CODECISION AND ITS DISCONTENTS: INTRA-ORGANISATIONAL POLITICS AND INSTITUTIONAL REFORM IN THE EUROPEAN PARLIAMENT

by

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Abstract

This paper investigates a recent trend in EU legislative politics: the *de facto* shift of decision-making from public inclusive to informal secluded arenas, and the subsequent adoption of legislation at first reading. Previous research has explained why fast-track legislation occurs and evaluated its democratic consequences. This study focuses on how the EP has responded to the steep increase in informal and fast-tracked legislation. First, we show how fast-track legislation has informalised legislative decision-making, transformed inter-organisational relations, and created new asymmetrical opportunities and constraints. Second, we theorise the political discontents in response to this transformation. Drawing on rational choice institutionalism and bargaining theory, we argue, first, that actors will seek to redress asymmetrical opportunities through institutional reform; that attempts of redress will centre on the control of negotiation authority and information flows; and that institutional reform will be highly contested. Second, we suggest that the chances of successful redress will be low in the EP as a decentralised organisation unless two conditions are met: 1) the extent of fast-track legislation reaches a critical level, and 2) the organisation goes through a period of wider reform; the former will facilitate reform through the increased visibility of disempowerment and reputational costs; the latter through package deals in a multi-issue negotiation space, and/or the strategic evocation of collective parliamentary norms. Third, we probe our argument by analysing how the EP's rules pertaining to codecision have been contested, negotiated and reformed from the introduction of fast-track legislation in 1999 to the adoption of the *Code of Conduct for Negotiating Codecision Files* in 2009. Based on qualitative document analysis and semi-structured elite interviews, our paper offers a first systematic analysis of how fast-track legislation has impacted on intra-organisational politics and reform in the EP.

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Introduction[1]

This paper investigates how the European Parliament (EP) has responded to a recent transformation of legislative politics in the European Union (EU): the trend to "fast-track" legislation under the codecision procedure, and the resulting informalisation and seclusion of the political process. The possibility of fast-track legislation was introduced with the Amsterdam Treaty, and since 1999 an ever increasing percentage of acts has been adopted at first reading by the EP and the Council of the European Union: between 1999 and 2004, 28% of codecision dossiers were adopted "early"; between 2004 and 2006, the number went up to 63%; and the overall percentage of "early agreements" in the last parliamentary term was 72% (European Parliament 2004a; 2009a).

This increase in early conclusion has had three repercussions on the conduct of codecision. First, to agree a file early, a legislative compromise must be reached informally prior to the EP's first reading. This compromise is negotiated in restricted and secluded "trilogues", bringing together representatives from EP, Council and European Commission. Second, the procedure is abridged, as legislation is adopted after only one rather than three possible readings. Third, the interdependence between inter- and intra-organisational negotiations has increased, and the new rules and arenas of interaction have created novel opportunities for some actors and novel constraints for others. Our paper explores the EP's reaction to the increase in fast-track legislation, and asks: Has the changing practice of codecision since 1999 led to intra-organisational contestation and reform in the EP?[2] Have newly constrained actors responded, and which procedural rules have they contested? Why have contestation and redress (not) translated into reform of the EP's rules of co-legislation?

Our interest is warranted for three reasons. First, the sheer volume of fast-track legislation begs for empirical investigation, theoretical explanation and normative evaluation. At the same time, we know little about how fast-tracked legislation is agreed, under which conditions it occurs, and what its consequences are. In spite of an extensive debate about *inter*-organisational relations under codecision, only one contribution has looked at legislative influence in the informal arena (Häge/Kaeding

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[2] In this paper, we distinguish between *organisations*, i.e. the collective actors involved in the legislative process, and *institutions*, i.e. the man-made rules of behaviour that facilitate and restrict interaction between individual and collective actors (North 1990).

2007). Similarly, although practitioners have commented for more than a decade on the transformation of codecision, only three academic studies have offered systematic analysis: one pilot study on intra-organisational relations in the Council and Parliament (Farrell/Héritier 2004), as well as two quantitative studies of early conclusion, one of the Fifth European Parliament (Rasmussen 2011), and one of the more extensive 1999 to 2009 period (Reh et al. 2010). Second, practitioners and scholars alike have praised fast-track legislation for its efficiency (Héritier 2007) and criticised informalisation on democratic grounds (Imbeni et al. 2001; Raunio/Shackleton 2003; Reh 2008). Since EP President Jerzy Buzek, shortly after his election in 2009, publicly dismissed first reading agreements, the debate about the benefits and costs of fast-track legislation has intensified in the EP. Our paper systematically tracks this debate since its origins, with a focus on the reasons for contestation, and the success or failure of reform. Third, although our case study is of EU legislative politics only, our theoretical framework and empirical findings will be of wider interest to scholars of shared decision-making and organisational reform.

Our paper proceeds in four steps. Section 1 demonstrates how fast-track legislation has informalised legislative decision-making, transformed relations between co-legislators, and created new asymmetrical opportunities and constraints. Section 2 theorises and exemplifies the political conflict in response to this transformation. Drawing on rational choice institutionalism and bargaining theory, we argue that actors will seek to redress asymmetrical opportunity structures through institutional reform; that reform attempts will centre on the stringency of rules, on the control of negotiation authority and on information flows; and that institutional reform will be highly contested. Section 3 focuses on the likelihood of successful redress through institutional reform. Earlier research has shown that the chances of successful redress will be low where opportunities are asymmetrical and the organisation is decentralised (Farrell/Héritier 2004). Yet, we argue that even under such conditions successful institutional reform is likely where 1) the increase in fast-track legislation reaches a critical level; and 2) the organisation goes through a period of wider reform. The former condition facilitates reform through an increased visibility of actors' lost influence and of the EP's reputational costs; the latter allows "reformers" to use the momentum of wider reform by striking package deals in a multi-issue negotiation agenda, and/or by evoking collective organisational norms. Section 4 assesses our argument empirically by showing how the EP's rules pertaining to codecision have been contested, negotiated

and reformed over three time periods since 1999: first, the early years of fast-track legislation (1999-2004), during which we see first political contestation, culminating in the non-binding 2004 *Guidelines for First and Second Reading Agreements under the Codecision Procedure*; second, the first half of the Sixth EP (2004-2006), during which we witness a surge in both early agreements and political contestation, but no attempt at further reform; third, the second half of the Sixth EP (2007-2009), featuring a steep increase in fast-track legislation and political contestation, coinciding with the "Working Party for Parliamentary Reform", and ending with agreement on the binding *Code of Conduct for Negotiating Codecision Files* in the EP's May 2009 plenary. Based on qualitative document analysis and a series of semi-structured interviews with EP and Commission officials as well as Members of the European Parliament (MEPs) between May 2008 and June 2010, we trace the factors that have translated political contestation into institutional reform, and offer a first systematic analysis of how the EP has responded to fast-track legislation. The paper concludes by outlining the wider implications for the study of shared decision-making and organisational reform.

1. Codecision Transformed: Formal Reform and Legislative Practice

The introduction of codecision in 1993 was accompanied by diverse expectations and concerns. On the one hand, codecision was seen as a means to bolster procedural democracy; empowering the EP promised to make EU legislation more accountable, inclusive and transparent, and to challenge—or complement—the "cartel of elites" that had hitherto dominated negotiation between Council and Commission (Wallace 1996, 33). On the other hand, practitioners and scholars feared that the complex new procedure would render EU decision-making more cumbersome and inefficient (Scharpf 1994). The routine use of fast-track legislation has refuted both expectations: on the one hand, the recourse to informal and secluded negotiations has disappointed hopes for greater accountability, inclusiveness and transparency; on the other hand, the new procedure has proved to be highly efficient: the Fifth and Sixth EP passed a total of 797 legislative acts under codecision; on average, it took 20.7 months to adopt a piece of legislation, and 15.4 months to pass a first reading deal (see Table 1).

Table 1: Codecision—Average Duration (1999-2009)

	Average duration (months)	Total number
Procedure concluded at 1st reading	15.4	458
Procedure concluded at 2nd reading	25.7	262
Procedure concluded at 3rd reading	35.2	77
All procedures	20.7	797

Source: Authors' Own Database

The possibility of fast-track legislation was formally introduced with the Amsterdam Treaty; it allows Parliament and Council to adopt a legislative dossier at first reading, with the procedure closed accordingly. Since their formal introduction, first reading deals have surged from 17% in 1999/2000 to 80% in 2008/2009 (see Table 2).

Table 2: Codecision—Stage of Conclusion (1999-2009)

Year	Number of concluded files	Percentage of files concluded at 1st reading	Percentage of files concluded at 2nd reading	Percentage of files concluded at 3rd reading
1999-2000	48	17	62	21
2000-2001	67	25	42	33
2001-2002	70	30	46	24
2002-2003	74	20	51	29
2003-2004	144	36	51	13
2004-2005	26	69	31	0
2005-2006	69	65	25	10
2006-2007	82	58	37	5
2007-2008	100	74	20	6
2008-2009	177	80	16	1

Source: European Parliament 2009a

This trend is unlikely to be reversed in the near future—on the contrary, Parliament, Council and Commission seem to agree on its desirability. In the 2007 *Joint Declaration on Practical Arrangements for the Codecision Procedure* they commit themselves to "cooperate in good faith with a view to reconciling their positions as far as possible and thereby clearing the way, where appropriate, for the adoption of the act concerned at an early stage" (European Parliament et al. 2007). Furthermore, while early agreements were initially foreseen for "technical" and "certain politically urgent" dossiers (European Commission 2007), a recent quantitative analysis of all codecision files in the Fifth and Sixth EP has demonstrated that even salient and redistributive dossiers are routinely adopted at first reading (Reh et al. 2010).

This observation has as much impact on the study of codecision as it has on the legislative practice. Most importantly, it calls for re-directing academic attention from the decision-rules in the final bargaining stage to the institutions governing informal

decision-making prior to first reading; from actors' opportunities and constraints in the formal process to differential empowerment in the informal arena; and from inter-organisational relations to intra-organisational bargaining. Indeed, fast-track legislation has increased the procedure's overall efficiency; yet, it has also shifted decision-making power between and within each of the co-legislators. It is the shift of decision-power within the EP as well as the attempt to redress this shift that is at the heart of our paper.[3]

The following gives a more detailed account of how codecision has been transformed since 1999. We show that routine fast-track legislation has 1) increased the recourse to informal politics; 2) brought about more cooperative EP-Council relations; and 3) created new opportunities as well as constraints for parliamentary actors in particular.

When the Amsterdam Treaty introduced the possibility of fast-track legislation, Art. 251 TEC merely stipulated that the Council, in its first reading, could adopt a proposed legislative act as amended by the EP "if it approve[d] all the amendments contained in the European Parliament's opinion". Yet, as the Treaty gave no indication as to how such agreement was to be reached, the co-legislators had to flesh out the formal rules of codecision on a day-to-day basis. The possibility of early conclusion therefore opened the door widely to interpretation; most importantly, however, it led to "a shift from formal, sequential bargaining between Council and Parliament to a more informal, simultaneous, and diffuse set of relations" (Farrell/Héritier 2004, 1199). The mechanism behind a first reading agreement is the following: after the Commission has tabled its legislative proposal, representatives of the three institutions enter into informal negotiations. These negotiations take place *before* the EP has issued its formal opinion and *before* the Council has adopted its common position. If an informal compromise is reached, the EP includes the Council's propositions in its first reading amendments; it requires simple majority to adopt these amendments. Subsequently, the Council, acting by qualified majority, accepts the Commission proposal as amended by Parliament, with the procedure closed and the act adopted accordingly. Informalisation is, therefore, a necessary condition for early conclusion—because a fast-tracked act must be rubberstamped (otherwise the procedure cannot be concluded early), and because the legislative compromise must be pre-agreed prior to the first formal steps.

[3] Fast-track legislation also has significant implications for the distribution of power within the Council, but given the scope of this paper these developments cannot be included here.

The informal negotiations take place in so-called "trilogues"—"private meetings between representatives of the European Parliament, Council and Commission which take place at each stage of the codecision procedure" (House of Lords 2009, 13). Trilogues were first used in the wake of Maastricht to facilitate the work of the conciliation committee prior to third reading (Rasmussen/Shackleton 2005). When Parliament and Council began to make use of the possibility to agree early, trilogues quickly became the accepted negotiation format, and they are now at the heart of fast-track legislation (European Parliament et al. 2007; Shackleton 2000). In most first reading trilogues, the EP is represented by the *rapporteur* for the dossier, the Council by the President of a working group or COREPER, and the Commission by the Director or Director General responsible for the legislative initiative; most trilogues are also attended by support staff from all three institutions. Yet, the composition of trilogues varies: the EP's *rapporteur* may be accompanied by "shadow *rapporteurs*" from other political groups and/ or the chair of the responsible committee; the Council can second a representative of the next Presidency; and in "political trilogues" the Commissioner him or herself can negotiate on behalf of the Commission (Interv. Com1 2008).

All first reading trilogues are, however, characterised by five features. First, they bring together a variable and restricted set of decision-makers rather than the full set (as does the EP's plenary or a Council meeting), or a formally restricted sub-set (as does a parliamentary committee or the conciliation delegation). Second, trilogues are secluded: documentation is not available, and meetings are closed to non-members and the public. Third, trilogues begin before EP and Council have adopted a public stance on the file. Fourth, trilogues aim to facilitate compromise and to coordinate positions so as to close the procedure at first reading; trilogues therefore provide a forum for inter-organisational negotiation rather than parliamentary debate (Jacqué 2007). Fifth, while representatives can pre-agree a legislative compromise in trilogue, any such agreement must be formally endorsed by the EP's plenary and the Council of Ministers.

In sum, informal decision-making in trilogues is at the heart of fast-track legislation, and the allocation of roles in trilogues, as well as information about and control of this arena, become as crucial to assess legislative influence—inter- and intra-organisational—as the distribution of power in the formal legislative process.

The study of inter-organisational relations in EU legislative politics has hitherto focused on two aspects: first, legislative influence under the formal rules of codecision (see a.o. Kreppel 1999; Tsebelis/Garrett 2000; Thomson/Hosli 2006); second, the strategic use of institutional politics by Parliament to bring about a change of the formal rules (Farrell/Héritier 2003; Hix 2002). Yet, both legislative output and legislative practice since 1999 suggest that EP and Council have begun to cooperate closely and constructively, with a focus on resolving policy-disagreement on EU legislation. Indeed, in order to fast-track a dossier, representatives from Commission, Council and Parliament need to work together closely, regularly and informally. Such cooperation has not been free of conflict. When the Amsterdam Treaty entered into force, the co-legislators disagreed about the adequate mix of formal and informal politics. While the Council actively pushed for fast-track legislation, the EP was "eager to retain the distinct nature of the first and second readings, insisting on the importance of the formal organs, committee and plenary, as the normal forums for contact and debate between the two institutions" (Raunio/Shackleton 2003, 177).

To allow the use of early agreements, cooperation between and within the co-legislators has since become structured by informal and semi-formal institutions, the most important of which is the *Joint Declaration on Practical Arrangements for the (New) Codecision Procedure*, an agreement concluded in 1999 and amended in 2007. Codecision practitioners therefore talk about "rules of engagement" (Shackleton 2000) and «pratiques dégagées au fil du temps» (Jacqué 2007, 2), which are designed to oil shared decision-making. Dramatically reinforcing interaction between EP and Council (Shackleton 2004, 3I), successful fast-track legislation post-Amsterdam has thus been seen as starting a new era of EP-Council relations—characterised by cooperative interaction rather than confrontational institutional politics (Jacqué 2007, 12; Intervs. Com2 2008; EP1 2008). A successful strategy to cope with the complexity of codecision, informalisation seems to have transformed inter-organisational relations too.

In sum, in order to fully use the formal provisions of Art. 251 TEC, the co-legislators must a) pre-agree a compromise in secluded and restricted trilogues; b) endorse this compromise in the formal arena; and c) cooperate closely and constructively.

These three features of fast-track legislation have raised our curiosity about the EP's response—given that informalisation runs counter to the expectations raised when

Parliament was empowered; and given that the informalisation of shared decision-making will re-calibrate the opportunities and constraints created by the formal rules of codecision. Indeed, if actors' influence over policy-outcomes is defined by formal and informal rules of procedure, then increased interdependence between co-legislators, as well as new rules and arenas of interaction will create novel opportunities and constraints for selected actors (Farrell/Héritier 2004). This holds true for politics within and between organisations; we are interested in the former. For parliamentary actors, the re-calibration of opportunities and constraints under fast-track legislation has three sources: 1) the restriction of decision-making; 2) the seclusion of negotiation; 3) the requirement to endorse compromise at first reading and the majority needed to do so.

First, the *restriction of trilogues* implies differentiated access to and control over *de facto* decision-making. New institutional opportunities are created for negotiators who represent the EP in the informal arena, while new constraints are generated for those actors who are consistently absent from trilogues (Farrell/Héritier 2004, 1200ff.). Negotiators in restricted settings will be particularly empowered where a) intra-parliamentary control is limited and weakly institutionalised; b) key decisions about parliamentary and Council amendments are agreed—rather than merely discussed—in trilogue; and c) pre-decisions are formalised—rather than re-opened—in committee and plenary. The reverse is true for actors who are absent from trilogues, and who benefit from strong institutionalised intra-organisational control; from preparation rather than decision-making in the informal arena; and from the possibility to discuss and amend rather than rubberstamp pre-agreed decisions.

Second, the *seclusion of trilogues* implies differentiated access to information flows between co-legislators. Negotiators—and *rapporteurs* in particular—will be particularly empowered where it is not only impossible to attend trilogues, but where it is a) difficult to follow the decision-process *ex post* through official documentation, and where b) pre-agreement reached in trilogue is not subject to extensive public contestation, debate and amendment in committee and plenary. In turn, the recourse to secluded negotiations will constrain those actors that are not involved in trilogues, first and foremost, by denying them access to information. Such constraints will be minimised where trilogues are tightly controlled, and where pre-agreed amendments are publicly contested and debated in committee and plenary.

Third, an early agreement hinges upon the endorsement by the EP's plenary of the agreement reached with Council in trilogue; at first reading, Parliament requires a simple majority of votes to do so. Scholars and practitioners have therefore pointed to the differential empowerment of actors through early agreements, because legislative influence varies between the first and subsequent readings (Rasmussen 2011, 2; Imbeni et al. 2001). *Rapporteurs* are empowered in two ways: first and politically, because the inter-organisational compromise can be presented as a "fait accomplit"; second and institutionally, because formalisation of this compromise only requires a simple majority of votes cast (Rasmussen/Shackleton 2005). In turn, actors who are not involved in trilogues will be less constrained where public contestation and debate is pronounced, and where the threshold for formalising a pre-agreement is high.

The next two sections will follow up on this general discussion of the institutional opportunities and constraints under fast-track legislation. Section 2 explores the "bones of contention"; it theorises and explores how different parliamentary constituencies have responded, and which procedural features have been subject to redress. Sections 3 and 4 then turn to the chances of successful redress; they theorise and investigate whether and why contestation over the institutional rules of fast-track legislation has (or has not) translated into reformed internal parliamentary rules of co-legislation. One preliminary caveat is, however, in order: this paper neither theorises nor analyses whether new institutional opportunities and constraints have actually shifted power and influence in the EP; such a study would require analytical tools and primary documents that would allow to trace whether and how *rapporteurs* have been more successful in realising their policy-preferences than other individual or group actors (Rasmussen 2011). This paper, instead, identifies novel opportunities and constraints, and traces the conflict over how the new political space of codecision was institutionalised.

2. Actors' Preferences: Differential Empowerment and Reputational Costs

So far, we have shown that the formal rule-change of codecision has informalised legislative decision-making and increased inter-organisational cooperation between EP and Council. Following up on Farrell and Héritier (2004, 1188), we have also argued that the transformation of codecision has created new and asymmetrical opportunities and constraints. We now turn to the question of whether and how newly constrained actors in Parliament, who suffered a relative loss in decision-making power, have tried

to redress this transformation by reforming the rules of co-legislation, and whether and why they have been successful in doing so.

Our discussion of actors' preferences in this section, and of institutional reform in section 3, is prefaced by the following argument about the context of shared decision-making that is co-decision: we assume that inter-organisational interaction will impact on intra-organisational politics; more specifically, we assume that the changing rules of bargaining between EP and Council will trigger intra-organisational contestation at the individual and collective level in Parliament, and that this contestation will, under certain conditions, lead to intra-organisational reform.

First, we draw on Knight's rational choice institutionalism (1992). More specifically, we build on the assumption that actors seek to maximise their influence over policy-outcomes by seeking to increase their institutional power. Whether they succeed in doing so will largely depend on their power position in the bargaining over new institutional rules governing fast-track legislation, as well as specific environmental conditions, such as pre-existing institutional rules or changes in the environment. More specifically, we expect that those actors who see their influence over legislative outcomes constrained because they are excluded from the inter-organisational arena will seek remedies by promoting institutional reform which may lead to institutional change. Second, we argue that fast-track legislation not only creates asymmetrical opportunities for individual actors; increasing interdependence between Parliament and Council will also affect the EP as a collective actor—its strategic position, legislative influence and public reputation. Therefore, fast-track legislation will not only trigger a response by actors who seek to claw back their institutional power; it will also be redressed by those actors who retain an important role in intra-organisational decision-making.

In sum, actors' preferences over the rules of co-legislation will be driven by two instrumental motivations: asymmetrical legislative influence and constraints for individual actors; strategic and reputational benefits and costs for the organisation as a collective actor. In response, both individual "losers" and organisational "leaders" will seek remedies by promoting institutional reform which may lead to institutional change. In particular, actors will seek to redefine internal procedures within their own arena so as to limit the application of fast-track legislation *tout court* and—if fast-track legislation is chosen—to limit the power of *rapporteurs*.

In the following, we will look at key parliamentary actors and their preferences over institutional reform (the dependent variable of our study); in sections 3 and 4, we will look at the process of strategic bargaining over such reform. Hence, we engage in a conceptual experiment and distinguish between the involved actors and their preferences on the one hand, and environmental conditions on the other hand. By assuming specific actors' preferences, and varying two key environmental conditions—the frequency of fast-track legislation, and the presence of wider organisational reform—we derive hypotheses as to the expected outcome of the strategic interaction.

On the basis of our theoretical arguments, we expect that two types of parliamentary actors will attempt to redress the rules of fast-track legislation: a) actors who are faced with increased institutional constraints and a potential loss of legislative influence, and b) actors who are in horizontal leadership positions within Parliament. We identify small political groups and rank-and-file MEPs as representatives of the former, and the EP's Vice-Presidents as representatives of the latter. These actors will seek redress, by demanding more stringent rules of fast-track legislation; yet, this demand will meet with the resistance of those actors who are empowered by fast-track legislation. We identify large political groups, committee chairs and *rapporteurs* as empowered actors.

The rules of fast-track legislation and their reform will, therefore, be subject to conflict in the EP; in the ensuing bargaining process we expect that reform attempts are targeted at creating stringent rules on (i) the scope of fast-track legislation; (ii) control over delegated negotiators; and (iii) access to information flows between EP and Council. More specifically, the following issues will be at the centre of bargaining:

- Shall early agreements be used exceptionally or routinely?
- Shall the rules of fast-track legislation be binding or voluntary?
- Shall behavioural prescriptions be precise or vague?
- Shall the *rapporteur* represent the EP in trilogue, or shall access be broadened?
- Shall the *rapporteur* be mandated by committee?
- If so, shall the committee vote or decide by consensus?
- Shall the mandate equal a procedural permission to negotiate?
- Or shall the mandate be a (vague or detailed) substantive policy brief?
- Will the mandate be global or shall it be adjusted during negotiations?
- Is the *rapporteur* obliged to report back to the responsible committee?
- How shall the compromise between EP and Council be treated in committee?

Below we explain our expectations of actors' preferences over institutional reform in more detail, and draw on our interview material to illustrate the arguments.

Based on our theoretical line of argumentation, we expect that actors in horizontal leadership positions—first and foremost, the EP's *President and Vice-Presidents*—will advocate more stringent rules governing fast-track legislation. These actors will, in particular, push for the transparency and public visibility of legislative decision-making, in order to minimise the reputational costs for Parliament. Indeed, it is plausible to assume that the EP's leadership is much concerned with the coherence of Parliament, and with the image that their organisation offers to the outside world. The "leaders" wish Parliament to be perceived as a prime locus of democratic debate and of transparent decision-making. They are therefore particularly receptive to the growing public criticism of inter-organisational collusion between EP and Council, of lacking transparency in fast-track legislation, and of deals that are pre-cooked by a small group of actors. In short, faced with growing public criticism, the EP's leadership will attempt to a) bring down the number of early agreements by introducing stringent rules, or b) regulate co-legislation in a way that maximises the transparency of the political process. Our interviewees in the EP largely confirmed this assumption. They state that criticism of fast-track legislation has been expressed by both national parliaments and Brussels-based lobby groups (Interv. EP3 2009; Bunyan 2007; House of Lords 2009), and that the EP's leadership is vulnerable where the scope and style of fast-track legislation are under attack (Intervs. EP4 2009; EP2 2010). It is also suggested repeatedly that the EP's leadership is particularly concerned about the lack of visibility, publicity and open party political conflict—given the history of the EP's institutional battles and empowerment, as well as notoriously low voter turnout in EP elections (Intervs. EP3 2009; EP4 2009; EP1 2010; EP2 2010; EP3 2010; EP4 2010).

Second, we also expect that *small political groups* and *rank-and-file parliamentarians* will push to contain and institutionalise fast-track legislation. Our reasoning is, however, different and based on asymmetrical empowerment rather than the visibility of reputational costs. We argue that small groups and rank-and-file MEPs lose institutional opportunities for two reasons. First, fewer *rapporteurs* come from small political groups than from large parties. This means, in turn, that MEPs from small groups are less likely to be involved in trilogues and more likely to lose influence over shaping policies. Second, given the endorsement of the legislative compromise by simple majority in

plenary, small groups and rank-and-file MEPs *de facto*—if not *de jure*—lose the opportunity to make amendments and to initiate political debate (Rasmussen/Shackleton 2005). Both constraints also amount to a loss of publicity. In short, faced with increasing institutional constraints on their influence, small political parties and rank-and-file MEPs will push to a) make early agreements the exception rather than the rule, or b) regulate co-legislation in a way that maximises the control of the *rapporteur* by the committee. Our interviewees backed this assumption. It was mentioned repeatedly that small political groups are critical of early agreements, and advocate more constrained *rapporteurs* and broader access to information about the negotiation process (Intervs. EP4 2009; EP1 2010; EP2 2010; EP4 2010). The Greens in particular are said to have advocated the containment of early agreements and more transparent fast-track legislation—through strict requirements of mandating, feedback and *ex ante* and *ex post* votes in committee (Intervs. EP3 2009; EP2 2010). One interviewee also mentioned a practical reason for the small political groups' preference: covering all dossiers in a committee by a few group members is challenging, and a clear mandate as well as accessible information would facilitate this task (Interv. EP2 2010).

Third, we expect *committee chairs* to prefer more flexible rules governing early agreements. Our reasoning is as follows. Where legislation is fast-tracked, the committee gains further relevance as a decision-arena: it is in committee that the decision to attempt an early agreement is taken, the *rapporteur* is mandated, decisions about representation in trilogues are taken, and negotiation strategies with the Council are developed. Committees have also been shown to differ significantly in their propensity to fast-track legislation—with LIBE and ECON passing the most, and ITRE and TRAN passing the fewest early agreements (Reh et al. 2010). We therefore assume that committee chairs, a) try to resist the attempt at standardising the practice of fast-track legislation, or b) where institutionalisation is attempted, they will try to keep the rules flexible, and maintain the privileged position of committees. This argument is supported by our interviewees, who stress the strategic importance of committees *vis-à-vis* Council in fast-track legislation (Intervs. EP3 2009; EP3 2010); underline how strongly practices vary across committees (Interv. EP1 2010); and indicate committees' opposition to more centralised rules (Intervs. EP1 2009; EP2 2009; EP2 2010).

Finally, we expect *large political groups* and *rapporteurs* to advocate fast-track legislation and to prefer more flexible rules governing early agreements. This

expectation is based on the inverse argument to our assumption on small political parties and rank-and-file parliamentarians. We argue that large political groups and *rapporteurs* gain institutional opportunities for two reasons. First, more *rapporteurs* come from large political groups, which are therefore at the centre of fast-track legislation. This implies that MEPs from large groups are more likely to be involved in trilogues, and more likely to gain policy-influence over shaping policies. Second, the *rapporteur* is particularly empowered where his or her deal with the Council is easy to adopt, which is the case at first reading where only a simple majority is required to adopt amendments. In short, *rapporteurs* from large political parties are particularly empowered, politically and institutionally (Farrell/Héritier 2003; 2004), and will therefore push for a) an extensive use of fast-track legislation, or b) flexible rules where co-legislation is institutionalised. Our interviewees consistently back this assumption, by describing the conflict over fast-track legislation as a divide between small and large, rather than left and right, groups (Intervs. EP4 2009; EP1 2010; EP2 2010; EP3 2010). However, interviewees also stress that large political groups, too, face a trade-off between policy-influence in the informal arena, and public visibility in the legislative process (Intervs. EP4 2009; EP2 2010). Recent research has also shown that the likelihood of early agreement decreases where the *rapporteur*'s policy-preference deviates from the EP median (Rasmussen 2011); a finding which casts doubt over the *rapporteur*'s unconstrained power in the informal arena.

3. Theorising the Likelihood and Choice of Institutional Reform

So far, we have made three arguments: first, fast-track legislation creates new institutional opportunities and constraints with a concomitant shift of power through restricted, secluded bargaining in trilogues; second, newly constrained actors who suffered a relative loss of power, and actors in horizontal leadership positions contest fast-track legislation; third, contestation focuses on whether fast-track legislation should be governed by more stringent institutional rules, to reduce the likelihood of early agreement and to impose controls on inter-organisational bargaining in trilogue.

Assuming actors' preferences over outcomes as described in section 2, we will now turn to the environmental conditions under which the EP's "losers" and "leaders" will successfully redress fast-track legislation by reforming the rules governing early agreements. A pilot study of the first years of codecision post-Amsterdam has argued

convincingly that the EP is, *per se*, unlikely to adopt such rules: it is a decentralised organisation where the benefits and costs of early agreements are distributed asymmetrically. "In these organizations, individual actors [...] will seek to maximize their individual control of legislative outcomes regardless of the consequences for their organization as a whole" (Farrell/Héritier 2004, 1190). Yet, in May 2009, the EP adopted a *Code of Conduct for Negotiating Codecision Files* as part of its revised Rules of Procedure. In the following, we address this puzzle theoretically, by developing explanations for why Parliament reformed, and for why it chose a particular set of rules.

In a nutshell, we argue that even in the EP as a decentralised organisation, successful redress is likely where two conditions are met. Given the actors' preferences specified above, we vary two environmental conditions that facilitate institutional change, leading to more stringent rules and tighter controls on inter-organisational bargaining: 1) the extent of early agreements; and 2) the presence or absence of overall parliamentary reform. The two complementary hypotheses developed below are derived from rational choice institutionalism and bargaining theory; they assume that both "losers" and "leaders" are motivated by a respective gain or loss in power.

First, we argue that the *drastic increase in the number of early agreements* adopted per year can explain a) why calls for adopting internal procedural rules of fast-track legislation become louder, and b) why these calls translate into a change of rules. We argue that the increase of early agreements—slow in the first years post-Amsterdam; dramatic in the Sixth EP—made fast-track legislation more visible, both internal and external to Parliament, and that greater visibility had two effects. First, at the level of the individual parliamentary actor, greater visibility made the loss of institutional power more obvious and reform more pressing. "Losers" may accept fast-track legislation where 17% of files are *de facto* decided in trilogue and rubberstamped, but they will be much less willing to do so where the number is above 50%. Similarly, "leaders" will find it harder to rebut criticism of fast-track legislation from the "outside world"—be this lobbyists, national parliaments or the media—where early agreements account for more than half of the concluded files. Second, increasing inter-organisational collusion in the informal arena will raise questions about the EP's strategic and reputational position, *vis-à-vis* Council and the wider public. Once a high number of early agreements is reached, it will therefore be more difficult to see the pressure for institutional reform as a purely individual—rather than collective—concerns. Given

actors' divergent preferences about the desirability of more stringent rules governing early agreements, we therefore submit

H1 A steep increase in the number of early agreements will lead to an institutional reform providing for some more stringent rules of fast-track legislation.

Second, we argue that the *presence or absence of an overall reform agenda* matters for obtaining objectives of institutional change. This argument is based on two equifinal causal mechanisms.

First, under the roof of the overall reform, individual institutional reform measures are given impetus and political momentum. Overall reform creates wider political attention extending also to individual reform measures. From a strategic bargaining perspective, an entire reform programme covering multiple institutional reform issues, moreover, allows for issue linkages between individual reform items and the conclusion of a package deal across a variety of reform measures. In other words, the institutional attributes of a decision-making agenda matter. Assuming actors with divergent preferences and a decision-making rule which is unanimity or at least consensus, a multiple-issue agenda as opposed to a single-issue agenda holds more promising prospects for reform. It offers the possibility that the winners of a reform measure in one area compensate the losers in another issue area, a possibility which does not exist in the case of a single issue agenda (Davis 2004; Héritier 2007).

Second, the presence of an overall reform agenda also equips the EP's leadership with a strategic advantage. We argue that the "strategic use of norm-based arguments" (Schimmelfennig 2001, 48) is the "leaders'" main bargaining tool, and that an overall reform context makes it easier to frame the institutional reform of fast-track legislation as a response to challenged parliamentary norms. The routine recourse to informal secluded negotiation, and the unconstrained empowerment of selected negotiators under fast-track legislation can, indeed, be framed as challenging such norms, namely the EP's role as either a debating chamber (by constraining or even replacing public contestation), or as a working parliament (by curtailing the role of committees) (Steffani 1979). We argue that advocating such a "collective frame" is facilitated by wider negotiations about an organisation's role and functioning; such wider negotiations offer a "discursive hook" to advocate the reform of fast-track legislation as benefiting the EP

as a collective actor, rather than redressing individual loss of power. A "collective frame" will facilitate reform for two reasons: first, because it can cluster wider parliamentary support around the suggested change; second, because the evocation of consensual collective norms can "shame" the "winners" of unconstrained fast-track legislation into accepting reform (for similar arguments see Checkel 2005, 808ff.; Schimmelfennig 2001, 62ff.; Rittberger/Schimmelfennig 2006, 1157ff.). In short, in a context of overall reform, the evocation of core parliamentary norms—the "leaders'" main bargaining strategy—will be both more credible and more effective.

Given actors' divergent preferences about the desirability of more stringent rules governing early agreements, we therefore submit

H2 The existence of an overall parliamentary reform agenda will lead to an institutional reform including elements of a stricter regulation of fast-track legislation.

Table 3: Hypotheses, Operationalisation of Variables, Empirical Indicators

Hypothesis	Indicators: IV	Indicators: DV	Disconfirmation
H1	High percentage of EA	Introduction and reform of institutional rules: - Status: stringent, binding - Scope of EA: restricted - Control: strict checks on trilogues - Language: precise	No introduction of institutional rules OR Introduction of weak institutional rules: - Status: flexible, non binding - Scope of EA: unlimited - Control: limited checks on trilogues - Language: general
HII	Low percentage of EA	No introduction of institutional rules OR Introduction of weak institutional rules: - Status: flexible, non binding - Scope of EA: unlimited - Control: limited checks on trilogues - Language: general	Introduction and reform of institutional rules: - Status: stringent, binding - Scope of EA: restricted - Control: strict checks on trilogues - Language: precise

H2	Overall reform	Introduction and reform of institutional rules: - Status: stringent, binding - Scope of EA: restricted - Control: strict checks on trilogues - Language: precise	No introduction of institutional rules OR: Introduction of weak institutional rules: - Status: flexible, non-binding - Scope of EA: unlimited - Control: limited checks on trilogues - Language: general
HII	No overall reform	No introduction of institutional rules OR: Introduction of weak institutional rules: - Status: flexible, non-binding - Scope of EA: unlimited - Control: limited checks on trilogues - Language: general	Introduction and reform of institutional rules: - Status: stringent, binding - Scope of EA: restricted - Control: strict checks on trilogues - Language: precise

In the following, we will empirically assess how the EP's rules pertaining to conclusion at first reading have been contested, negotiated and reformed from the introduction of fast-track legislation in 1999 to the adoption of the *Code of Conduct for Negotiating Codecision Files* as part of the revised Rules of Procedure in 2009. In order to assess our hypotheses, we further sub-divide this period into the following phases:

1) In order to isolate the role played by the *number of early agreements*, we compare two phases: first, 1999-2004, during which early agreements rise moderately from 17% in 1999/2000 to 36% in 2003/2004; second, 2004-2006, during which early agreements increase dramatically beyond 50%. Based on H1, and assuming actors divergent preferences, we expect no or weak institutionalisation in phase 1, and institutional reform providing for more stringent rules of fast-track legislation in phase 2.

2) In order to assess the role played by the *presence or absence of overall parliamentary reform*, we further sub-divide the 2004-2009 period as a period during which the number of early agreements is high: first, 2004-2006, during which the number of early agreements has reached a high level, but there is no

overall parliamentary reform agenda; second, 2007-2009, during which the number of early agreements has reached a critical level, and the EP's "Working Party on Parliamentary Reform" is set up. Based on H2 and in view of the diverging preferences of actors, we therefore expect institutional reform measures of some stringency in the second half of the Sixth EP only.

Our empirical analysis draws on three data sources. First, we conducted semi-structured elite interviews with EP and Commission officials as well as MEPs between May 2008 and June 2010. Second, we use publicly accessible documents, including the EP's *Activity Reports* (1999-2004; 2004-2006; 2004-2009); the Parliament's 1999 opinion on the *Joint Declaration on Practical Arrangements of the New Codecision Procedure*; the 2004 *Guidelines for First and Second Reading Agreements under the Codecision Procedure*; the *Interim Report on Legislative Activities and Interinstitutional Relations* by the Working Party on Parliamentary Reform; and the *Code of Conduct for Negotiating Codecision Files*. Third, based on the EP's Legislative Observatory we created a dataset of all 797 codecision procedures concluded in the Fifth and Sixth EP between July 20, 1999 and July 17, 2009 (Reh et al. 2010).

4. Successful Redress? Parliamentary Conflict over Institutional Reform

How does H1—*A steep increase in the number of early agreements will lead to an institutional reform providing for more stringent rules of fast-track legislation*—hold up to empirical scrutiny? We looked at the number of early agreements between 1999 and 2006, and their impact on contestation and institutional reform. In order to isolate the impact of an increase in numbers from our explanatory factor "overall reform programme", we compared two time periods: 1999-2004, when early agreements rose consistently and moderately from 17% in 1999/2000 to 36% in 2003/2004; and 2004-2006, when early agreements rose dramatically to 69% by 2005. Based on our theoretical line of argumentation, we expect the EP's "losers" and "leaders" to contest the practice of fast-track legislation from the outset, and to be opposed by the "winners"; however, only in the 2004-2006 period—when a high level of early agreements (of at least 50%) was reached—do we expect successful redress through some stringent institutional reform measures. To summarize our findings, the empirical data does not support this expectation: the reform measures adopted in a period of low increase of early agreements were non-binding and even encouraged early agreement; yet, a high frequency of early agreements did not by itself induce stringent reforms.

More specifically, our empirical data shows that a small group of actors in the EP began to contest the rules of fast-track legislation as early as 2001; yet, concerns only became widespread in the Sixth EP. In 2001—when the percentage of early agreements had reached 25%—the three Vice-Presidents responsible for conciliation began to discuss whether early agreements were at all desirable, and how, if at all, fast-track legislation should be institutionalised. Two years into the new procedure, the Vice-Presidents praised the "flexibility" of early agreements and the "greater degree of trust and willingness to cooperate on the part of the institutions", but also raised concerns: about the lack of openness and transparency, about the quality of legislation passed at first reading, and about the "balance of power between the two co-legislators" (European Parliament 2004a, 26; Imbeni et al. 2001; Intervs. Com2 2008; Com3 2008; EP2 2008).

In spite of such early criticism by actors in horizontal leadership positions, our evidence shows that only once the number of early agreements had significantly risen (above 50%), did this debate spread to a wider circle of actors within the EP, and triggered criticism from the "outside world", to which the EP, in turn, needed to respond. Policy-makers talk about a shift of "culture" post-2004, when fast-track legislation was still a "non-issue", to a period when MEPs began to speak out against early agreements, both privately and publicly (Interv. EP4 2009). All interviewees backed this opinion, and ascribed the shift in both level of attention and degree of contestation to the steep increase in the number of early agreements. "The main reason is the statistics", argued one interviewee, as well as the fact that fast-track legislation had become "the dominant practice" (Interv. EP3 2009). Others observed that in the Sixth EP "everybody had noticed something had happened" (Intervs. EP2 2010; EP4 2010), and that the rejection of early agreements had become "politically correct" (Interv. EP1 2010).

As expected, such criticism touched upon both, the differential empowerment of individual actors, and the wider role of Parliament in inter-organisational negotiations. Indeed, MEPs raised concerns about the "extreme liberty" left to the *rapporteur* in some committees, and about the plenary's role of mere rubberstamping (Interv. EP1 2010). In addition, an ever wider circle of actors saw core parliamentary principles at stake; interviewees, in particular, commented on the lack of transparency and democracy (Intervs. EP4 2009; EP 2 2010; EP4 2010), as well as visibility and publicity in the legislative process (Intervs. EP3 2009; EP4 2009). The growing criticism inside the EP was, not least, described as responding to pressure from the "outside": national

parliaments, supposed to scrutinise the legislative process, "complained more and more that it was too fast for them" (Interv. EP3 2009), while a wider group of "outsiders" began to criticise the secrecy of negotiation and the lack of public debate (Interv. EP2 2010). In short, a variety of actors began to ask what the EP stood to gain from fast-track legislation (Interv. EP4 2009).

However, in spite of the consistent but moderate increase of early agreements in the Fifth EP, contestation did not translate into stringent institutional reform. The 1999 *Joint Declaration on Practical Arrangements for the New Codecision Procedure* encouraged the Council and Parliament to "cooperate in good faith [...] so that wherever possible an act can be adopted at first reading", and to "establish appropriate contacts" to this effect (European Parliament et al. 1999). It was the *rapporteur* who conducted these contacts for the EP, and (s)he faced few substantive or procedural constraints (Farrell/Héritier 2004, 1200, 1202; Rasmussen/Shackleton 2005, 12). As stated in the EP's 2004 *Activity Report*, the Fifth EP "had no uniform policy on defining the nature of [...] [informal] contacts, with each parliamentary committee having its own case-by-case approach to informal meetings and negotiations" (European Parliament 2004a, 26).

The first—unsuccessful—attempt at reform came in 2001, when the EP's Vice-Presidents proposed internal guidelines; as expected, these guidelines would have addressed both the scope of early agreements, and the control over negotiating authority: informal negotiations with the Council were only to start on the basis of a substantive policy mandate by the EP committee (Farrell/Héritier 2004, 1204). Yet, this proposal met with substantial resistance on the part of the *rapporteurs*, especially from large political groups. In the words of one prominent MEP:

> "They can write down whatever they want. They write a lot of reports. Nobody will take notice of that. [...] Those people who are really doing the job, need the contacts and they use the contacts. [...]. I am an independent MEP. In am not one that follows the order of the Vice President. [...] There are some people who want such rules, but they have no chance" (quoted in Farrell and Héritier 2004, 1205).

While *rapporteurs* did recognise that some change of rules was necessary, they argued against an overly formal approach, which, they believed, would make it more difficult to reach consensus with the Council (Farrell and Héritier 2004, 1205). The compromise between this newly empowered group of actors and the EP's more critical leadership were the *Guidelines for First and Second Reading Agreements under the Co-Decision*

Procedure, adopted by the Conference of the Presidents in 2004 and entering into force in the Sixth EP (European Parliament 2004b).

Hence, our first expectation—divergent actors' preferences, in combination with a moderate increase in early agreements will either lead to continued non-regulation, or to non-binding, weak and vague institutional rules—is borne out by empirical evidence. Adopted at a time when the percentage of early agreements had increased but remained below 50%, the 2004 *Guidelines* are an example of weak institutionalisation.

First, the *Guidelines* put those actors centre-stage that suffered a relative loss of decision-making power under fast-track legislation: the committee, shadow *rapporteurs* and small political parties. Second, the *Guidelines* attempted to redress differential empowerment by giving the parliamentary committee greater control over the *rapporteur*. While encouraging informal contacts at all stages of codecision, concrete negotiations should wait "until the committee has adopted its first or second reading amendments" which could then "provide the mandate on the basis of which the committee's representatives can negotiate"; any significant change in this position "should have broad political support" (European Parliament 2004b). In addition, the *Guidelines* stated that parliamentary representation was to be decided by the coordinators, permitting the involvement of all political groups. Third, the *Guidelines* aimed to give the responsible committee more information; the *rapporteur* was required to "report back regularly on the state of negotiations" (European Parliament 2004b). Yet, the *Guidelines* were both vague and non-binding. The document is riddled with vague compromise formulations: verbs like "should", "can" and "be encouraged" predominate; the *Guidelines* were also "suggestions for best practice" only, applied very differently across committees and with no means of central enforcement (Intervs. EP1 2008; EP2 2008; Working Party 2007, 4). In short, the consistent but moderate increase of early agreements from 1999-2004 was accompanied by a period of non-institutionalisation and, subsequently, a set of non-binding and flexible rules.

While the 1999-2004 period fully confirms our expectations, this is not the case for the 2004-2006 period. Indeed, although the percentage of early agreements had reached 50% (69% in 2004/2005 and 65% in 2005/2006); although criticism had grown inside and outside Parliament; and although the "atmosphere was excellent for reforms" (Interv. EP4 2010), there was no successful redress. Empowered actors with vested

interests in fast-track legislation supported flexible rules (and, in turn, the use of early agreements). As one interviewee put it, the *Guidelines* de facto "promot[ed] [...] early conclusions" (Interv. EP4 2009; see also Intervs. EP1 2010; EP2 2010)—with early agreements, indeed, continuing to increase. Hence, H1 is disconfirmed.

We next turn to the empirical assessment of H2—*The existence of an overall parliamentary reform agenda will lead to an institutional reform including elements of a stricter regulation of fast-track legislation*. In order to assess H2, we analyse the second half of the Sixth EP, namely the period of 2007-2009. Doing so, allows us to study three years during which the percentage of early agreements continued to be significantly above 50%; slightly dropping to 58% by 2007, then rising steeply to 74% by 2008 and to 80% by 2009. Holding constant a high level of early agreements, we scrutinise the role played by our second explanatory factor, the existence of overall parliamentary reform. To put it briefly, our empirical evidence supports this expectation to some extent: as expected, the 2007-2009 period ends with a higher level of regulation. However, the adopted rules of fast-track legislation are less binding and stringent than H2 would have us expect.

In the latter half of the Sixth EP, we can observe a trend towards the regulation of fast-track legislation, culminating in the adoption of the *Code of Conduct for Negotiating Codecision Files* as part of the EP's Rules of Procedure in May 2009. The adoption of the *Code*—more binding, more stringent and more detailed than the 2004 *Guidelines*—is difficult to explain with the arguments used so far: in 2009, the EP is still a decentralised organisation; actors have divergent reform preferences since they "win" and "lose" through fast-track legislation; and the percentage of early agreements was high by 2005 already. What had changed, however, was the institutional context of negotiation. In 2007, the Conference of Presidents set up the "Working Party for Parliamentary Reform", and the Sixth EP went through a period of overall reform in the second half of its legislative term. In this context the *Code of Conduct* was adopted.

The Working Party, chaired by the German Socialist MEP Dagmar Roth-Behrendt, was a high-level political group, with a broad reform mandate and a good reputation across political groups and among MEPs more widely (Intervs. EP4 2009; EP4 2010). As part of its mandate to reform the legislative process, the Working Party was explicitly tasked

to look at the practice of early agreements. In its 2007 *Second Interim Report*, the Working Party summarised the state of institutionalisation as follows:

> "[c]urrently not all Members and Parliament staff are fully aware of the existence of the guidelines, and their status—though approved by the Conference of the Presidents—is only that of suggestions for best practice: as a result, recourse to the guidelines is rare and if used, their implementation very much depends on the discretion of the Members involved and/or the staff of the committee secretariat" (Working Party 2007, 4).

The *Code of Conduct* was the reaction to this diagnosis. It is a set of more precise rules about the conduct of fast-track legislation; and it is the first set of such rules that was extensively discussed in various bodies, and that was confirmed—if not debated—in plenary (Interv. EP1 2010; EP4 2010). The *Code* was drafted by the EP's codecision unit upon request by the Working Party; the document was discussed and agreed in the Working Party (Intervs. EP3 2009; EP4 2009); subsequently the draft *Code* was submitted to the Conference of the Presidents who endorsed it in September 2008. The *Code* was adopted as part of the "Corbett Report", revising the EP's Rules of Procedure, first, in the Constitutional Affairs Committee, and subsequently in the 2009 May plenary. The Corbett Report was approved by 552 votes in favour, 101 votes against and 51 abstentions; the *Code* became Annex XX of the revised Rules of Procedure, with Rule 70 referring explicitly to the *Code* (Intervs. EP4 2009; EP 3 2010; EP4 2010; European Parliament 2009b).

In view of the *Guidelines*' inconsistent application, it was the aim of the *Code* to strengthen the content, to enhance the status, and to improve the visibility of the rules governing fast-track legislation (Working Party 2007, 3). As one interviewee put it, the *Code* aimed "to limit the number of files concluded at first reading" (Interv. EP4 2009). The *Code* addresses similar issues as the *Guidelines*, but it does so in more detail.

First, the *Code* stresses the key role played by the EP committee as "the main responsible body during the negotiations"; the committee also decides on a case-by-case basis "whether it actually wants to attempt early conclusion" (European Parliament 2008). Second, the *Code* broadens access to the informal arena; the committee—no longer the coordinators—decide on parliamentary representation in trilogue. This decision on "the EP's negotiating team"— no longer "the *rapporteur*"—shall respect "political balance" (European Parliament 2008). Third, the *Code* introduces an explicit and substantive mandate, namely the committee's or the plenary's amendments; where negotiations take place before amendments have been agreed, the committee "shall

provide guidance", but such contacts are to be "exceptional" (European Parliament 2008). The committee shall also "update the mandate of the negotiating team in the case that further negotiations are required"; only under exceptional time pressure shall this decision fall to "the rapporteur and the shadow rapporteurs, if necessary together with the committee chair and the coordinators" (European Parliament 2008). Fourth, the *Code of Conduct* broadens access to information flows. It specifies the kinds of documents to be used in trilogues, which should be made available to the committee following negotiations. Also, "[a]fter each trilogue, the negotiating team shall report back to the committee on the outcome of the negotiations"; under time constraints the team must fully update the shadow *rapporteurs* and, if necessary, the coordinators (European Parliament 2008). Finally, to redress institutional opportunities lost to (small) political parties and ordinary MEPs, the *Code* introduces a "cooling off period" between the end of the inter-organisational negotiations and the final vote in the EP's plenary.

As a part of the EP's codified and respected Rules of Procedure, the *Code of Conduct* is a more binding, visible and precise set of rules. Yet, the negotiation outcome and process suggest the importance of compromise—in all likelihood reached through package deals and issue linkage. Given the actors' conflicting preferences outlined in section 2, the *Code* was contested, in particular with regard to its legal status, the stringency of the mandate, and the clarity of provisions.

As Annex XX to the EP's Rules of Procedure, the *Code* is linked to Rule 70, and a close comparison between the two documents reveals a degree of divergence between the *Code* and the Rule. Rule 70II states that "[b]efore entering into such negotiations [to reach early conclusion] the committee responsible should, in principle, take a decision by the majority of its members"; the *Code*, by contrast, talks about "broad consensus" in committee. Rule 70 requires the committee to "adopt a mandate, orientation or priorities"; the *Code*, by contrast, requires "amendments adopted in committee or in plenary". The co-existence of those provisions indicates the need for compromise; in case of conflict, Rule 70 would prevail (Intervs. EP4 2009; EP2 2010). The two contradictions between Rule 70 and the *Code* concern precisely the two most contested issues in the Working Party: first, the *Code*'s Art. 2—*de facto* limiting the scope of fast-track legislation by requiring a "case-by-case decision" that must be "politically justified" and taken either by "broad consensus or, if necessary, by a vote" in committee; second, the *Code*'s Art. 4, that makes trilogue negotiations without a

mandate by committee an "exceptional case". Both articles were pushed, in particular, by small political groups (Intervs. EP4 2009; EP3 2010; EP4 2010). A further trace of conflict can be found in the *Code*'s language. While opting for more linguistic constraints than the *Guidelines*—consistently replacing "should" by "shall"—the *Code* features formulations that require interpretation and are open to different readings. Such formulations—"as a general rule", "political priorities", "an urgent situation", "the attitude of a given Presidency", "as a general principle", "guidance", "in the exceptional case", "if necessary" or "sufficient time"—indicate the need for compromise face to continuous conflict (Intervs. EP4 2009; EP2 2010; EP4 2010).

In short, the reform of institutional rules met with continued resistance from key actors who had benefited from fast-track legislation; in section 2 we identified committee chairs, large political groups and *rapporteurs* as such actors. Our interviews support our argument that agreement between the "pro" and "anti" reform groups in Parliament was greatly facilitated by the existence of an overall reform agenda with ambitious diverging goals that required compromise (Interv. EP1 2010); indeed, when the Corbett Report passed through the Constitutional Affairs Committee, the *Code* itself was not considered "a big thing" (Interv. EP3 2010). One interviewee claimed that more stringent institutionalisation was linked to the possibility of issue linkage—the Code "had a chance [...] because of the reform working party" (Interv. EP4 2010)—and another that "it is important not to treat this [the *Code*] totally in isolation. [...] There were three reports of the working group, so it was part of a broader package. So there's a sense in which its results were also the product of some package deal" (Interv. EP2 2010), with important conflict between small and big groups (Interv. EP4 2010).

While our empirical documents cannot show us the precise content of such package deals, two explanations spring to mind: first, the empowerment of committees; second, the chair of the Working Group. In section 2, we identified committee chairs and large political parties and the *rapporteurs* as "winners" of fast-track legislation. Although our empirical evidence shows that committee chairs value far-reaching independence (Interv. EP2 2010), they may have agreed to more centralised rules because committees were not only put at the centre of the first reading stage, but were also granted a degree of discretion in interpreting the *Code*'s rules. In this conflict it is also likely that Dagmar Roth-Behrendt—a veteran member of the PSE—had significant clout and could take her large political group along (Interv. EP2 2010).

When following the negotiation, it is striking that the content of the *Code* was mainly discussed informally; negotiated and decided in the restricted setting of the Working Party; and not subjected to wider public debate. Indeed, the EP's plenary tabled and rejected amendments to the revised Rules of Procedure—and, eventually, adopted Rule 70—but it did not debate the substance of the *Code* itself (Interv. EP1 2009).

In sum, we find some evidence in confirmation of H2: An overall reform agenda allowed for some more stringent institutional reform measures. Yet, due to continued reform resistance by the "winners" of fast-track legislation, these rules fall short of the complete set of indicators established above, with the contradictions to Rule 70 and vague formulations more open to interpretation than we would have expected.

So far, we have shown how an overall reform context as a multi-issue process has facilitated agreement on the *Code of Conduct* as part of a package deal. In the following, we will trace the second causal argument behind H2: an overall reform context will also facilitate successful strategic framing by the EP's leadership. Again, we find confirming as well as disconfirming evidence: the "leaders" did, indeed, consistently evoke collective parliamentary norms, and as part of the Corbett Report the *Code* was adopted by a large majority. Yet, the *Code*'s compromise character demonstrates that not all "winners" could be shamed into accepting stringent regulation.

Arguments about how fast-track legislation challenged parliamentary norms—rather than the "losers'" vested interests alone—were made as early as 2001. Two years post-Amsterdam the EP's Vice-Presidents warned against two "manifest dangers":

> "first, Parliament could find itself reduced to the role of the *16th Member State*, with reduced opportunities for wider societal and political interests to introduce their points of view into the decision making process. […] second, open and public debate in the plenary with the full participation of all political groups and members would tend to be reduced in importance by informal negotiations taking place elsewhere. The essential transparency of the legislative process would be put at risk, threatening the *agora* function of this institution" (Imbeni et al. 2001, 2; italics in the original).

This statement evokes key parliamentary norms: access and representation of interests, public deliberation, visible political conflict, a transparent legislative process. Yet, as discussed under H1 above, these arguments could not translate into institutional reform in the first half of the Sixth EP. Two environmental conditions had changed by 2009: first, the frequency and visibility of first-reading deals had reached the 50% threshold in 2005 and continued to be high; second, the overall reform negotiations transformed the

discursive context. Both changes matter for our second causal argument: even a decentralised organisation is likely to reform, we suggested, where such attempts can be framed as a response to organisational—in addition to individual—concerns, can cluster broad support, and can shame "winners" into acceptance.

When looking at public documents and debates, the institutionalisation of fast-track legislation was, indeed, framed as a direct response to defend the EP's self-understanding as a political—rather than intergovernmental or technocratic—actor. Echoing earlier criticism by the Vice-President's, the EP's 2004 *Activity Report* clearly illustrates this frame; appealing to the EP's identity and self-interest, it recalls

> "the danger of becoming an adjunct to the Council [...]. [...] Parliament must ensure that it remains clearly visible to the European citizen as an autonomous, democratic institution which has its own positions and priorities [...]. Success in responding to these challenges, and in generating a more parliamentary style of behaviour on the part of the Council, will not only make the legislative procedure easier to understand but will contribute to creating a truly bicameral system at the European level" (European Parliament 2004a, 35).

Hence, to advocate their reform agenda, "leaders" strategically framed the redress of fast-track legislation as defending a core norm: the EP's role as the only directly elected EU institution, that was empowered to "fully parliamentaris[e]" codecision (European Parliament 2004a, 8). Documents and interviews show consensus on what a "parliamentary" process should entail: open debate on the shape of legislation; scope for the public to follow; transparent inter- and intra-organisational relations; and visible political contestation (European Parliament 2004a, 2007; Imbeni et al. 2001; Intervs. EP4 2009; EP3 2009; EP4 2009; EP2 2010; EP4 2010). When presenting its reform proposal, the Working Party pitched the *Code* as a defence of precisely these principles:

> "Where Parliament is asked to confirm in plenary a pre-negotiated agreement reached at informal meetings between a small number of representatives of the three Institutions [...] this certainly does not increase Parliament's visibility in the public and the media, who are looking for political confrontation along clear political lines and not for a flat, 'technocratic' debate where the representatives of the three Institutions congratulate each other on the 'good work' done" (Working Party 2007, 2f.).

As our interviews demonstrate, it was only in the latter part of the Sixth EP that fast-track legislation was seen in this light. By then, concerns about fast-track legislation focused on the unconstrained political power of individual actors; but they also revolved around the challenge to core parliamentary norms. An ever wider circle of actors within the EP associated early agreements with a lack of transparency, democracy and publicity in the legislative process (Intervs. EP3 2009; EP4 2009; EP 2 2010; EP4

2010), rather than with efficiency and policy gains that had dominated the image of fast-track legislation in the early years of its application (Intervs. EP4 2009; EP2 2010). This perception was intensified by the history of the EP's empowerment through codecision. As one interviewee remarked: "the whole reform of the codecision procedure was [meant] [...] to make the Parliament known in public, to allow for debates" (Interv. EP4 2010); instead, in the eyes of the public, the EP was now seen to be colluding and negotiating with the Council in secret. Such a perception challenged the EP's "view of itself as a defender of certain institutional prerogatives" as well as its identity as a "separate institution with its own kind of priorities and its own kind of vision of the world" (Interv. EP2 2010).

Against this backdrop, it is even more surprising that the *Code*—framed as a measure to re-establish transparent, democratic and visible legislative decision-making—was itself mainly debated informally in the EP; discussed and decided by the restricted Working Party; and merely confirmed—rather than debated—in plenary.

In short, our empirical evidence supports two aspects of the second causal argument. First, the EP's leadership, indeed, framed the *Code* as a defence of collective organisational norms, and used the context of overall reform as a "discursive hook" to do so. Second, this frame resonated with—and was supported by—a wide parliamentary constituency in the EP, although the *Code* itself was only voted but not debated in plenary. Third, attempting to re-establish the key role of the parliamentary committee, to introduce a degree of control over parliamentary representation *vis-à-vis* the Council, to improve the transparency of the procedure, and to re-establish the role of the plenary the *Code* can, indeed, be read as redressing some of the above-identified challenges to the Parliament as a collective actor. The *Code*'s adoption just prior to the 2009 EP elections—coupled with continued concerns about turnout and EP elections as "second order" (Reif/Schmitt 1980)—also demonstrates awareness of external normative criticism. At the same time, the above-described evidence of compromise and continued contestation clearly shows that not all "winners" could be shamed into accepting stringent rules to fully re-establish the challenged parliamentary norms.

Conclusion

Our paper investigated the EP's response to the most recent and most striking transformation of EU legislative politics: the trend to adopt legislation at first reading. Our paper argues that—contrary to early expectations and concerns—the introduction of codecision has made EU legislation neither more "parliamentary" nor less efficient. Instead, the routine use of fast-track legislation in the Fifth and Sixth EP has led to 1) an increasing recourse to informal and secluded political processes; 2) intensive inter-organisational cooperation between EP and Council; and 3) growing intra-organisational conflict over the conduct of codecision in Parliament.

Our paper theorised the consequences of fast-track legislation for the EP. Drawing on rational choice institutionalism and bargaining theory, we argued that fast-track legislation shifts new opportunities and legislative influence to those actors who represent the EP *vis-à-vis* the Council—first and foremost, *rapporteurs*, but also large political groups and committee chairs—and imposes new constraints on the power of those actors who predominantly play in one decision-arena—first and foremost, rank-and-file MEPs, small political parties and the EP's leadership. We therefore expected "winners" to defend the institutional *status quo* of unconstrained fast-track legislation, and "losers" and "leaders" to challenge the existing practice, with reform attempts focused on a) the scope of early agreements; b) control of trilogues; and c) access to information flows. In the decentralised EP, reform attempts would only succeed, we argued, where 1) the increase in fast-track legislation reaches a threshold of at least 50%; and where 2) the organisation goes through a concomitant period of wider reform.

We probed our argument empirically by analysing how the EP's rules of fast-track legislation were contested and changed from the entry into force of the Amsterdam Treaty to adoption of the *Code of Conduct for Negotiating Codecision Files*. To trace the causal importance of our variables, we sub-divided the 1999-2009 period into three phases: 1) 1999-2004 where a moderate increase of early agreements combined with the absence of organisational reform; 2) 2004-2006 where a steep increase of early agreements combined with an absence of overall reform; 3) 2007-2009 where a steep increase in early agreements combined with the presence of overall reform. Based on qualitative document analysis and a series of elite interviews, we found both confirmatory and disconfirmatory evidence for our argument.

First, we found that, once fast-track legislation went above 50% of all codecision items, with differential empowerment clearly visible, the practice became contested in the EP; conflict concerned both the general desirability of first reading deals, and the EP's internal rules of decision-making. As expected, reform attempts addressed the role of committees and small political parties in particular, seeking 1) to tighten control over trilogues (by strengthening the committee's role in mandating, and by broadening parliamentary representation); and 2) to gain greater access to information (by defining the documents used in trilogues, institutionalising feedback, and installing a "cooling off period" before the formal vote in plenary). Yet, these reforms seem to have met with great resistance on the part of the "winners": between 1999 and 2004 the EP had no consistent policy on the conduct of fast-track legislation, while the 2004 *Guidelines*, adopted by the Conference of the Presidents, were applied inconsistently in the Sixth EP. These findings are fully in line with our expectations for the EP as a decentralised organisation and given actors' heterogeneous preferences. However, in May 2009 the EP's plenary adopted a new *Code of Conduct for Negotiating Codecision Files* as Annex XX to the revised Rules of Procedure. Given its wide political backing, more binding nature, tighter constraints and greater visibility, the *Code* can be read as a first step towards successful redress through stringent institutional rules; yet, at the same time, the documents testify sustained resistance of selected parliamentary actors.

While this development is puzzling in view of the EP's continued decentralisation and ongoing preference divergence between "winners" and "losers", we can explain the timing and content of institutional change in the following way. The combination of a high number of early agreements and the context of overall reform facilitated steps towards successful redress: first, by creating a multi-issue negotiation agenda, that allowed to adopt the *Code* as part of a wider reform package; and, second, by creating a discursive context, that allowed to cluster supporters—and to shame opponents—around a "collective frame" of reforms as defending core parliamentary norms. Hence, while a high number of early agreements alone does not lead to stringent informal reform—with H1 accordingly disconfirmed—we find some evidence in confirmation of H2: where a steep increase in early agreements coincides with overall reform, issue linkage and strategic framing can translate contestation into more stringent rules. Yet, our analysis of the reform process and outcome also throws up disconfirmatory evidence: the "winners" continue to resist reform, and the adopted rules of fast-track legislation fall short of our expectations when it comes to enforceability and precision.

Our paper analysed the EP's response to the routine use of fast-track legislation and the steep increase in early agreements since 1999. Future research will now need to follow up on whether and how the *Code of Conduct* is—or is not—successfully implemented, and whether the new rules decrease the number of early agreements. Such findings can contribute to the wider debate about shared decision-making in Comparative Politics in two ways: first, by re-directing attention from the impact of formal rule change on inter-organisational relations to the consequences for intra-organisational decision-making, power shifts and institutional reform; and, second, by demonstrating how inter-organisational relations can influence the development, contestation and strategic evocation of an organisation's core norms.

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