Code of Conduct for Negotiating in the Context of Codecision Procedures*, concluded at the end of the sixth term, and established as an Annex (XX) to the Rules of Procedure. Our interview with one of the norm entrepreneurs established the importance of the **CODE** unit as a source of the 2009 revisions (interview 3, 9.9.2014). The Code established the key factors of oversight and pluralization present today: that committees, rather than political coordinators, would be the formal mechanism of oversight; that a decision to enter into negotiations, as well as a specific negotiating mandate, should first originate from a committee (other than in exceptional cases); and that a negotiating team would include Shadow Rapporteurs (or political group coordinators or advisors). The final report of the Working Party still shows that at least some leading MEPs saw the growth of early agreements and trilogues as a reversible phenomenon. One of the recommendations was indeed that “as a rule, Parliament should make use of all stages of the codecision procedure and agreements in early stages should be the exception and respect certain criteria” (European Parliament 2010, 10). By the end of the 6th term of the EP in 2009, however, some 82% of all adopted codecision files were early agreements. From 2009 on, the financial crisis and the concurrent entry into force of the Lisbon Treaty were powerful structural forces behind the continued

⁴ See, for instance: Bunyan, 2007; House of Lords, 2009; EU Observer, 2014; International New York Times, 2014.

⁵ Now Socialists & Democrats (S&D)

growth of early agreements. Financial integration picked up speed while co-decision was extended from a core (minority) of committees to all committees.

ECON provided a distinct input into the process. Before the outbreak of the financial crisis in Europe, ECON under the chairmanship of MEP Berès (S&D) had developed a practice norm of the committee Chair attending all trilogue meetings as a means of enforcing committee positions (Roederer-Rynning & Greenwood 2015). The rationale for this approach was to increase the representativeness of the EP team, out of the axiom “tell me who wrote the rule, and I’ll tell you what’s in it.” Berès transferred this practice to the next parliamentary term when she became chair of the Employment and Social Affairs Committee (EMPL) from 2009 to 2014. Importantly, the legacy she left in ECON was continued by her successor Sharon Bowles, ECON Chair from 2009 to 2014, *in the midst of the financial crisis* (Roederer-Rynning & Greenwood, 2015). Control over logistical arrangements⁶, in particular, helped the EP to achieve its institutional prerogatives, used to the full by ECON, which participated in EP7 in more than twice as many trilogues than any other EP Committee (Roederer-Rynning and Greenwood, 2015).

The **CCC** had in the mid-2000s sought to contribute to parliamentary reform, by organizing “away days” resulting in the Limelette Declaration (2006) and the Strasbourg Declaration (2007)—(Limelette +”). While both declarations were used as an agenda-setting instrument for the work of the CoP, neither referred explicitly to the issue of trilogues. It is only from 2010 on that the CCC began paying more systematic its attention to the issue of trilogues. In October, it held extensive exchange of views with contributions by the Secretaries General of the political groups. The issue was taken up in CoP in the spring of 2011, leading to the formal invitation to AFCO to review the Rules of Procedure of the EP. AFCO’s mandate was to review the Rules:

*with a view to making the procedures more effective, more transparent, and more inclusive through the incorporation of some key elements of the Code of conduct for negotiating in the context of the ordinary legislative procedures in the **binding** part of the Rules, and in particular those parts on:*

- *the decision of a committee to enter into negotiation;*
- *the decision on the composition and mandate of the negotiating team;*
- *the regular report-back to the committee concerned on the progress and outcome of the negotiations, including any agreement reached;*
- *the re-consultation of the committee on the text agreed before the vote in plenary.*

European Parliament; our emphasis (2012, 9).

Minutes of CCC meetings on 25 October 2011 and 13 December 2011 show the role of this body in structuring a collective reflection as well as crystallizing positions in AFCO and among the committee chairs. One of the reasons for the reform process, AFCO Rapporteur Guerrero Salom highlighted in the first CCC debate, was “the existing asymmetry between Committees on the application of the code of conduct when it comes to negotiating first-reading agreements”; and this was preoccupying in a context marked by the increase of early agreements (CCC Chair “Mr. LEHNE recalled that according to available statistics, 78% of all

⁶ The prevailing rule is that trilogues are held on EP premises, and therefore the logistical arrangements are made by committee secretariats. This is increasingly being diluted by logistical realities of a lack of rooms, meaning that some are being held on Council, and Presidency, premises.

legislative texts have been adopted through first-reading which is on the increase”). Several committee chairs participated in the debate—overwhelmingly from committees accustomed to dealing with co-decision⁷. While we don’t have access to the details of their discussion, we know that they “underlined their scepticism as to the need to adopt legislative texts quickly; speed sometimes being detrimental to quality. They especially warned against “trophy agreements” for the Presidency when reaching the end of a six month term” (European Parliament 2011a, 4-5).

The second CCC meeting, on 13 December 2011, gave further insights into the scope and depth of the internal debate. Divergences of views within the EP existed as to the involvement of the plenary in the delivery of negotiation mandates. There was also a discussion of the options for making the negotiating mandate more transparent. The case of procedures with associated committees was discussed. An important part of the debate, at that point, focused on the respective role of committee and plenary in trilogue negotiations. These debates highlighted, once again, the collective need to strike a balance between efficiency and transparency. This time, the ECON Chair stressed that “if the rules under consideration [regarding the involvement of plenary in the delivery of mandates] had been in force at the time of the negotiations on the ‘six pack’, the adoption of those files would have been impossible ... the negotiations were usually so urgent that submitting mandates to Plenary would unduly delay the whole process” (European Parliament 2011b, 7). ECON was the only committee delivering an opinion on the AFCO Report on Rule 70, insisting on the role of the committee chair in the negotiations and the need to provide mandates in the form of amendments rather than general orientations. Whilst these high standards were not incorporated in the final version voted through by plenary, their inclusion within the AFCO report to plenary helped to create something of a marker by way or norm internalization, discussed below.

The reform of the RoP (70 and 70a) can be considered as a tipping point in the development of practice norms of trilogues. Most importantly, perhaps, the norm of “active chair”, promoted vigorously by a handful of leading MEPs—especially Berès and Bowles, as chairs of ECON—was entrenched in a binding format.

Norm diffusion and internationalization: Routine and exceptional legislators

According to EP official documents, Rules 70 and Rule 70a simply ‘codified existing practice of committees’ (European Parliament, 2014a, p.23). Committees new to co-decision could follow the best practice example set by the committee most involved in trilogues in EP6, ECON, led by Berès, while most of the original core group could evolve towards the new standards in EP7. But to what extent and how have other EP committee practices converged in reality?

Although a norm of committee chairs attending all, or almost all, trilogue meetings had emerged in some committees before the end of EP7, fieldwork highlights the value of distinguishing between routine legislators and exceptional legislators. Among the committees that we have dubbed *routine legislators*, there is a substantial convergence around the principle of chair attendance in trilogues. In ECON, Bowles emulated the practice established by Berès in

⁷ Ms. BERÈS, Chair of EMPL, Ms. BOWLES, Chair of ECON, Mr. MOREIRA, Chair of INTA, Mr. HARBOUR, Chair of IMCO, Mr. REUL, Chair of ITRE, Mr. SIMPSON, Chair of TRAN and Mr. LEHNE, Chair of JURI.

attending/chairing every trilogue meeting, imposing her own authority through control of logistical arrangements (Roederer-Rynning and Greenwood, 2015). The Chair of IMCO adopted the practices from ECON. The Chair of INTA has also made a priority of attending all trilogues—secondment by a Vice-Chair is not used. The same situation applies for REGI—though interestingly not for AGRI, which resorted to secondment (by a Vice-Chair) in trilogue negotiations in the first CAP reform under co-decision in 2013. In this group of committees, TRAN was a notable departure from the norm of Chair attendance, the committee chair attending typically the concluding trilogue sessions or those anticipated to be most troublesome. We interpret this departure as reflecting the chair “style”, rather than conflicting with the meaning of emerging EP norms. TRAN is the only EP committee where a significant number of legislative files (a quarter of all TRAN files) continued to be concluded in second (not early second) and third readings in EP7. This reflected a viewpoint of the retiring committee Chair that the EP’s interests could be well served by agreements later in the legislative process (Interview 2, 20.5.2014). The same argument applies regarding chair attendance in trilogues. At an EP hosted conference to mark ‘20 Years of Codecision’ the chair of TRAN described this practice as a tactical move aimed at conveying the message that ‘when the Chair comes, the Council knows it’s getting serious.’⁸

In the group of *exceptional legislators*, practice and knowledge varied broadly. In some committees, the chair was inactive in trilogues; and sometimes, this practice was associated with an unclear perception of the role of the chair in trilogues under the revised Rules of Procedure. In trilogues, the rapporteur and/or the administrative staff filled in the vacuum left by the chair. In another, the practice was mixed; but there was a clear perception that the new Rules of Procedure had clarified the role of the chair in trilogues. Yet in another, the chair was said to be present throughout the trilogues. Finally, one chair was said to be not only active in the political trilogues but also systematically at the level of technical discussions.

Understanding the carriers and mechanisms of diffusion of norms is only starting. As a starting point, we recall the two-edged effect of rules on the mobility of the EP administrative staff: both facilitating the cross-dissemination and diffusion of practices and norms across the EP and impeding the constitution of an institutional memory at the level of individual EP committees. REGI sought to remedy the loss of institutional memory by writing a vademecum. We had to reconsider our initial assumption that emulation or mimesis underpinned the diffusion of ECON norms. Committees do not “pick up” practices from observing practice in other committees—at least not directly. CODE diffuses some committee norms (in particular ECON norms) as best practices to EP committees less experienced with legislating—but this is socialization, rather than emulation. For more experienced committees, the CCC (though frequently described as a dull place) appears a more relevant and likely forum of socialization and diffusion of legitimate standards of behavior. One committee chair emphasized the

⁸ <http://www.europarl.europa.eu/ep-live/en/other-events/video?event=20131105-0900-SPECIAL> consulted on 27 February 2014.

Because of the global financial crisis, ECON was the source of substantial legislation in EP7, accounting for more than one-fifth of all trilogues in which the EP was involved—and therefore, ECON practice under Bowles was critical for the EP as a whole, in part diffused and internalized through overlapping committee membership.

socialization effects that committees exert on political group coordinators as a mechanism of norm diffusion. MEPs' overlapping memberships was also described as a factor of diffusion of norms from one committee to another.

CONCLUSION

Seeking meaning in a disorderly pattern of institutionalization of EP power, H eritier and Reh have earlier found supporting evidence for both rationalist and sociological-constructivist based explanations in their observation that "where a steep increase in EAs coincided with wider reform, package deals, issue linkage and norm-based framing could translate contestation into more stringent institutional change" (H eritier and Reh, 2012, p.1153). With this paper, we come closer to an appreciation of the respective role of social context and rationality.

The trigger for change was no "September 11" (as an EP administrator told us in reference to LIBE's changing politics in the wake of the terrorist attack on the World Trade Center). It was rather an evolutionary process resulting from a growing awareness of the expanding scope of trilogues as well as growing unease as to potential implications of the phenomenon for the broader EP community—triggering a normative assessment. Large parties initiated change; and, at the height of EP internal reform, some options of institutional design were ruled out in the name of efficiency. Likewise, norms are fluid in the EP. If a change of personnel as well as party (to the Greens) leadership gives rise to a reasonable expectation that TRAN might move in the direction of practices elsewhere, established ECON norms may lose their bite as a new and more pragmatic chair takes command. In line with sociological-constructivist perspectives, however, we note that change emerged from inside the EP, with the reform process set in train in 2007 before the first signs of external criticism (see, for instance, Bunyan 2007) emerged. The Council, as an institution interested in keeping EP negotiators in a secluded world of bargains, cannot be considered as a source of EP norms of oversight and pluralization.

There was a core incompatibility of the *ancien regime* of trilogues with the EP's central mission of institutional assertion together with the practical need to continue with an inexorable growth of early legislative agreements whose outcomes often suited the EP. Instead of being drawn into Council territory of quiet diplomacy (Shackleton, 2000), the EP had succeeded in drawing the Council into the political arena, where the EP could 'go public' as a means of influencing the course of trilogue negotiations—and asserting its identity as a normal legislator (Roederer-Rynning and Greenwood, 2015). If these key MEPs can be understood as norm entrepreneurs in a rationalist context, a sociological-constructivist perspective helps us better understand the process, as it mobilized collectively held identities (as normal legislator) and was founded on a platform of expertise and deliberation where ECON, AFCCO, the CoP and the CCC played important roles.

Interviews

Chairs:

Chair of the ECON committee of EP7, UK, 7.7.2014.

Chair of the IMCO committee of EP7, UK, 27.8.2014.

Chair of the EMPL committee of EP7, Brussels, 9.9.2014.

Chair of the LIBE committee of EP7, Brussels, 9.9.2014.

Chair of the ITRE committee of EP7, Brussels, 10.9.2014.

Secretariats:

Official of the European Parliament, Directorate General Internal Policies (DGIPol), Brussels, 4.2.2015.

Member of the committee secretariat of the Transport and Tourism Committee, Brussels, 20.5.2014.

Head of unit for codecision in EP7, Brussels, 22.5.2014 and 12.9.2014.

Head of unit for codecision, and assistant in unit, in EP8, Brussels, 3.2.2015.

Member of the secretariat of the unit for legislative coordination, Brussels, 4.2.2015.

Member of the secretariat of the Committee on International Trade (INTA), Brussels, 2.2.2015.

Member of the secretariat of the Committee on Budgets (BUDG) Brussels, 2.2.2015.

Members of the secretariat of the Committee on Development (DEVE) Brussels, 2.2.2015.

Members of the secretariat of the Committee on Constitutional Affairs (AFCO), Brussels, 3.2.2015.

Members of the secretariat of the Committee on Regional Development (REGI), Brussels, 3.2.2015.

Members of the secretariat of the Committee on Women's Rights and Gender Equality (FEMM), Brussels, 4.2.2015.

Member of the secretariat of the Committee on Budgetary Control (CONT), Brussels, 4.2.2015.

Members of the secretariat of the Committee on Culture & Education (CULT), Brussels, 6.2.2015.

Member of the secretariat of the Committee on Legal Affairs (JURI), Brussels, 20.5.2014.

Members of the secretariat of the Committee on the Environment, Public Health and Food Safety (ENVI), Brussels, 20.5.2014.

Member of the secretariat of the Committee on Industry, Research and Energy (ITRE), Brussels, 20.5.2014.

Member of the secretariat of the Committee on Transport and Tourism (TRAN), Brussels, 20.5.2014.

Member of the secretariat of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), Brussels, 21.5.2014.

Members of the secretariat of the Committee on Economic and Monetary Affairs (ECON), Brussels, 21.5.2014.

Members of the secretariat of the Committee on Employment and Social Affairs (EMPL), Brussels, 10.9.2014.

Member of the secretariat of the Committee on Internal Market and Consumer Affairs (IMCO), Brussels, 10.9.2014.

Member of the secretariat of the Committee on Agriculture and Rural Development (AGRI), Brussels, 20.5.14 & 9.9.2014.

Other:

Richard Corbett MEP, Brussels, 9.9.2014.

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Table 1 – Legislative activity of EP committees, EP7

LEGISLATIVE ACTIVITY				TRILOGUE ACTIVITY		
EP committee	Number of adopted co-decision files in EP7	% of all adopted co-decision in EP7	% of first-reading agreement	EP committee	Number of trilogues in EP7	% of all trilogues in EP7
ENVI	70	14	84	ECON	331	21.5
ECON	54	11	98	ENVI	165	10.7
LIBE	50	10	86	LIBE	163	10.6
INTA	48	10	79	AGRI	103	6.7
ITRE	41	8	85	REGI	96	6.2
JURI	37	8	97	EMPL	94	6.2
IMCO	35	7	89	ITRE	91	5.9
TRAN	35	7	63	TRAN	89	5.8
AGRI	27	6	89	INTA	75	4.9
EMPL	22	5	82	IMCO	71	4.6
PECH	20	4	80	JURI	66	4.3
REGI	14	3	100	AFET	49	3.2
AFET	9	2	89	BUDG	42	2.7
BUDG	7	1	86	PECH	36	2.3
CULT	6	1	67	DEVE	28	1.8
DEVE	5	1	60	CULT	16	1.0
CONT	2	0	50	CONT	15	1.0
FEMM	2	0	0	AFCO	9	0.6
AFCO	1	0	100	FEMM	2	0.1
Total	485				1541	

Table 2 – Two views on norms and implications for the institutionalization of EP legislative power

Lifecycle of norms	Norms as coordinating devices (rationalism)	Norms as legitimate standards of behavior (sociological-constructivism)
Emergence	<ul style="list-style-type: none"> - Norms do not come from social interaction; if some norms are active, they will come from domestic politics or inter-institutional interaction (e.g. influence of the Council); - Attempts to regulate practices or develop new devices would reflect a crisis in, or sub-optimal cooperation between Council and EP; there is no collective perception that something is not the way it “ought to be”; - Norms are promoted by utility-maximizing entrepreneurs motivated by the prospect of rewards, material (stream of resources) as well as non-material (reputation) rewards; - Evidence of cost-benefit reasoning and practices or well-defined reciprocity expectations. 	<ul style="list-style-type: none"> - Promoted by MEPs “having strong notions about appropriate and desirable behavior in their community” (Finnemore and Sikkink 1998, 896); concretely, a growing awareness of the expanding scope of trilogues and that a collective thinking must take place in order to examine the appropriate way to deal with this phenomenon; growing unease as to potential implications of the phenomenon for broader community as well as possible incidents triggering a normative assessment; - These norm entrepreneurs are supported by organizational platforms providing them with expertise and other organizational resources needed to construct their normative argument; - Persuasion logic evidenced by “collective plotting, in which the group legitimates and delegitimates arguments in the interest of finding joint solutions” (Lewis 2003, 107); persuasion may rely on a mix of appeal to sentiments and emotions as well as more logical attempts to link specific norm to a broader structure of principles (Finnemore and Sikkink 1998); - “Tipping point” is reached when “norm entrepreneurs have persuaded a critical mass of [EP actors] to become norm leaders

		and adopt the new norms”, evidenced by either quantitative rules of thumb (1/3 of relevant community actors) or adoption by “critical” actors (Finnemore and Sikkink 1998, 901);
Diffusion	<ul style="list-style-type: none"> - Generally weak due to thin socialization patterns; - Varies across committees depending on the expected utility function of legislators; very little influence of cross-committee fora discussing norms of EP engagement in trilogues (political as well as administrative); possible influence, however, of Conference of Presidents in <i>ad hoc</i> decisions on the basis of redistributive calculation or in the shadow of power asymmetry; - “Decoupling effects” (Checkel 2002): “agents learn to ‘talk the talk’, and avert the potential ‘socializing force of group pressure or arguments” (Lewis 2003, 105); - Through competition in environment characterized by scarce resources and goal of attraction and retainment of resources (Kleibrink 2011) and coercion in cases of highly asymmetric power relations (Kleibrink 2011); 	<ul style="list-style-type: none"> - Broad norm acceptance evidenced by converging behavior (Finnemore and Sikkink 1998); - Varies across committees depending on the EP committee chair “decision-making style” and socialization in cross-committee fora (administrative as well as political) where norms of EP engagement are discussed and systematized; especially, influence of Conference of Committee Chairs (CCC) and various EP horizontal units (CODE; CORDLEG) aiming at developing standards of EP practices in trilogues; - Emulation of perceived “models”; norm-breaching generates “collective plotting” in order to reassess legitimacy arguments; norm-conforming generates praise; - Evidence of expanded “self” incorporating perceptions of collective obligation and responsibility and leading to moderating demands in cases of collective resistance to individual claims (Lewis 2003);
Internalization	<ul style="list-style-type: none"> - Rare since loyalty to groups is not intrinsically generated (Lewis 2003); - Norms are seldom “self-binding” (Wendt 1999, cited in Lewis 2003, 103) but must be enforced; 	<ul style="list-style-type: none"> - Possible given endogenous construction of norms; - Self-binding norms difficult to see given their taken-for-granted character; but norm-breaching generates stigmatization and disapproval (Finnemore and Sikkink 1998).

	<ul style="list-style-type: none">- Competition for resources, threats, and asymmetric power are primary mechanisms of internalization.	
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Table 3 - Regulating trilogues: The path of EP internal reform

Date	Actor	Issue / Output
2001	Group of Vice-Presidents responsible for oversight of co-decision	Issue of trilogue regulation first formally raised by the group of Vice-Presidents responsible for oversight of co-decision.
2004		Best practice <i>Guidelines for First and Second Reading Agreements under the Codecision Procedure</i> .
15 February 2007	Conference of Presidents	Conference of Presidents sets up a “Working party on parliamentary reform”; the party is chaired by MEP Dagmar Roth-Berendt and composed of one member from each political group.
2009		<i>Code of Conduct for Negotiating in the Context of Codecision Procedures</i> concluded at the end of the sixth term, and established as an Annex XX to the Rules of Procedure.
19 October 2010	Conference of Committee Chairs	CCC holds extensive exchange of views with contributions by the Secretaries General of the political groups.
10 March 2011	Conference of Presidents	CoP takes up the issue.
18 April 2011	EP President Buzek	In a letter, EP President Buzek invites AFCO to review EP Rules for adopting first-reading legislation under codecision with a view to making Code of Conduct more binding.
14 June 2011	AFCO	S&D Enrique Guerrero Salom is appointed rapporteur for the report on EP Rules of Procedure, Rule 70: Interinstitutional negotiations in legislative procedures.
1 December 2011	EP plenary	Committee referral announced in Parliament, first-reading.
13 February 2012	ECON	ALDE Sharon Bowles from ECON is appointed rapporteur for opinion.
14 September 2011	AFCO	<i>Working Document on Revision of Rule 70 of Parliament’s Rules of Procedure on Interinstitutional Negotiations in Legislative Procedures</i> .
25 October 2011	Conference of Committee Chairs	Rapporteur Guerrero-Salom discusses revision of RoP.
27 October 2011	AFCO	<i>First Draft Report on Amendment of Rule 70 of Parliament’s Rules of Procedure on Interinstitutional</i>

		<i>Negotiations in Legislative Procedures</i> , PE473.959v01-00, 27 October 2011.
13 December 2011	Conference of Committee Chairs	Detailed discussion of Guerrero-Salom draft report.
8 March 2012	AFCO	<i>Second Draft Report on Amendment of Rule 70 of Parliament's Rules of Procedure on Interinstitutional Negotiations in Legislative Procedures</i> , PE473.959v03-00, 8 March 2012.
2 July 2012	ECON	ECON opinion adopted unanimously on 2 July 2012 (33 votes in favor; 0 against; 0 abstentions).
17 September 2012	AFCO	<i>Report on Amendment of Rule 70 of Parliament's Rules of Procedure on Interinstitutional Negotiations in Legislative Procedures</i> adopted in AFCO with 20 votes in favor and 1 abstention.
25 September 2012	EP Plenary	AFCO <i>Report on Amendment of Rule 70 of Parliament's Rules of Procedure on Interinstitutional Negotiations in Legislative Procedures</i> tabled in plenary.
20 November 2012	EP Plenary	Report adopted in plenary: 11 amendments are adopted (8 tabled by AFCO; 3 tabled by political groups) leading to revision of Rule 70 and introduction of Rule 70a.