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**Time to Decide:  
The effect of early agreements on legislative duration in the EU<sup>1</sup>**

***Dimiter Toshkov*** Assistant Professor, Department of Public Administration, Leiden University

***Anne Rasmussen*** Assistant Professor, Department of Public Administration, Leiden University

**Abstract:** The increased use of early agreements in the EU co-decision procedure raises the concern that intra and inter-institutional political debate is sacrificed for the sake of efficiency. We investigate the effect of early agreements (trilogues) on the time it takes for legislation to be negotiated during the first reading of co-decision. We find that the first reading negotiations of trilogues on salient legislation take longer than first readings of similar files reconciled at second and third reading. First readings of early agreements also appear to last longer when considering all co-decision files submitted to the 5<sup>th</sup> and 6<sup>th</sup> European Parliaments, but the effect is masked by a general increase in first reading duration after 2004. We conclude that even if early agreements restrict access of certain actors to decision making, they allow for more time for substantive debate at the first reading stage than similar files reconciled later in the legislative process.

**Keywords:** co-decision procedure; Council of Ministers; early agreements; European Commission; European Parliament; institutionalization; legislative procedure; joint decision making

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<sup>1</sup> Both authors contributed equally to this paper and to Rasmussen and Toshkov (2011).

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## Introduction

The co-decision procedure, which became the ‘ordinary legislative procedure’ of the European Union (EU) with the Treaty of Lisbon (2009), has been the subject of a number of adaptations during its relatively short history. The practices for the conduct of negotiations between the institutions in the context of co-decision have changed considerably over time. One of the most important and most controversial of these developments is the increased use of the so-called ‘early agreements’, where a deal is reached between the European Parliament (EP) and the Council at the first reading stage thus bypassing the often lengthy negotiations during second reading and conciliation. It was the Amsterdam Treaty (1999) that made it possible to conclude EU co-decision as early as the first reading. This change was motivated by a desire to increase the efficiency of EU law-making in a situation where the scope of the procedure was to be expanded to more and more new policy areas. The option of concluding early agreements has been heavily used ever since, and such deals have been referred to as ‘fast-track legislation’, or ‘trilogues’.

Notwithstanding the possible efficiency gains, academics, commentators and the EU institutions themselves have been wary about the normative consequences of reaching such fast-track agreements. Problems with transparency and the possibility for systematic exclusion of some actors, like small states and party groups, from the legislative process are two issues that have been raised with regard to the increased use of early agreements (Shackleton and Raunio 2003; Farrell and Héritier 2004; Häge and Kaeding 2007; Héritier and Reh 2011). Another potential concern with fast-track legislation is that such deals are reached so fast that it becomes difficult for the legislative bodies as a whole to allocate sufficient time for deliberation and control of the leading negotiators to ensure that these deals are representative of the views of the entire legislature (Shackleton and Raunio 2003, Farrell and Héritier 2004, CEPS 2009). To assess the seriousness of this part of the critique of early agreements, we need to know whether early agreements are reached faster than other deals, and whether there is any pattern in the duration of the different kinds of deals depending on the saliency and controversy of the legislative dossiers.

In this article we offer the first systematic study of the impact of early agreements on the duration of legislative deliberation by analyzing the factors that influence the length of the first readings for co-decision files concluded at different stages of the legislative process. The existing literature on EU legislative duration does not provide an answer to this question, because it either focuses on overall legislative length (Golub 1999; 2007; 2008; Schulz and König 2000; Golub and Steunenberg 2007; König 2007; 2008; Klüver and Sagarzazu 2011) or pools data from different legislative procedures (Rasmussen and Toshkov 2011). Moreover, rather than examining legislative duration, studies of co-decision have so far focused on the conditions under which first reading deals/early agreements occur (Rasmussen 2011; Reh et al. 2013).

Our empirical strategy is two-fold. First, we compare the duration of first readings for all legislative dossiers submitted under co-decision to the 5<sup>th</sup> and 6<sup>th</sup> EPs. We find that, overall, early agreements endure longer first readings than files reconciled at the second and third

stages. But due to reforms in the mechanics of co-decision introduced in 2004 which have resulted in longer first readings for *all* types of files, this first empirical analysis cannot separate the effect of early agreements from the effects of the 2004 institutional reform. Subsequently, we conduct and present a second empirical analysis which focuses on 45 salient and controversial files. The analysis finds evidence that the first readings of early agreements indeed last significantly longer than other files, even when we control for inter and intra-institutional political disagreements<sup>2</sup>.

Our findings do not challenge the fact that early agreements entail problems with transparency and open up the possibility for systematic exclusion of some actors. However, they show that, even if fast-track legislation restricts access for certain actors to decision making, early agreements on salient legislation allow more time for substantive debate and negotiations during the first reading stage.

## **1. Early agreements and the co-decision procedure**

As introduced with the Treaty of Maastricht (1993), the co-decision procedure can include a maximum of three legislative readings. The Amsterdam Treaty amendments enabled the co-legislators to reach legislation as early as the first reading if the Council can find a sufficient majority to pass the Commission's proposal including any amendments the EP might have adopted. If not, the procedure moves on to second reading, where it is concluded if the Council manages to reach a so-called 'common position' and to agree to any amendments the EP might put forward to this text. If the EP makes amendments to which the Council cannot agree, a conciliation committee is called at the third reading stage where the co-legislators aim to reconcile their legislative differences.

Early agreements require an informal compromise between the legislators. Typically a few key representatives from each institution meet in a so-called trilogue and broker a compromise at a moment at which neither the EP nor the Council has adopted a formal position (Shackleton and Raunio 2003; Farrell and Héritier 2004). Deals reached are subsequently presented to the full legislative bodies of the Council and the EP but in such a way that it is practically impossible to amend them, which puts the average members of the legislative bodies under a severe pressure to accept what is on the table unless they prefer no legislation at all. Rasmussen and Shackleton (2005) explain how key negotiators from the institutions are subject to very little constraint and monitoring from their parent bodies at such an early decision-making stage compared to later in the policy process (2005).

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<sup>2</sup> The DEU data allows us to use elite survey-based dossier-level measures of preference heterogeneity instead of the rather indirect institutional proxies used by Golub 1999; 2007; 2008; Schulz and König 2000; Golub and Steunenberg 2007, or the sector-level party positions employed by König 2007; 2008; and Klüver and Sagarzazu 2010.

After the introduction of the possibility for early agreements, there has been a clear trend to expand the use of first reading conclusions. The increasing share of early agreements exceeded even the expectations of practitioners involved in the conduct of the procedure (Shackleton 2000). Table 1 presents the relative shares of proposals decided at first, second, and third reading and the incomplete procedures (a final decision has not been made yet) for each year in which the proposals were made for all co-decision cases submitted to the 5<sup>th</sup> and 6<sup>th</sup> EPs. Altogether, out of the entire population (899 proposals), 53% have been completed at the first reading stage, second reading conclusion took place for a little under a third of all files and third reading conclusion (after the involvement of the conciliation committee) is the exception, accounting for 8% of the files (10% of all files introduced have not been completed by the end of this study). We make an important distinction between first reading conclusions which have involved a genuine early agreement and those which have been finalized at first reading because the EP has made no amendments at all, or a trivial number of amendments that the Council has accepted in full<sup>3</sup>. Still, early agreements account for between 41% and 57% of all co-decision files concluded between 2005 and July 2009.

**Table 1: Percentage of co-decision proposals submitted to the 5th and 6th European Parliaments by finalization stage and year of proposal**

Year of proposal	1 <sup>st</sup> reading		2 <sup>nd</sup> reading	3 <sup>rd</sup> reading	Not yet adopted	N proposals
	trivial	early agreement				
> July 1999	26 %	5 %	47 %	16 %	5 %	19
2000	17 %	1 %	51 %	26 %	5 %	86
2001	13 %	3 %	58 %	19 %	9 %	80
2002	31 %	6 %	49 %	10 %	4 %	71
2003	41 %	15 %	32 %	6 %	6 %	110
2004	32 %	25 %	27 %	7 %	8 %	71
2005	11 %	41 %	23 %	8 %	18 %	91
2006	22 %	57 %	18 %	1 %	3 %	118
2007	28 %	49 %	18 %	1 %	5 %	101
2008	12 %	55 %	9 %	1 %	23 %	121
< July 2009	13 %	42 %	6 %	0 %	39 %	31
<b>TOTAL</b>	<b>23 %</b>	<b>30 %</b>	<b>29 %</b>	<b>8 %</b>	<b>10 %</b>	<b>899</b>

*Source: own data based on the Legislative Observatory*

The increased use of early agreements results in time savings and efficiency gains because legislation is adopted faster. In spite of this, there has been no shortage of criticism of first reading deals among academic scholars, commentators and the EU institutions themselves. In

<sup>3</sup> In order to separate early agreements from the rest of the first reading conclusions we employ automated text analysis on the documents provided by the Legislative Observatory database. More details on the procedure are given in the ‘Research design and data’ section of the article.

fact, the worries of the potential “side-effects” of concluding early have been so prominent that a substantial share of the academic literature on co-decision has shifted away from analyzing the relative influence of the different institutions in this and other decision-making procedures to a discussion of what the consequences of early agreements are for EU decision-making (Shackleton and Raunio 2003; Farrell and Héritier 2004; Rasmussen and Shackleton 2005; Héritier and Reh 2011) and under what conditions they occur (Rasmussen 2011; Reh et al. 2013).

Concerns regarding early agreements relate to the lack of transparency entailed in negotiation processes, which often allows for systematic exclusion of important actors. Another concern raised about these deals is that they are being pushed through in a fast manner without adequate time for deliberation and control of the legislators who negotiate them (CEPS 2009). When criticizing first readings, Shackleton and Raunio even go as far as to speak of “a trade-off, a normative choice between the claims of efficiency and democracy, as democracy is not primarily about the speed of the decision-making process” (2003: 183). Statewatch echoes this criticism by pointing out how “the efficiency of decision-making is enhanced at the expense of transparency, openness and accountability”<sup>4</sup>. An important element of Farrell and Héritier’s criticism of first reading conclusion is also that they are reconciled in a fast manner. In discussing the challenges that national parliamentary committees face in controlling the EU outputs, they for example state that, “decisions are typically taken before the member states have even had the chance to reach a consensus on a Common Position, let alone to defend their negotiating strategies to their respective domestic Parliaments” (2004: 9).

The claim that early agreements allow for less time for deliberation and negotiation has not been tested systematically so far. Naturally, the total amount of time between proposal and entry into force is shorter for early agreements since one or two decision-making stages are bypassed. However, this still leaves open the possibility that early agreements could extend the duration of the *first reading* and hence provide more time for political discussions at the early stage compared to a file that is reconciled later in the legislative process. In the remainder of the paper we focus on this question and, after discussing several hypotheses about the potential determinants of first reading durations, we present two sets of empirical analyses.

## 2. What determines first reading duration of co-decision files?

Although our main interest is in evaluating whether the first readings of early agreements last longer, we need to envelop this hypothesis into a more general set of theoretical expectations about the determinants of legislative duration. We ground these theoretical expectations in the existing literature on the duration of the EU legislative process (Golub 1999; 2007; 2008;

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<sup>4</sup> Statewatch Viewpoint, September 2007, “Secret trilogues and the democratic deficit” (<http://www.statewatch.org/analyses/no-64-secret-trilogues.pdf>). See also and <http://euobserver.com>, 06.02.2008 “MEPs fear lack of transparency in quick EU law-making”.

Schulz and König 2000; Golub and Steunenber 2007; König 2007; 2008; Rasmussen and Toshkov 2011; Klüver and Sagarzazu 2011)<sup>5</sup>.

### 2.1. Early agreements and conclusion stage

Let us first clearly state the logic behind our main hypothesis that early agreements should prolong the negotiations and deliberations during the first reading of the co-decision procedure. All things equal, we would expect legislators to spend more time on the first readings if they need to reconcile all the items here than if they can also make use of decision time at second reading. This does not mean that first reading conclusions last as long as the total amount of time spent on second reading conclusions of course. Hence, we know from standard micro-economic theory that the marginal productivity of each additional hour spent on something is likely to decline over time. Second readings usually take longer than first readings meaning that the marginal productivity of the last hours spent on these files is likely to be lower than the marginal productivity of the last hours spent on first readings. As a result of the higher average productivity for first reading as opposed to second reading files, legislators should therefore be able to complete first reading files in a shorter overall period of time than second reading files (even if these files have a similar level of controversy). At the same time, we would regard it as unrealistic that they are so much more productive in concluding early agreements than they do not need more time for their first reading than for first readings of files with a similar degree of salience and controversy reconciled later in the legislative process. Our expectation is therefore that *if conclusion of salient files is reached at first reading, then the first reading negotiation period should take longer than if they are reconciled later in the policy process (hypothesis 1)*. If on the other hand, as the conventional wisdom indirectly argues, the legislative work at first readings is less thorough because key negotiators can push through items with less debate and control, then the length of first readings of salient files might be the same no matter whether they are reconciled here or not.

### 2.2. Preference heterogeneity

Existing duration studies found a positive link between intra and inter-institutional disagreements and legislative duration (Schulz and König 2000; König 2007; Klüver and Sagarzazu 2011). The theoretical argument derived from spatial decision-making models is that the gridlock interval where no policy preferred to the status quo exists is greater the more heterogeneous the actor preferences become and the more veto players exist (see for example Tsebelis 2002.). Rather than ending up with no policy change in a situation of gridlock, a deal is usually brokered by offering a compromise to unsatisfied veto players or providing them side-payments. However, in such a case, negotiations can be expected to last longer. In line

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<sup>5</sup> The existing studies do not answer the issue this article addresses because, with the exception of Rasmussen and Toshkov 2011, focus on the *total* length of the legislative process and are concerned with general issues of efficiency in EU decision making.

with these predictions, *we expect the first reading negotiations to last longer, the greater the level of disagreement between and within the co-legislating institutions (hypothesis 2).*

Whereas the theory linking preference heterogeneity and duration is relatively straightforward, testing its predictions is rather challenging in practice. So far, studies have not used direct measure of actors' preferences over individual pieces of legislation to derive measure of preference heterogeneity. Instead, several studies have relied on indirect measures of preference heterogeneity (Golub 1999; 2007; 2008; Schulz and König 2000; Golub and Steunenberg 2007). As an example, Schulz and König (2000) argued that there may be some overall differences in the degree of preference heterogeneity between different issue areas and different types of EU outputs, and Golub (1997; 2007) expected the level of preference disagreement to be linked to specific historical moments in the history of the EU (such as the leadership of Thatcher) and important institutional events (such as enlargements). As a result, these studies incorporate a series of dummy variables in the equations. The effects of these dummy variables are difficult to interpret since we cannot be sure exactly what they measure – preference heterogeneity, or some other factor which happened to correlate or coincide with enlargements or the tenure of some political party in office. Other pieces of research have instead attempted to derive policy positions for the actors by relying on the party manifestos of their national political parties (König 2007; 2008; Klüver and Sagarzazu 2011). The advantage of such research is that it allows us to derive proposal specific preference positions. Moreover, Klüver and Sagarzazu's analysis adds to the existing literature by not only controlling for preference heterogeneity within the Council but also between the institutions rather than including a dummy for whether the EP acts as a veto player or not. However, in spite of these improvements it is still questionable whether controversy and preference heterogeneity between EU level actors on concrete pieces of EU legislation can be derived from general policy positions of national political parties. As a result, we test our predictions using proposal-specific measures (more details on our approach are presented later in the text).

### **2.3. Institutional constraints**

Another factor which spatial theory predicts to affect the likelihood of a policy change is the institutional set-up (Romer and Rosenthal 1979; Rosenthal 1990). Institutions constrain the behavior of the actors by putting forward the requirements they need to fulfill in order to reach agreement. In this way, existing literature on duration has shown that the legislative process takes longer when the Council operates under unanimity rather than a qualified majority requirement (see e.g. Golub 2007 and König 2007). In such a situation, the gridlock interval where no policy can be adopted is greater. Again, more compromises and side-payments will be required to reach agreement, which is expected to increase duration. In our case we have no real variation in the decision-making rule, since practically all co-decision files are adopted using qualified majority voting. However, we have institutional variation over time in another type of rules guiding how the first readings should be adopted.

When the option of early agreement was first introduced, key negotiators from the institutions could largely do their work in an unconstrained institutional environment (Rasmussen and Shackleton 2005). However, the EP especially has become aware of the potential dangers involved in letting their rapporteurs negotiate with the Council without any control and monitoring, and efforts have been made to constrain these negotiators more and more. In November 2004, a set of guidelines on how to conduct negotiations and conclude agreements at first and second reading was approved by the Conference of Presidents and confirmed by the Conference of Committee Chairs (EP 2007; Shackleton and Rasmussen 2005; EP 2009). Also the subsequent Joint Declaration from 2006 on the conduct of co-decision between the Institutions made reference to how each institution would designate and define the mandate of their representatives in the meetings. Moreover, the guidelines have recently been replaced by a “Code of Conduct for Negotiating Codecision Files” adopted by the Conference of Presidents on 18.9.2008. According to the EP itself, “In comparison to the rather vague term ‘guidelines’, its name is intended to underline its more binding nature” (2009: 26). The code also specifies in more detail how negotiations ought to be conducted, for example how the negotiating team of the EP should be monitored and collect mandate and what the role of the relevant EP committee monitoring the key negotiators is. When the EP adopted a revision of its Rules of Procedure on 6 May 2009, it was annexed to its Rules.

All of this demonstrates that early agreements are no longer struck in the kind of institution-free environment that existed initially. Nowadays, there are quite elaborate constraints on the key negotiators that require them to report back to their committees regularly, collect mandates etc. These rules do not fundamentally change the majority requirement for adoption of the early agreements of course. The key negotiators still only need to present the co-legislators with a compromise which they prefer to the status quo. However, whereas they could choose earlier where to place such a compromise within the winset of possible deals that satisfy their legislative bodies, this choice is now constrained. Giving these legislative bodies as a whole more influence on exactly what the final deals looks like by making sure that they give regular mandates and receive information during the negotiation process might mean that their key negotiators need more time to conclude the informal negotiations. Our expectation is therefore that, *as stricter procedures have been introduced for the conduct of early agreements over time, they last longer (hypothesis 3)*.

### **3. Research design and data**

In order to estimate the effect of early agreements on legislative duration we use a two-fold empirical approach that relies on two different datasets. In this section, we describe the data sources and operationalizations of the variables used in the empirical analyses.

In both sets of analyses the unit of observation is a legislative dossier (file) and all variables are measured at this level of aggregation. The first dataset includes the entire population of co-decision proposals submitted to the EP between July 1999 and July 2009 – a period which covers the 5<sup>th</sup> and the 6<sup>th</sup> terms of the EP. We accessed the necessary data in June 2011 using

automated data extraction from the Legislative Observatory and complemented it with records from Prelex (a database monitoring the inter-institutional decision-making and managed by the Commission). Our second dataset focuses on highly salient co-decision proposals studied in the framework of the ‘Decision making in the European Union’ (DEU) I and II projects (Thomson et al 2006; Thomson 2011). The major advantages of the second dataset are that it offers precise dossier-level estimates of preference heterogeneity (see below) and that it is deliberately restricted to a set of highly salient files (thus keeping saliency relatively constant). The overall dataset includes 125 controversial consultation, co-decision and assent files, from which we selected all the co-decision files, which were concluded at the time of the analysis, i.e. altogether 45 files. Our selection includes proposals from a large number of different policy areas before and after enlargement that were of political importance and involved some controversy. The latter was determined by only including proposals mentioned in different EU news sources and on which interviewed experts indicated that there was substantive disagreement. From the 45 completed co-decision files in the DEU datasets, 19 are finalized at first reading, 24 are concluded at 2<sup>nd</sup> reading and 2 are finalized at the last 3<sup>rd</sup> reading stage.

Our dependent variable – the duration of legislative deliberation – is the same in both sets of empirical analyses and is defined as the difference in months between the date of the adoption of the EP’s first reading position (technically, it is called a ‘legislative resolution on the proposal’) and the date of the legislative proposal. The necessary data is obtained from the Legislative Observatory.

The main independent variable that we use classifies all legislative dossiers into four groups - early agreements, ‘trivial’ first reading conclusions, second, and third reading conclusions. The files comprising the first two groups had to be finalized and had to have no second or third reading. Data on the conclusion stage is available from the Legislative Observatory. The tricky part in constructing this variable is separating genuine early agreements from the trivial first reading conclusions. To do so we employed the following strategy. First, using automated data extraction and text analysis we downloaded all documents related to the first reading and summaries of the first readings in the institutions from the Legislative Observatory. Second, we searched the summaries for references to “informal”, “compromise”, “trilogue”, or “agreement”. Third, we classified as early agreements the files that mentioned either of these terms. We selected the search terms after careful hand-coding of several dozens of cases. ‘To give an example, the EP summary of the first reading on ‘Rail transport: interoperability of the Community rail system’ (COD/2006/0273) states “The text adopted in plenary was the result of an agreement negotiated with the Council” Alternative approaches like relying on the number of adopted EP amendments or the novelty of the legal acts proved unsatisfactory while the text-based approach delivered results that closely match existing estimates of the prevalence of early agreements (Reh et al. 2013) and that could be validated using human coding.

The level of political disagreement is our second independent variable. We use the number of amendments in the EP’s first reading report as a proxy for general conflict. However, this

measure is not without limitations since some EP first reading amendments are often compromises reached between the Council and the EP how to change the Commission proposal rather than straightforward indicators of the level of conflict between the EP and the Council. This is why, in the second set of empirical analyses, we employ two additional indicators of disagreement that capture preference heterogeneity between the member states in the Council of Ministers, and between the EP and the Council. These indicators rely on expert-based measures of preference positions of the actors involved in the negotiations, which makes it possible to control for preference heterogeneity using proposal specific measures rather than indirect measures of preference heterogeneity (Golub 1999; 2007; 2008; Schulz and König 2000; Golub and Steunenberg 2007) or measures derived from positions of national political parties (König 2007; 2008; Klüver and Sagarzazu 2011). The preference positions come from face-to-face interviews with experts involved in decision-making processes. Experts were asked to identify the dominant issue dimension(s) of conflicts, to indicate how salient the issues were and to specify numerical estimates for the policy positions of the key actors while justifying the information with qualitative evidence (Thomson 2011). The validity and reliability of the estimates have been checked by comparing the expert information to information from documentation on Council decision making (Thomson 2006) and judgments of different experts with each other (Thomson 2006; König et al. 2007). In both cases, a high degree of congruence was found.

The indicator of preference heterogeneity within the Council is the average of the ranges [maximum - minimum] of member states' positions on each issue part of a proposal, weighted by the relative salience of the issue. The indicator of the disagreement between the EP and the Council is the distance between the EP's position and the Council's compromise, averaged over each issue part of a proposal whereas issues are again weighted by their relative salience.

The next variable that we use captures the effect of the institutional reforms of co-decision and is a binary indicator whether the first reading deal has been reached by the 5<sup>th</sup> or the 6<sup>th</sup> EPs. The start of the work of the 6<sup>th</sup> EP roughly coincides with the adoption of the guidelines on how to conduct negotiations and conclude agreements at first reading in November 2004.

Finally, we include a series of control variables in the general analysis, which measure characteristics of the negotiated files. First, we control for whether the negotiated act is new, an amendment to or a codification of an existing act. We know that the Better Regulation agenda of the Commission has reduced the amount of new legislation put forward and put emphasis on simplification and codification of existing legislation<sup>6</sup>. Over time, the share of such new legislation adopted has decreased whereas the share of acts codifying, recasting and repealing existing legislation has gone up<sup>7</sup>. We need to examine how closely any change in

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<sup>6</sup> A description of the programme can be found in the Commission's "Third progress report on the strategy for simplifying the regulatory environment" COM(2009)15, COM(2009)16, and COM(2009)17.

<sup>7</sup> Codification means bringing all amendments to a given law adopted at different times into one law. Recasting implies modifying existing legislation whilst simultaneously codifying it in one consolidated text incorporating all previous amendments. Repeals recall existing pieces of legislation or replace them with new content.

the length of the first reading negotiation period is linked to the fact that the character of the legislative proposals in the period examined has changed. The EP itself emphasizes that this factor plays a role by stating that, “Part of the explanation for the changing pattern of conclusions lies in the submission by the Commission of a significant number of proposals ‘recasting’ or codifying existing legislation” (2007: 10). The existing literature of duration in EU legislative processes does not include a control for these variables.

Second, we control for the legal character of the act, which has been shown in previous work on legislative duration to affect the length of the negotiations. Schulz and König (2000) showed that negotiations of directives last longer than of regulations and decisions. The argument put forward in previous research is that because directives require national implementation, member states can be expected to be less flexible when negotiating them, leading to a longer bargaining process (Schulz and König, 2000). It has also been emphasized how directives typically deal with more significant issues than non-directives (Golub, 2008). Even if our main focus is not the overall length of the negotiations but that of the first readings in one specific legislative procedure, the legal character of the file might also matter.

We employ negative binomial regression as the method of analysis. The dependent variable is essentially a count of the months between proposal and the adoption of the EP’s first reading position (legislative resolution) and its empirical distribution fits well a negative binomial distribution with the variance (28.3) higher than the mean (9.9) – hence a negative binomial model is preferred to a Poisson model as it can accommodate overdispersion. Scholars of legislative duration have often used event history, and more specifically the semi-parametric Cox proportional hazard models (see Box-Steffensmeier and Jones, 2004), as the preferred method of analysis. However, in our case the major advantage of event history (survival) models – the ability to handle censored observations - is lost because we have to exclude from the analysis all cases that are not completed by the time we collected the data since they do not have a value on our main independent variable. Nevertheless, we replicated the analyses presented below using Cox proportional hazard models and all inferences that we make on the basis of the negative binomial regressions stand. The decision to present in the article the former rather than the latter is due to the fact that the Cox event history models run into problems with the proportional hazard assumption (Box-Steffensmeier and Jones, 2004) – problems which do not completely disappear when we interact the independent variables with time.

#### **4. The effect of early agreements on first reading duration**

In order to estimate the effect of early agreements on legislative duration we start with an analysis of the entire population of proposals submitted to the European Parliament between July 1999 and July 2009 – a period which covers the 5<sup>th</sup> and the 6<sup>th</sup> terms of the EP. The descriptive statistics presented in Table 2 already give an idea about the differences in duration between early agreements, trivial first readings and the rest of the files. On average, the conclusion of first reading when an early agreement is done is a little more than 11

months (same as the first reading of files that would eventually be concluded at third reading). As expected, trivial first reading last much less – 7.4 months while second reading deals have an average first reading duration of 9.6. The average duration of first readings seems to have increased over time, especially for 2<sup>nd</sup> and 3<sup>rd</sup> reading deals, but unfortunately the trend is masked by the censoring of the 2008 and 2009 observations.

**Table 2: Duration of first reading in months by final stage and year of proposal**

Year of proposal	1 <sup>st</sup> reading		2 <sup>nd</sup> reading	3 <sup>rd</sup> reading	Not yet adopted
	trivial	early agreement			
> July 1999	8,6	14,0	8,1	9,7	2,0
2000	8,0	15,0	9,7	9,5	10,5
2001	8,0	6,5	9,5	9,2	8,9
2002	7,8	10,5	8,4	12,0	16,3
2003	6,4	8,7	9,2	10,9	6,7
2004	9,8	15,2	15,1	15,2	17,8
2005	6,0	14,5	13,2	15,9	9,1
2006	6,6	10,1	13,1	15,0	15,7
2007	7,3	10,9	10,5	10,0	9,0
2008	5,2	8,4	6,3	5,0	12,1
< July 2009	7,3	9,2	3,0	NA	15,8
<b>AVERAGE</b>	<b>7,4</b>	<b>11,2</b>	<b>9,6</b>	<b>11,2</b>	<b>11,3</b>

*Source: own data based on the Legislative Observatory*

Having introduced the data, we move forward to the regression analysis. Table 3 reports the results of the first set of four models. Model A1 includes our main variable of interest – the stage at which the dossier was concluded, and the number of EP amendments. According to the model, the first readings of trilogues (early agreements) last significantly longer than the first readings of the baseline category (2<sup>nd</sup> reading conclusions).

Early agreements lead to 8% longer 1<sup>st</sup> readings (the effect sizes are computed by exponentiation of the coefficients in Table 3), according to the model, which translates into approximately one additional month. Apparently, although statistically significant the effect is rather small. On the other hand, the first readings of trivial files are 22% shorter than the baseline, and 3<sup>rd</sup> reading files are slightly but not significantly longer. Moreover, the number of EP amendments has the expected positive effect on the duration of 1<sup>st</sup> readings – a standard deviation change (83 amendments) brings a 10% increase in the duration.

Model A2 includes an additional set of control variables – the type and novelty of the legal proposal, and the responsible Commission DG (which controls for the policy area). The original findings remain robust and, according to the model, the first readings of directives and new acts last significantly longer than decisions and amending/codification acts.

**Table 3: Negative binomial models of the duration of first readings in months for all co-decision files submitted between July 1999 and July 2009**

Variable	Model A1	Model A2	Model A3	Model A4
	<i>Coeff.</i> ( <i>St.error</i> )	<i>Coeff.</i> ( <i>St.error</i> )	<i>Coeff.</i> ( <i>St.error</i> )	<i>Coeff.</i> ( <i>St.error</i> )
(Intercept)	2.21 (0.03)***	1.85 (0.22)	2.12 (0.04)	1.90 (0.21)***
Finalization stage: ( <i>2<sup>nd</sup> is baseline</i> )				
1 <sup>st</sup> (early agreement)	0.08 (0.04)*	0.09 (0.04)*	-0.05 (0.04)	-0.04 (0.05)
1 <sup>st</sup> (trivial)	-0.25 (0.05)***	-0.17 (0.05)**	-0.30 (0.05)***	-0.20 (0.05)***
3 <sup>rd</sup> (conciliation)	0.08 (0.06)	0.06 (0.06)	0.12 (0.06)*	0.10 (0.06)
Type of act: ( <i>decision is baseline</i> )			-	
Directive	-	0.25 (0.07)***	-	0.23 (0.07)***
Regulation	-	0.14 (0.07)*	-	0.10 (0.07)
Amending/codification act	-	-0.12 (0.04)**	-	-0.12 (0.04)***
Number of EP amend-s (10)	0.01 (0.00)***	0.01 (0.00)***	0.01 (0.00)	0.01 (0.00)***
6 <sup>th</sup> EP term	-	-	0.25 (0.04)***	0.26 (0.04)***
	N=805	N=752	N=805	N=752

*N.B. Models 2 and 4 include controls for the responsible Commission DG as well.*  
*Significance codes: '\*\*\*' 0.001 '\*\*' 0.01 '\*' 0.05*

In Models A3 and A4, we add the EP term as another explanatory variable. According to Model A3, the institutional reforms indeed resulted in a longer time lapse before the EP adopts its first opinion: the positive and significant coefficient implies a 28% increase in the duration (or between 2 and 3 months). This means that even before the guidelines were re-established by the new code of conduct, they may have had an effect on duration. This is interesting since one of the reasons for tightening the guidelines listed by the EP was exactly that, “It is not clear to what extent these guidelines have been applied since their adoption” (EP 2008: 26).

Moreover, once we include the EP term in the model, the difference between the duration of first reading for early agreements and second reading deals disappears (the additional controls in Model A4 do not affect these findings). According to the EP itself, “This trend can be explained with the higher number of 1<sup>st</sup> reading agreements which included more and more controversial files which need more time to be negotiated and where parliament strives to get the best deal” (2009: 13). It could also be due to the effect of the Eastern Enlargement. What we can confirm is that the trend of longer first readings is robust to the inclusion of controls for the character of the files, which means that it is not driven by the changing composition of co-decision dossiers that the EP has to deal with. In a recent report, the EP itself confirms

how the new procedures have taken effect, which means that the institutional set-up at first reading has now become similar to the tighter rules at the conciliation stage: “Conciliation provides a model which is gradually being implemented in 1st and 2nd reading negotiations. Interpretation and translation is fully provided for, the delegation is regularly informed by and mandates the negotiation team, and the entire process is fully documented in a 4-column working document” (2009: 23). The conduct of fast-track legislation looks different from the initial period that scholars and commentators examined. Extensive procedures have been put in place, which seem to increase the length of the first readings. In fact, we see that, once we include the EP term in the model, the difference between the duration of first reading for early agreements and second reading deals disappears (the additional controls in Model A4 do not affect these findings). All things considered, it is hard to say whether the apparent global difference between the early agreements and 2<sup>nd</sup> reading deals is due to the increased use of early agreements after 2004 when all first readings started to take longer, or to any systematic effect of the conduct of early agreements. In any case, when all co-decision proposals are considered, the effect of early agreements on duration is likely to be small.

By including the number of EP amendments, and in models A2 and A4 the type, novelty and policy area of the proposals, we have tried to account for the possibility that early agreements and the rest of the files differ systematically in their salience<sup>8</sup>. The variables that we use, however, are imperfect proxies for salience and disagreement. Moreover, due to data limitations, in the analysis presented above we are not able to control for the preference heterogeneity between the EP and the Council which is a possible confounding variable. To address these two shortcomings, we present a second set of analyses which is restricted to the 45 highly salient DEU proposals.

Table 4 present the results from the negative binomial models estimated on this restricted sample. Models B1 and B3 includes the same set of variables as models A1 and A3 from Table 3, respectively (the only difference is that there are no trivial cases in this dataset so this category is not present). The findings, however, differ noticeably. First, the difference between the 1<sup>st</sup> reading duration of early agreements and 2<sup>nd</sup> reading deals is much bigger now, and it is robust to the inclusion of the EP term in the model (Model B3). Substantively, early agreements increase the duration of 1<sup>st</sup> readings by 55% (according to Model B1) – they add more than 6 months to the average for the sample 12 months from proposal till completion of 1<sup>st</sup> reading.

When we take into account the institutional innovations in 2004, the effect of early agreements drops slightly but, unlike in the analysis of the entire population of co-decision files and despite of the much smaller sample size, it remains significant and is associated with a 46% increase in duration vis-à-vis second reading deals. Again we see an effect of these

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<sup>8</sup> Models which add interaction effects between the number of EP amendments or the EP term and the finalization stage variable do not show any significant interactions regarding the difference in duration between early agreements and 2<sup>nd</sup> reading deals.

guidelines on duration even before they were tightened in the new code of conduct. Interestingly, the number of EP amendments is no longer significantly related to duration – apparently for highly salient files, the additional effect of EP amendments disappears (the DEU sample has a mean of 114 amendments vs. the average of 54 amendments in the entire population of proposals).

**Table 4: Negative binomial models of the duration of first readings in months for the files included in the DEU I&II datasets**

Variable	Model B1	Model B2	Model B3	Model B4
	<i>Coeff.</i> <i>(St.error)</i>	<i>Coeff.</i> <i>(St.error)</i>	<i>Coeff.</i> <i>(St.error)</i>	<i>Coeff.</i> <i>(St.error)</i>
(Intercept)	2.21 (0.13)***	1.65 (0.34)***	2.00 (0.18)***	1.45 (0.35)***
Finalization stage: ( <i>2<sup>nd</sup> is baseline</i> )				
1 <sup>st</sup> (early agreement)	0.44 (0.15)**	0.45 (0.14)**	0.38 (0.14)*	0.40 (0.14)**
3 <sup>rd</sup> (conciliation)	-0.17 (0.44)	-0.09 (0.42)	-0.14 (0.41)	-0.05 (0.40)
EP-Council preference distance	-	0.01 (0.00)*	-	0.01 (0.00)*
Council preference heterogeneity	-	0.01 (0.01)	-	0.01 (0.01)
Number of EP amend-s (10)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)
6 <sup>th</sup> EP term	-	-	0.35 (0.18)	0.32 (0.18)
	N=45	N=45	N=45	N=45

*Significance codes: '\*\*\*' 0.001 '\*\*' 0.01 '\*' 0.05*

Models B2 and B4 take into account the possible confounding influence of the preference distance between the EP and the Council, and of the preference heterogeneity within the Council<sup>9</sup>. Our original findings stand – if anything, the size and significance of the difference between early agreements and 2<sup>nd</sup> reading deals increases. In addition, the preference distance between the EP and the Council has a significant and positive impact on the duration of first readings, while the differences within the Council do not seem to play a role. A standard deviation change in the EP-Council distance increases the duration of first readings by 17% (or approximately 2 months), according to Model B2.

In summary, our empirical analyses support the following conclusions: When all proposals submitted between 1999 and 2009 are considered, the duration of first reading has significantly increased after the institutional reforms in 2004. Because this reform coincides with the increased use of early agreements, it is difficult to say whether trilogues lead to

longer first readings, but if there is an effect, it is likely to be small (less than a month). However, when only highly salient proposals are discussed, then the duration of the 1<sup>st</sup> reading stage takes significantly longer if an early deal is struck at first reading. Moreover, the difference is present both before and after the reforms in 2004. These findings are robust to controls for the type of proposal, the number of EP amendments, the preference heterogeneity within the Council, and the extent of disagreement between the EP and the Council.

## Conclusion

Even though early agreements of EU co-decision files have significantly reduced the overall duration of the legislative process, they have received a substantial amount of criticism. Scholars, policy experts and MEPs have pointed out how this increase in the efficiency of EU law means that deals are now reached so fast that there is little opportunity for broad input into such deals both from within and outside the legislative bodies. Our analysis does not allow us to rule out that there are normative issues with early agreements. However, scrutinizing the conditions under which these negotiations have a varying length casts a more nuanced view on early agreements than the existing literature. Hence our findings demonstrate that even if early agreements lead to overall efficiency gains, they *do* allow more time for negotiation and deliberation when salient legislation is on the bargaining table and there is a level of political disagreement between the co-legislators.

We find that the length of their first reading negotiation period is longer than that of files concluded at second reading, when the debated legislation is highly salient. Whether the fact that the first reading negotiation period of the early agreements are on average 46 per cent longer than that of files concluded at second reading is enough to ensure enough time for deliberation and input from the various actors in the EP is of course a normative issue that we cannot settle. Nevertheless, these findings do indicate that the co-legislators compensate for some of the lost time from not going to second reading by extending the length of the first reading negotiations when the deals are salient.

Rather than finding evidence that deals are pushed through quickly irrespective of how controversial they are, we find that the co-legislators spend more time on the first reading negotiation period the greater the level of political disagreement between them. Finally, we see a general trend in our analysis of all co-decision files submitted to the 5<sup>th</sup> and 6<sup>th</sup> EP that the duration of the early agreement has increased over time. Negotiation of fast-track legislation looks different today from the early period of first reading deals discussed among commentators and academic scholars<sup>10</sup>. This trend holds even when we control for

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<sup>10</sup> Another institutional change, which might contribute to increasing legislative length is the so-called period of “cooling-off” introduced by the Working Party on Parliamentary Reform, i.e. “a period of at least one month between the vote on any legislative report in committee (on first reading) and the vote on it in plenary”. The rule became applicable on 1.1.2008 and its aim was to facilitate time for deliberation within the political groups after conclusion of first readings negotiations with the Council and the resulting vote in the EP plenary (EP 2009).

characteristics of the file, such as its number of amendments, legal nature and novelty. In this way, it appears that the number of initiatives that the EP has undertaken to formalize, clarify and institutionalize the procedures according to which early agreements are concluded have had an effect. Hence, the increased amount of time spent on concluding first reading deals coincides with the implementation of the reforms. Much work remains to systematically examine the consequences of early agreements<sup>11</sup>. However, what seems clear based on the results of our analysis is that the EP has adapted to the changing nature of the co-decision procedure and that these adaptations seem to have contributed to a more thorough treatment of fast-track legislation.

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<sup>11</sup> Such work should also examine the new practice to conclude so-called early second readings, i.e. agreements concluded with the adoption of the Council common position. In such cases, the EP does not table second reading amendments but has its concerns incorporated into the common position.

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