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CO-DECISION TRANSFORMED: INFORMAL POLITICS, POWER SHIFTS AND INSTITUTIONAL CHANGE IN THE EUROPEAN PARLIAMENT

by

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First draft—please do not quote without permission. Comments very welcome!

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Abstract

This paper investigates a widespread yet understudied trend in European politics: the *de facto* shift of legislative decision-making from public inclusive to informal secluded arenas, and the subsequent adoption of legislation at first reading. Since its formal introduction in 1999, "fast-track legislation" has become ever more frequent, accounting for 72% of adopted co-decision files in the last parliamentary term. Our paper explores the political and institutional consequences of this trend for the European Parliament (EP). First, we analyse the recent transformation of co-decision in view of increased informalisation, inter-organisational cooperation, and intra-organisational conflict. Second, drawing on rational choice institutionalism, bargaining theory and organisational sociology we theorise intra-organisational conflict in the EP, and argue 1) that interdependence under shared decision-making will create new institutional opportunities and constraints; 2) that constrained actors will seek to redress their lost opportunities while empowered actors will seek to defend the institutional *status quo*; and 3) that ensuing attempts of internal reform will be successful where an organisation manages shared decision-making centrally, or where reforms are perceived to bolster an organisation's legitimate self-understanding. Third, based on primary document analysis we offer a first empirical illustration of how fast-track legislation has impacted on intra-organisational politics, institutional opportunities and internal reform in the EP.

Introduction[1]

This paper investigates an increasingly prominent yet understudied phenomenon in European politics: the shift of decision-making from public, inclusive to informal, secluded arenas, and the political and institutional consequences of this shift. To do so, we focus on the co-decision procedure in the European Union (EU), and on its rapid transformation during the last decade in particular. Indeed, since the procedure's introduction by the Maastricht Treaty in 1993, both the formal rules of co-decision and the legislative practice in Europe have undergone significant change (see Maurer 2003 and Shackleton 2000 for an overview). In terms of formal reform, the 1999 Amsterdam Treaty, first, extended the scope of co-decision to 38 areas of Community policy; a trend continued with the 2003 Nice Treaty that increased the number to 43. Second, under the Amsterdam Treaty the Council lost the right to re-introduce its common position at third reading, following failed conciliation. Third, Amsterdam formalised the possibility of passing an act at first reading, with the legislative procedure abridged or "fast-tracked" accordingly. Such "early agreements" or "first reading deals" are based on informal negotiations between the Council of Ministers and the European Parliament

[1] Research for this paper has been supported by the UK's Economic and Social Research Council (Grant RES-000-22-3661) and by the European University Institute. The theoretical framework draws on and further develops an argument first suggested by Farrell and Héritier (2004).

(EP), taking place before the Parliament has issued its formal opinion and before the Council has adopted its common position on the Commission's legislative proposal.

Our paper explores the political and institutional consequences of this third reform; more specifically, we ask how the formal possibility of "fast-track legislation" has impacted on intra-organisational politics, decision-rules, and the distribution of power in the EP. In line with related research on shared decision-making in Comparative Politics, we are thus interested in the consequences of institutional change; yet, in delimitation from existing studies we redirect attention from the impact of shared decision-making on *inter*-organisational relations to its consequences for *intra*-organisational rule-making and distribution of power (see Farrell and Héritier 2004 for a similar approach).[2] Given the prominence of fast-track legislation and the debate that has accompanied its extensive use, such a study has political as well as academic relevance. Indeed, the number of early agreements has increased dramatically over the last ten years—rising from 22% in 1999 to 86% in 2009 (Tallberg et al. 2009). Formalising the possibility of fast-track legislation has also transformed the everyday practice of legislative decision-making in Europe—by increasing the recurrence to informal political processes; by changing inter-organisational relations; and by creating new opportunities—as well as constraints—for individual and group actors within the Council and the European Parliament. As such, fast-track legislation has been praised for its efficiency, saving transaction costs to both Council and Parliament (Héritier 2007). Yet, it has also been criticised on democratic grounds by practitioners and scholars (Bunyan 2007; Imbeni et al. 2001; Raunio/ Shackleton 2003; Reh 2008). Most recently, newly elected EP President Jerzy Buzek publicly declared that there should be "as few first reading agreements as possible" in the future.

Against this backdrop, our paper addresses the following questions: how are the formal rules of co-decision applied in the political practice? Who is likely to "win" and to "lose" under fast-track legislation? What is the relationship between formal institutional change, the ensuing power shift, and the creation and reform of internal parliamentary rules? Does institutional change attempt to redress actors' differential empowerment? How is this attempt reflected in the evolution of the EP's rules of decision-making?

[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).

Our discussion proceeds in three steps. The next section analyses the recent transformation of co-decision in more detail; we argue that the routine application of fast-track legislation has led to 1) an informalisation of the legislative procedure; 2) an inter-organisational partnership between the two co-legislators; 3) the empowerment of particular actors and subsequent intra-organisational conflict within the Parliament. Section 2 then theorises the political conflict about internal rule change in the EP. Drawing on rational choice institutionalism, bargaining theory and organisational sociology, we formulate hypotheses about who will be empowered under fast-track legislation; who will react to such differential empowerment; and what will be the consequences for internal parliamentary reform. Indeed, if we assume that individual actors within organisations seek to maximise their influence over policy-outcomes, and if we assume that this influence is largely shaped by formal, semi-formal and informal rules of decision-making, then the creation and reform of these rules will be at the heart of intra-organisational contestation. The same expectation holds if we follow the behavioural assumptions of organisational sociology and argue that conflict over the legitimacy of an organisation's core principles will play a key role in intra-organisational politics. Section 3 offers a first empirical account of how the parliamentary rules pertaining to co-decision have been contested, negotiated and reformed during the last decade. The analysis is based on a pilot series of interviews conducted in May 2008 in Brussels, and on publicly accessible documents, including the EP's *Activity Reports* (1999-2004; 2004-2006); 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"; as well as the *Code of Conduct for Negotiating Codecision Files* agreed in the EP's May 2009 plenary session. An analysis of these documents gives us good insights into how the EP's internal rules have developed; it also allows us to draw conclusions about the nature of conflict addressed by these rules. However, while this discussion can illustrate our theoretical argument, a systematic empirical test would require a more in-depth analysis of the bargaining process in the EP, based on a wider range of sources. Our paper therefore concludes by outlining future research steps, and by discussing the wider implications for the study of shared decision-making.

1. Co-Decision Transformed: Formal Reform and Legislative Practice

The introduction of co-decision in 1993 was accompanied by very diverse expectations and concerns. On the one hand, co-decision was seen as a means to bolster procedural democracy in Europe; empowering the Parliament promised to make the EU's legislative process more accountable, inclusive and transparent, and to challenge—or complement—the "cartel of elites" that had hitherto dominated negotiation between the Commission and the Council of Ministers (Wallace 1996, 33). On the other hand, practitioners and scholars feared that the complex new procedure would render EU decision-making even more cumbersome and inefficient (Scharpf 1994). The introduction of co-decision also led to a series of conflicts between Parliament and Council over their respective roles and over how the new legislative procedure should be applied (Farrell/Héritier 2003; Héritier 2007). While the EP perceived its new role as that of a fully-fledged co-legislator, the Council initially did not intend to bargain with the Parliament but merely to indicate those pieces of legislation which it would accept or reject on a "take it or leave it" basis (Corbett et al. 2000). Both interpretations were compatible with the formal Treaty provisions. It was only after a series of hard-fought legislative battles that the Council gradually recognised the need to negotiate with the EP over legislative items that came under co-decision (Farrell/Héritier 2003).

In the following, we will outline how the formal rules of co-decision have been played out in the political practice. We will argue that the informal pre-negotiations that developed between Council and Parliament in the wake of Maastricht, as well as the ever more extensive use of early agreements since Amsterdam have fundamentally transformed legislative decision-making in Europe. This transformation has refuted both sets of expectations raised in 1993: while the recourse to informal and secluded negotiations has disappointed hopes for greater accountability, inclusiveness and transparency, the new procedure has not led to inefficiencies; in fact, between 2000/2001 and 2006/2007 the average length for the adoption of a co-decision file decreased from 686 to 206 days (Hix 2009). After initial conflict between Council and EP about the application of co-decision, the successful and routine use of fast-track legislation has also resulted in cooperative rather than confrontational inter-organisational relations, but it has raised new intra-organisational challenges at the same time. Indeed, whilst fast-track legislation made the relationship between Council and Parliament more efficient, it has shifted decision-making power between and within

each of these organisations. 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]

Early agreements were formally introduced with the 1999 Amsterdam Treaty; they allow Parliament and Council to adopt a legislative dossier at first reading, with the procedure closed accordingly. Since their formalisation, such first reading deals have become more and more frequent: between 1999 and 2004 28% of successful co-decision dossiers were concluded at first reading; between 2004 and 2009 the number went up to 72%; and observers estimate that 86% of all dossiers adopted in 2009 so far were fast-tracked (European Parliament 2004; Tallberg et al. 2009).[4] 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 of the procedure" (European Parliament et al. 2007). Furthermore, while early agreements were initially foreseen for technical and non-confrontational dossiers only, their remit has become broader. In its *Guide to Internal Procedures* the Commission, for instance, talks of both "technical" and "certain politically urgent" dossiers as likely cases for fast-tracking, but excludes "more sensitive" files due to their substantial, budgetary, legal or institutional consequences. A good example of a "politically urgent" dossier concluded as an early agreement is the 2008 package on "Climate Action and Renewable Energy" (CARE); here, the international climate negotiations to be concluded in the up-coming Copenhagen Summit imposed an external deadline that encouraged speedy conclusion.

In order to fast-track such a high percentage of legislation, Parliament, Council and Commission had to agree on how the formal rules of co-decision should be fleshed out on a day-to-day basis. Indeed, Art. 251 TEC merely stipulates that the Council, in its first reading, "if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended" by qualified majority. Yet, the

[3] Fast-track legislation also has significant implications for the distribution of power between the EP, the Commission and the Council of Ministers, as well as within the Council of Ministers; given the scope of this paper these developments can, however, not be included in the analysis to follow.

[4] As a caveat we should, however, mention the Commission's programme to consolidate and streamline existing legislation, as well as the required adjustments to EU legislation stemming from the new "regulatory procedure with scrutiny" under Comitology. Both developments have led to an extensive use of early agreements, but not to new EU legislation (Interv. Com1 2008).

Treaties give no indication as to how such agreement is to be brought about. The following discusses three ways in which the successful use of fast-track legislation has transformed the co-decision procedure. First, the adoption of early agreements increased the need of, and the recourse to, informal political processes; second, it required, and brought about, a cooperative rather than conflictual relationship between the Council and the Parliament; third, it created new opportunities as well as constraints, thus leading to intra-organisational conflict, particularly in the EP.

The Recourse to Informal Politics

Indeed, the possibility of concluding the legislative procedure at first reading has opened the door widely to informal politics and has 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 early agreements is the following: after the Commission has tabled its legislative proposal, representatives of Parliament, Council and Commission enter into informal negotiations over the desired outcome. As mentioned above, these negotiations take place before the adoption of the Parliament's formal opinion and the Council's common position. If the Council and the EP can reach an informal compromise, the Parliament includes the Council's propositions in its own amendments; such amendments are voted at first reading and require a majority of votes cast to be accepted—a lower threshold than is required for amendments at second reading. Subsequently, the Council, using qualified majority, accepts the Commission proposal as amended by Parliament, with the procedure closed and the act adopted accordingly. If the co-legislators cannot agree, the dossier takes the formal route where the Council's common position and the EP's second reading will be the next steps.

The compromise behind an early agreement is reached 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 the third reading (Rasmussen/Shackleton 2005). When the early rule-fights between Parliament and Council post-Maastricht gave way to inter-organisational interaction and negotiation, the Council Presidency—anticipating the transaction costs of co-legislation—proposed to also hold informal

trilogues early on in the legislative procedure; this enabled both sides to explain their positions more freely and to reduce the time needed to adopt new legislation (Interv. Council 2001). Trilogues quickly became accepted practice and 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 legislative 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 organisations. Yet, trilogues bring together up to 40 people (House of Lords 2009, 13), and their composition 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 negotiates on behalf of the Commission (Interv. Com1 2008).

All first reading trilogues are, however, characterised by four features. First, they bring together a variable but necessarily restricted set of decision-makers rather than the full set (as does the EP's plenary or a Council meeting), or a formally restricted set (as does a parliamentary committee or the conciliation delegation). Second, trilogues are not only informal but secluded arenas: documentation of the process is not available, and meetings are closed to non-members and the public. Third, trilogues begin before either the Parliament or the Council have adopted a public stance on the file. As such, trilogues allow Parliament to exert its influence early in the negotiation process, and the Council seems to prefer such early parliamentary influence to eventual blockage. Fourth, a trilogue mainly aims to facilitate compromise and to coordinate the Parliament's and the Council's positions so as to close the procedure at first reading. While representatives can pre-agree a legislative compromise in this format, any agreement must be endorsed by the EP's plenary and the Council of Ministers to become binding law. Overall, it is thus the trilogue's main function to provide a forum for inter-organisational negotiation rather than parliamentary debate—or, as a Council official puts it: «La procédure n'a dès lors que peu de rapport avec un examen parlementaire classique et se rapproche davantage du schéma traditionnel de négociation au sein du Conseil» (Jacqué 2007, 7).

In sum, in order to fast-track a dossier, representatives of the Council, Commission and EP need to work together closely, regularly and informally. As mentioned above, such cooperation has not been free from conflict. Post-Maastricht, it was only after a series of hard-fought legislative battles that the Council and the Parliament began to negotiate more constructively. Similarly, soon after the Amsterdam Treaty entered into force, the EP's Vice-Presidents responsible for conciliation warned against the "dangers" of fast-track legislation—for the EP's role, and for the transparency of the legislative process (Imbeni et al. 2001, 2). Initially, the two co-legislators did not agree about the adequate mix of formal and informal politics. While the Council actively pushed for informal pre-negotiation, the EP was "more 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). Closely related, scholars and practitioners have pointed to the differential empowerment of actors through early agreements, "because the potential for different interests within the legislative bodies to affect the legislative outcomes varies considerably between the first reading to the other legislative stages" (Rasmussen 2007, 2; Imbeni et al. 2001).

To facilitate cooperation, the social interaction between and within the three organisations has since become structured by a set of informal and semi-formal institutions, the most important of which is the *Joint Declaration on Practical Arrangements for the (New) Codecision Procedure*, an inter-institutional agreement concluded in 1999 and amended in 2007. Close observers of co-decision therefore talk about the "rules of engagement" (Shackleton 2000) and «pratiques dégagées au fil du temps» (Jacqué 2007, 2) that are designed to oil shared decision-making. These rules have not only been influenced by the informal negotiations and trilogues set up to facilitate conciliation. They have also been shaped by the above-mentioned fights over the application of co-decision post-Maastricht, and by the resulting recourse to informal negotiation early in the procedure. Following the "dramatic reinforcement of the interaction between the Parliament and Council" (Shackleton 2004, 3I), successful fast-track legislation has been seen as an expression of new inter-organisational relations—cooperative interaction rather than confrontational institutional politics seems to characterise these relations post-Amsterdam (Jacqué 2007, 12; Intervs. Com2 2008;

EP1 2008). If informalisation is a successful strategy to cope with the complexity of co-decision, it seems to have transformed inter-organisational relations at the same time.

Next to inter-organisational rules of interaction stand guides to internal procedures in the Council, Parliament and Commission, regulating the practice of intra-organisational decision-making and of inter-organisational interaction. As will be discussed in more detail below, these informal and semi-formal rules have not been followed consistently, and have been subject to significant conflict within the Parliament in particular.

Differential Empowerment and Intra-Organisational Conflict

Recourse to early agreements has been praised for making a potentially cumbersome procedure more efficient and for epitomising newly constructive relations between Parliament and Council. At the same time, such "inter-organisational collusion" has been criticised on democratic grounds by scholars and practitioners, including the EP's Vice-Presidents responsible for conciliation. Indeed, if it had been the intention to bolster procedural democracy by introducing co-decision, then the recourse to informal politics is problematic, as it shifts decision-making from a "public accessible forum to one which is secret and thus removed from public scrutiny, comment, debate and possible intervention" (Bunyan 2007, 8). On the one hand, concerns relate to the secrecy of informal pre-negotiation: it is impossible to attend trilogues, or to follow the decision-process *ex post* through official documentation. On the other hand, informal politics changes the style of the legislative process, fostering diplomatic negotiation at the expense of parliamentary debate. In the formal process, the *rapporteur* drafts a report for debate in the responsible committee, followed by the tabling, discussion and vote of amendments to the Commission's proposal. In the informal process, the Council intervenes in the Parliament's first reading: early agreements are only possible if the Council's concerns are accommodated at this stage, with the discussion in committee often restricted accordingly and the compromise voted as a "done deal" (Bunyan 2007, 8). In sum, it has been argued that "the greater the volume of negotiation earlier in the procedure, the less transparent the proceedings" (Raunio/Shackleton 2003, 178).

Such criticism directly points to the third transformation of legislative decision-making, which is at the heart of this paper: differential empowerment in the EP, and the ensuing conflict over the creation and reform of procedural rules. Indeed, if actors' influence

over policy-outcomes is largely defined by formal, semi-formal and informal rules of procedure, then new rules and interaction patterns will create new opportunities for some actors and new constraints for others. This holds true for politics within as well as between organisations; in this paper, we are interested in the former. When revisiting the above discussion of how fast-track legislation is being played out, we can identify two main sources of differential empowerment: first, the recourse to secluded negotiations by a variable and restricted set of decision-makers; and, second, the different majorities required in the EP to pass an early agreement at first reading as opposed to adopting an amendment at second reading.

First, the recourse to secluded negotiations by a variable and restricted set of decision-makers will offer new opportunities to those actors who represent their organisation, first and foremost, by granting them privileged access to information. Such "relais actors" (Crozier/Friedberg 1977) will be most empowered where intra-organisational control is minimal and/ or non-institutionalised; where key decisions are reached in the informal setting; and where the pre-decision will only be rubberstamped. In turn, the recourse to secluded negotiations by a variable and restricted set of decision-makers will constrain those actors that are not involved in informal negotiation, first and foremost, by denying them access to information. Such constraints will be minimised where intra-organisational control is strong and/ or institutionalised; where decisions are prepared rather than reached in the informal setting; and where the pre-decision is discussed and amended rather than just rubberstamped. Second, "relais actors" will be more empowered where public contestation and public debate of their pre-agreement is limited, and where the threshold for formally adopting a pre-agreement is low. In turn, actors that are not involved in secluded negotiations, will be least constrained where public contestation and debate is pronounced, and where the threshold for adopting a pre-agreement formally is high.

When applying these considerations to individual and group actors in the European Parliament, we would expect fast-track legislation to offer new opportunities to those actors who represent the EP in trilogues, and to generate new constraints for those actors who are consistently absent from such negotiations. Opportunities will, first and foremost, be offered to the *rapporteur* and to her attendants in trilogues. We would expect these actors to be particularly empowered a) where control by parliamentary committees and plenary is limited, weakly institutionalised and non-enforceable; b)

where amendments to the Commission's legislative proposal are agreed between Council and EP representatives in first reading trilogues; c) where these agreements are not subject to extensive public contestation, debate and amendment in committee and plenary; and d) where these agreements are adopted as amendments at first reading, therefore only requiring a simple majority of votes cast (for a similar argument see Farrell/Héritier 2004, 1200ff.; see also Rasmussen 2007; Rasmussen/Shackleton 2005). The reverse will be true for actors that are absent from trilogues and that would therefore benefit from greater monitoring and control of these arenas; and for actors that capitalise on public contestation, debate and amendment—first and foremost, ordinary Members of the European Parliament (MEPs), small political parties, committees, committee members and committee chairs, as well as the plenary. Given such differential opportunities and constraints, we would expect conflict over the institutionalisation of fast-track legislation, pertaining in particular to the control of representatives in trilogues, access to information flows, and the role played by public debate in committee and plenary.

The next sections will follow up on this general discussion of institutional empowerment and constraint. Drawing from rational choice institutionalism, bargaining theory and organisational sociology, section 2 will, first, theorise our observations more systematically, and formulate hypotheses about intra-organisational contestation and the reform of internal parliamentary rules. Section 3 then offers a first empirical discussion of the procedural rules that structure intra-organisational decision-making and interaction, in particular the process of mandating and controlling "relais actors", the management of information flows, and the role played by the plenary, committees and individual MEPs. Two caveats are, however, in order. First, on the basis of its empirical material this paper illustrates the theoretical argument, but it does not offer a systematic test. Second, this paper cannot claim to theorise or analyse whether a shift of power has actually taken place in the European Parliament; such a study would require analytical tools and primary documentation that allow us to trace whether and how "relais actors" have been more successful in realising their policy-preferences than other individual or group actors. Based on its theoretical assumptions, this paper can merely identify novel opportunities and constraints, and trace the conflict over how the new political space of co-decision should be institutionalised.

2. The Theoretical Framework: Bargaining in Shared Decision-Making

So far we have argued that the successful and routine use of fast-track legislation has led to the informalisation of Europe's legislative process and to cooperative inter-organisational relations; combined, these two developments have impacted on intra-organisational decision-making and control. Following up on Farrell and Héritier we will, next, theorise how a macro-institutional change at time t—the formal possibility of fast-track legislation introduced in Amsterdam—affects "the relative power of individual actors within organizations and [...] how these organizations will respond to these changes at time t + 1" (2004, 1188). We will focus on new institutional opportunities and constraints rather than on how new rules can—or cannot—be translated into actual influence over policy-outcomes, and we will look at the reactions to macro-institutional change and its consequences by collective and individual actors. To do so, we will draw on three theoretical approaches: rational choice institutionalism, theories of bargaining and delegated negotiation, and organisational sociology.

First, we will draw on Knight's rational choice institutionalism (1992). More specifically, we will build on his argument that individual actors seek to maximise their influence over policy-outcomes, and that such influence is largely determined by the formal, semi-formal and informal rules of decision-making. This argument underlies our framework as an assumption: only where actors seek to maximise power, and only where such power stems from institutions, can we expect institutional change to lead to the redistribution of power within and between organisations as well as to counter-proposals for institutional reform by disempowered actors.

Second, in order to analyse the specific opportunities and constraints that result from shared decision-making and delegated negotiation we draw on approaches to bargaining across interdependent arenas. More specifically, we follow Crozier and Friedberg (1977) who claim that delegated negotiators—or "relais actors"—play a key role in shared decision-making. This role gains them new opportunities in intra-organisational decision-making too, as "they are the 'gatekeepers' to the organization and broker information between the organization and its interlocutor" (Farrell/Héritier 2004, 1188). In turn, actors who find their institutional position weakened will seek to reign in the "relais actor's" independence. Combined with the rational institutionalist assumptions discussed above, these arguments underlie our expectations that actors will seek to

redress asymmetrical opportunity structures through institutional reform; that reform attempts will centre on the control of negotiation authority and information flows; and that such institutional reforms will be highly contested.

Finally, we will draw on different strands of organisational sociology to hypothesise why particular organisations are likely—or unlikely—to reform in response to asymmetrical empowerment. First, following Farrell and Héritier (2004; see also Mayntz 1968), we argue that one key to explaining reform success lies in the way that an organisation manages its inter-organisational relations under shared decision-making. While organisations with centralised control will face little controversy, decentralised organisations will meet with much greater resistance: "[i]n these organizations, individual actors [...] will seek to maximize their individual control of legislative outcomes regardless of the consequences for the organization as a whole" (Farrell/Héritier 2004, 1190). Hence, internal reform will be the outcome of a bargaining process between empowered individual or group actors on the one side, and the organisation as a collective actor on the other side.

Second, we suggest an alternative explanation for the likelihood of intra-organisational change, drawing on arguments by March and Olsen (1989). We argue that the chances for internal reform can be high even in decentralised organisations where individual actors have strong incentives to block such reforms. In such a context, reform attempts are only likely to be successful where asymmetrical empowerment and the conduct of shared decision-making threaten to undermine a prevalent or nascent consensus over the organisation's core principles and legitimate self-understanding. Under these conditions, conflict over internal reform will not just be about new opportunities and constraints; instead, conflict will be conceptualised as part of a wider struggle over an organisation's legitimate principles, which even those actors whose institutional position would be weakened post-reform are likely to back.

Turning to shared decision-making and legislative politics more specifically, we assume that individual and group actors will have a powerful motivation to maximise their influence over the shape and detail of legislation, and that this influence will mainly depend on actors' differential bargaining power. This bargaining power is, in turn, shaped by an actor's specific position in the negotiation between and within participant organisations. We therefore expect that actors attempt to maximise their formal and

informal decision-making competences, and their ability to affect other actors' choice-sets (Knight 1992; Putnam 1988). This expectation is based on the argument that actors will be particularly powerful if they can shape the set of actions that their co-negotiators can choose from. Or, put differently, the actors with the better fallback position in case of negotiation failure will be less risk averse and therefore obtain better bargaining outcomes. The existence of two interdependent negotiation arenas in shared decision-making will thus crucially shape actors' opportunities to influence legislative outcomes. When actors work in such multiple games, they may be able to leverage change in one arena into change in another arena in a manner that would be impossible if the two arenas were clearly distinct.

More specifically, actors' ability to exert influence based on their roles in shared decision-making hinges upon three factors (Farrell/Héritier 2004, 1186-1192). First, actors' influence will depend on the degree and direction of interdependence between negotiation arenas; interdependence is defined as the extent to which outcomes in one arena depend upon outcomes in another arena. Interdependence does not imply perfect information flows between arenas, and interdependence may be asymmetric, as negotiation in one arena may rely more on decisions taken in another arena than vice versa. The degree and direction of interdependence will not only be defined by formal rules but also by informal interaction, which is, in turn, determined by time constraints, vulnerability through negotiation failure, and relative resources. Second, different actors hold different positions in the relationship between interdependent negotiation arenas. Most important is the degree to which an actor has formal and informal negotiating authority vis-à-vis the other organisation. Negotiating authority may be granted formally; some actors may be explicitly delegated to represent their organisation in a negotiation. However, it may also be grounded in informal power based on particular networking capacity, or on the political support and policy expertise which an actor enjoys within her own organisation. The opportunity to negotiate between arenas may also give actors additional scope to influence debates within their "home" arena, and thus increase their influence over legislative outcomes indirectly. Third, holding formal or informal negotiating authority grants access to and control over information, with potentially important implications for the legislative process. Actors' beliefs about decision-making in an interdependent arena will have consequences for their perceived choice sets; indeed, actors will update their beliefs about what actions are possible or impossible, beneficial or harmful, according to their beliefs about what is happening in

the other arena. If certain actors have privileged access to information about an interdependent arena, they will also have a more precise understanding of what is possible and impossible in that other arena, and of appropriate response strategies. They may use this information strategically in order to influence actors in their own organisation. Thus, actors' potential influence over legislation is not only increased by delegated negotiation authority but also by their—closely related—ability to control information flows between interdependent arenas.

In sum, we can derive the following hypotheses about how delegated negotiation across interdependent arenas is likely to empower and constrain actors:

(1) When the interdependence between two negotiation arenas increases, the opportunities for delegated negotiators to influence legislative outcomes will increase too. These opportunities stem from (i) formal negotiating authority; (ii) privileged access to and control over information flows; (iii) informal resources such as networking capacity, expertise or the ability to mobilise support.

(2) When the interdependence between two negotiation arenas increases, the constraints for actors who operate in one arena only will increase too.

Subsequently, as constrained actors would regain power by tighter monitoring and control of the interdependent negotiation arena, we expect conflict over the institutionalisation of inter- and intra-organisational relations. More specifically, we expect that those actors who a) perceive their influence over legislative outcomes to be constrained because they are excluded from the inter-organisational arena, but who b) retain an important role in intra-organisational decision-making, will seek remedies by promoting institutional reform which may eventually lead to institutional change. First, they may seek to redefine the scope and nature of interdependence between arenas. Second, they may seek to redefine the direction of interdependence, so as to make their "home" arena more important vis-à-vis the other arena, and so as to make it more difficult for "relais actors" to use the external arena as a source of leverage. Third, they may seek to redefine internal procedures within their own arena so as to limit the negotiating authority of representatives, and so as to control information flows. Such attempts may, in turn, lead to further institutional adaptation and the reform of inter- and/ or intra-organisational procedures.

In sum, we can derive the following hypothesis about the likely reactions to differential empowerment within an organisation:

(3) Actors who are faced with an increase in institutional constraints will seek redress by (i) redefining the scope and direction of interdependence between negotiation arenas; (ii) redefining access to and/ or introducing control over delegated negotiating authority; (iii) broadening access to information flows across negotiation arenas.

Finally, we suggest competing explanations of when an attempt at redressing differential empowerment through institutional reform is likely to be successful. First, we expect reform to be facilitated—or constrained—by the way an organisation manages its inter-organisational relations. Indeed, an actor's willingness and ability to claw back control over legislative outcomes depends on the specific power constellation among actors and on the outcome of internal bargaining. One may imagine circumstances in which actors easily agree on institutional change that prevents "relais actors" from exploiting their negotiation authority or control over information flows. If such advantages are relatively evenly distributed, cross-cutting or temporary, or if they rotate fairly among actors, then empowered actors will be far less inclined to invest resources to defend their opportunities (Sudgen 1986).[5] Indeed, under such circumstances, all actors will be motivated to ensure that empowered actors are unlikely to abuse their influence. However, under conditions where a shift of power is to be corrected by shifting power back, one may expect the resistance of those holding the privileges. Under these circumstances, reform will be more difficult and contested, and will depend on power relations, and specifically on actors' relative procedural power.

Second, following March and Olsen (1989), we expect reform to be facilitated—or constrained—by how suggested change relates to an organisation's core principles and self-understanding. Indeed, as argued above, the reform of shared decision-making will have repercussions for the interaction between and within organisations. Within organisations, new opportunities and constraints will be created: some individual or group actors are likely to "win", others are likely to "lose". Yet, both the conduct of inter-organisational relations and differential empowerment can have a broader impact: they can bolster—or challenge—an organisation's implicit or explicit consensus about

[5] This would be the case in the Council of Ministers (Farrell/Héritier 2004, 1206-1208).

its role, function and core principles. Under co-decision, e.g., a routine recourse to informal negotiation between Council and EP, and the unconstrained empowerment of "relais actors" can challenge the core parliamentary principle of public deliberation, and undermine the EP's function 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). Where an organisation's core principles and functions are fundamentally challenged through a set of practices, we would expect successful collective redress even where such practices empower individual or group actors.

In sum, we can derive the following hypotheses about the likely success of redressing differential empowerment through institutional reform:

(4) Where negotiating authority is evenly spread, or is rotated, it will be relatively easy for actors to agree on institutional solutions in a non-conflictual manner.
(5) Where negotiating authority is unevenly distributed, and is not rotated, institutional change will be conflictual and difficult to bring about.
(6) Even under averse circumstances, the likelihood of institutional reform will be high where such reform is targeted at re-establishing the organisation's core principles and legitimate self-understanding.

3. First Empirical Evidence: Power Shifts and Internal Reform in the EP

In sum, the previous section argued, first, that increasing interdependence under shared decision-making creates new opportunities for some actors and new constraints for others; second, that constrained actors will seek to redress their lost opportunities while empowered actors will seek to defend their privileges and thus the *status quo*; and, third, that attempts at internal reform will be successful where inter-organisational relations are managed centrally, or where reform attempts are perceived to redress a challenge to the organisation's core principles. Based on our analysis of primary data—a pilot round of interviews in May 2008 and a set of public documents granting insights into parliamentary debate and reform—as well as on earlier research by Farrell and Héritier (2004) this section offers a first empirical illustration of our argument.

The formal possibility of fast-track legislation and its everyday application has, indeed, increased the interdependence of decision-arenas—with negotiation having to take place both between the Council, Commission and Parliament, and within each of these organisations. Above, we defined interdependence more specifically as the extent to which outcomes in one negotiation arena depend upon outcomes in another, and it is precisely in this sense that the degree of interdependence has changed under fast-track legislation. To allow an early agreement, both the Parliament and the Council need to endorse the compromise reached by their representatives in informal trilogues, and they must do so without amending the pre-agreement. Intra-parliamentary negotiation and debate is thus heavily dependent upon—some would argue heavily constrained by—inter-organisational negotiation (Bunyan 2007; Rasmussen/Shackleton 2005). At the first and second reading stage, MEPs do have the formal right to table amendments in committee as well as in plenary; *de facto*, however, they often face considerable political pressure not to challenge an informal compromise between EP and Council (Rasmussen/Shackleton 2005, 17; Interv. EP2 2008). The 2007 *Joint Declaration* underlines such constraints, stating that when an informal deal has been reached,

> "the chair of Coreper shall forward, in a letter to the chair of the relevant parliamentary committee, details of the substance of the agreement [...]. That letter shall indicate the Council's willingness to accept that outcome, subject to legal-linguistic verification, should it be confirmed by the vote in plenary" (European Parliament et al. 2007).

In a nutshell, if the intra-parliamentary decision does not conform with the inter-organisational deal, the file cannot be adopted at first reading.

In such multiple games, we expect new opportunities to arise for those "relais actors" that represent the EP in the inter-organisational arena, first and foremost, the *rapporteur* in trilogue. We expect these opportunities to be particularly pronounced under four conditions: 1) where the *rapporteur* has formal negotiating authority and where control of this authority is restricted, weakly institutionalised and non-enforceable; 2) where access to and control of inter-organisational information flows is limited for ordinary MEPs, committees and the plenary; 3) where the *rapporteur* enjoys broad political support, for instance through one of the large party groups; and 4) where the likelihood of having the inter-organisational compromise adopted in plenary is high.

Pilot research (Farrell/Héritier 2004, esp. 1200-1203; Rasmussen/Shackleton 2005) as well as primary documentation in the form of parliamentary reports and discussion documents (European Parliament 1999, 2004a, 2007; Imbeni et al. 2001) suggest that these four conditions were indeed present when fast-track legislation was first applied.

First, by 1999 the *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 "appropriate contacts" on behalf of the Parliament, and who enjoyed few substantive or procedural restrictions in doing so (Farrell/Héritier 2004, 1200, 1202; Rasmussen/Shackleton 2005, 12). At this stage, the EP would not have adopted an official opinion on the Commission proposal; not all committees would mandate their representatives; and committee chairs and shadows would not systematically accompany the *rapporteur* in trilogues. As stated in the EP's 2004 *Activity Report*, the fifth European Parliament "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). During the 1999-2004 parliamentary term, checks on "relais actors" were thus few and non-enforceable. Second, trilogues were—and still are—secluded negotiations that are not publicly documented. "Relais actors" therefore enjoyed privileged access to information about the interdependent decision-arena—i.e. about the state of inter-organisational negotiation, and about the Council's positions and justifications—as well as significant control over information flows back to their committees (Farrell/Héritier 2004, 1200, 1201). Third, even where "relais actors" did not represent one of the larger political groups in Parliament, by 2004 the EP's *Guidelines for First and Second Reading Agreements under the Codecision Procedure* foresaw political backing for an informal deal also when this deal had not been approved by the responsible committee; in such a case any compromise amendments "should be co-signed by the rapporteur and shadow rapporteurs or coordinators on behalf of their political groups to demonstrate that the amendments enjoy broad support" (European Parliament 2004b). Finally, "relais actors" are the more empowered "[t]he smaller the possibility for the chamber to reject the legislative compromise" (Rasmussen/Shackleton 2005, 16). First reading deals only require a simple majority of

votes cast to be adopted, with the *rapporteur* accordingly disposing of a wider margin of manoeuvre than in the second reading stage, where absolute majority is required.

By contrast, under fast-track legislation we would expect new constraints on the institutional positions of those actors that predominantly play in one negotiation arena: ordinary MEPs; sidelined committees and committee chairs; Vice-Presidents; and small political parties. Of course, early agreements, too, require a formal vote in committee and adoption in plenary, where ordinary MEPs are entitled to table amendments. However, as "the real discussions surrounding amendments have shifted from the committees into informal trilogues", committee members were likely to lose in importance (Farrell/Héritier 2004, 1201), and the formal right to propose amendments in plenary had become politically—if not formally—constrained (Rasmussen/Shackleton 2005, 17). All constrained actors would re-establish at least part of their institutional position through the tighter monitoring and control of the informal negotiation process; in response to the *status quo* described above, rationalist bargaining theory would therefore predict intra-organisational conflict over rule change.

Redress: Intra-Parliamentary Conflict over Institutional Reform

In sum, we would expect those actors who face novel constraints to challenge the existing practice of co-decision by way of internal reform. More specifically, we would expect ordinary MEPs, shadow *rapporteurs*, committee chairs, coordinators of small political parties, and Vice-Presidents to seek reforms that a) redefine the negotiation process between Council and Parliament, and, thus, the interdependence between negotiation arenas; b) give them greater control over negotiating authority, either by mandating the *rapporteur* or by broadening attendance in trilogues; and c) grant them greater access to information, either by regulating feedback to committees and plenary, or by making debate and negotiation more public.

At the most general level, the Parliament began to debate in 2001 whether fast-track legislation was at all desirable, and how, if at all, this new political space should be institutionalised—within and between organisations. In spite of the procedure's "flexibility" and the "greater degree of trust and willingness to cooperate on the part of the institutions", concerns were repeatedly raised 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; see also European Parliament 1999, 2007; Imbeni et al. 2001; Working Group 2007; Intervs. Com2 2008; Com3 2008; EP2 2008). Two years into the new procedure the Vice-Presidents responsible for conciliation already 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).

In these debates, specific reference was made to the status of committees. In 2001, the EP's Vice-Presidents and their chairs, unsuccessfully, attempted to re-establish these bodies as "the normal organizational framework for exchanges between the Parliament and the Council during first and second reading" (Farrell/Héritier 2004, 1204), and the EP's 2004 *Activity Report* stressed the importance of ensuring "that the informal nature of the negotiations goes hand in hand with a public debate in the parliamentary committee responsible" (European Parliament 2004a, 27).

Since 2001, the EP has also seen numerous more specific attempts at institutionalising inter- and intra-organisational decision-making, and at redressing differential empowerment under co-decision. Suggestions addressed exactly those issues that bargaining theory predicted to become contested: a) the interdependence of negotiation arenas; b) control over negotiating authority; and c) access to information flows.

With regard to interdependence, the Parliament initially showed greater reluctance than the Council to accept the growing interdependence of negotiation arenas (Raunio/Shackleton 2003, 177). Two years into the application of Amsterdam a proposal was advanced to abolish first reading deals altogether (Farrell/Héritier 2004, 1205)—and thus to disentangle inter- and intra-organisational decision-making. In practice, however, the frequency of early agreements increased every year, and with the 1999 *Joint Declaration* the EP, Commission and Council adopted an inter-institutional agreement that explicitly encouraged them to make "effective use of all the possibilities afforded by the new co-decision procedure", without prescribing the content or form of the necessary informal interaction (European Parliament et al. 1999). The 2007 revised *Joint Declaration* explicitly stressed that it was up to each organisation's "own rules of

procedure" to manage representation and negotiation (European Parliament et al. 2007). By this time, conflict in the EP had, indeed, turned to the reform of intra- rather than inter-organisational rules of procedure.

When looking at the establishment, scope and evolution of such intra-parliamentary rules, two issues were at the core of the debate: control of the *rapporteur*'s negotiating authority, and access to information. A significant step in this direction were the *Guidelines for First and Second Reading Agreements under the Co-Decision Procedure*, adopted by the Conference of the Presidents in 2004 (European Parliament 2004b). These *Guidelines* were described as a direct reaction to "the potential lack of transparency inherent in first and second reading negotiations and the lack of clarity and coordination as to the procedures to be applied" (European Parliament 2007, 10).

Against this backdrop, the *Guidelines*, first, attempted to give the parliamentary committee greater control over negotiating authority—on the one hand, by mandating the *rapporteur*, on the other hand, by broadening participation in trilogues. While encouraging informal contacts at all stages of codecision, the document asked that 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, either through "direct participation of the Committee Chair and/or shadow rapporteurs or coordinators, or through prompt and sufficiently detailed information" (European Parliament 2004b).

Second, in order to constrain the *rapporteur*'s bargaining power, the document aimed to give the responsible committee more information about the interdependent decision-arena, thus limiting the *rapporteur*'s comparative informational advantage in Parliament. This issue was addressed in two provisions: first and directly, by making the rapporteur "report back regularly on the state of negotiations" (European Parliament 2004b); second and indirectly, by encouraging the Council Presidency "to participate in committee meetings to present the Council position" (European Parliament 2004b). The call for "Council to come to committee" had been a long-standing aim of the European

Parliament; in this context, it can also be read as an attempt to reduce the asymmetry of information flows by gaining direct access to the Council's position.

Against our theoretical backdrop, three additional points are noteworthy. First, the *Guidelines* put exactly those actors centre-stage that have faced institutional constraints under fast-track legislation: the committee and committee chairs, shadow *rapporteurs* and small political parties. Second, while clearly attempting to redress differential empowerment, the document is written in a vague language and riddled with compromise formulations: verbs like "should", "can" and "be encouraged" indicate underlying attempts by empowered actors to see their opportunities constrained in the least possible way. Finally, the *Guidelines* were only adopted as "suggestions for best practice" (Working Party 2007, 4) that have been applied very differently by different committees, with no means of central enforcement (Intervs. EP1 2008; EP2 2008).

All three weaknesses were subsequently addressed by the *Guidelines*' follow-up document: the *Code of Conduct for Negotiating Codecision Files* (European Parliament 2008). Based upon suggestions made by the Working Party on Parliamentary Reform in 2007, the *Code* was endorsed by the Conference of the Presidents in September 2008 and adopted by the EP's plenary in May 2009 as part of its revised *Rules of Procedure*. In view of the previous rules' inconsistent application, the aim was to strengthen their content, to enhance their status, and to improving their visibility (Working Party 2007, 3). Indeed, the *Code* gives more detailed substantive guidance; is more visible as part of the *Rules of Procedure*; regulates both standard inter-organisational negotiation and decision-making under time pressure; and opts for more linguistic constraints, consistently replacing "should" by "shall". Nevertheless, like its predecessor, the *Code of Conduct* features numerous 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 between parliamentary constituencies.

In terms of content, the *Code* addresses similar issues as the *Guidelines* but does so in a more detailed way. In this document, too, the key aims are control over the informal process, and access to information flows; and here, as well, committees, committee chairs, shadow *rapporteurs* and political parties are placed centre-stage. First, the *Code*

starts by stressing the key role played by the parliamentary committee, which "shall be the main responsible body during the negotiations" and decide on a case-by-case basis "whether it actually wants to attempt early conclusion" (European Parliament 2008). Indeed, it has been argued that the *Code*'s "philosophy" is to see the first reading stage controlled by committees (Interv. EP1 2008). It is up to the committee—and no longer to the coordinators—to decide on parliamentary representation; this decision shall respect "political balance" and "all political groups shall be represented, at least at staff level in [...] negotiations" (European Parliament 2008). This passage directly addresses institutional constraints under interdependent negotiation: rather than calling for either "direct participation" or "prompt and sufficiently detailed information" as was the case in the 2004 document (European Parliament 2004b), the *Code* clearly opts for broadened participation in the interdependent arena; this is not least shown by consistent reference to "the EP's negotiating team" rather than "the *rapporteur*". Indeed, judging by a recent report of the British House of Lords, attendance in trilogues seems to have steadily increased (2009, 13). Second, the *Code* states that the EP's team shall negotiate on the basis of the committee's amendments; where negotiations take place before these have been agreed, the committee "shall provide guidance", but the *Code* makes clear that 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 be taken "by the rapporteur and the shadow rapporteurs, if necessary together with the committee chair and the coordinators" (European Parliament 2008).

As expected, the *Code of Conduct* also aims to broaden access to information flows. This is attempted in two ways. First, the *Code* specifies the kinds of documents to be used in trilogues, and states that these are to be made available to the committee following negotiation in trilogue (European Parliament 2008). Second, "[a]fter each trilogue, the negotiating team shall report back to the committee on the outcome of the negotiations"; under time constraints the team is to give a full update to the shadow rapporteurs and, if necessary, the coordinators (European Parliament 2008). Interestingly, the *Code of Conduct* no longer calls for "Council to come to committee"—potentially, because this claim is now incorporated in the 2007 *Joint Declaration*, or because overall control of the "relais actors" has been tightened.

Finally, in an attempt 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. Such a provision is possible because there are no formal time constraints in the Treaty prior to the first reading; and it is designed so that "[t]here shall be sufficient time [...] to allow political groups to prepare their final position" (European Parliament 2008).

In sum, once fast-track legislation was used routinely, and once differential empowerment became apparent, conflict broke out over the EP's internal rules of procedure. Contestation concerned both, the general desirability of early agreements given the lack of openness and transparency, and the concrete institutionalisation of intra-organisational decision-making. As expected under bargaining theory, attempts at redress, first and foremost, concerned the institutional positions of constrained actors, namely committees, committee chairs and ordinary Members in committee, in plenary and in small political parties. Following the establishment of interdependent negotiation arenas, these actors, indeed, sought reforms that a) gave them greater control over negotiating authority—by strengthening the committee's role in mandating and in defining parliamentary representation, and by broadening participation in trilogues according to political balance; and that b) granted them greater access to information—by regulating the types of documents used in trilogues, by establishing feedback to committees, by asking the Council to "come to committee", and by institutionalising a "cooling off period" between the informal negotiation and the formal vote in plenary.

Institutional Change: The Likelihood of Organisational Reform

The above discussion tentatively confirms the expectations of rationalist bargaining theory: actors whose institutional position was weakened under co-decision sought redress, and such redress was directed at regaining control over the informal political process. However, bargaining theory also argues that empowered actors will defend their newly gained privileges and oppose changes to the *status quo*. In section 2, we therefore offered potential explanations for the likely success or failure of internal reform. First, following Farrell and Héritier (2004), we argued that the way an organisation manages its inter-organisational relations can gives us some indication about likely success. In the EP, we would expect institutional change to be difficult—given the "lack of coordination of the multiple relations with the Council, and given the

diverging preferences of losers and winners regarding the informal trilogues and early agreements" (Farrell/Héritier 2004, 1207). Indeed, Farrell and Héritier's research on the early application of co-decision demonstrates that the Parliament found it much harder to reform than the more centrally coordinated Council of Ministers (2004, 1204-1208). Based on our alternative explanation, under such conditions we would only expect successful change where the reform is embedded in the broader context of challenges to, and debate about, the Parliament's role, function and core principles.

While our current data does not show us who backed and who blocked internal rule change, it does allow us to trace conflict over the everyday application of fast-track legislation, over its institutionalisation, and over the (non-) implementation of the new parliamentary rules. As touched upon above, until 2004 the EP had no coherent policy for conducting its inter-organisational relations and for handling their intra-organisational repercussions during the first and second reading stage[6]; instead each parliamentary committee took a distinct, case-by-case approach (European Parliament 2004a, 26). Early attempts at institutional reform mainly stemmed from the EP's Vice-Presidents; they included suggestions to explicitly mandate negotiators, to make "Council come to committee", and to abolish first reading deals altogether (Farrell/Héritier 2004, 1204-1206). Yet, these proposals could not summon wider political backing—as one *rapporteur* tellingly stated: "[t]here are some people who want such rules, but they have no chance" (quoted in Farrell/Héritier 2004, 1205). This led to the preliminary conclusion that because the EP has "no effective formal coordinative capacity [...] to discipline the main actors maintaining interorganizational relations [...] and, crucially because large political groups support the multiplicity of interorganizational relations through the rapporteurs" a significant revision of the Parliament's institutional rules would be unlikely (Farrell/Héritier 2004, 1206).

Our empirical data does not allow us to trace when, to what extent and why opposed parliamentary constituencies have changed their position. Yet, in the Sixth European Parliament, we can observe a clear trend towards more detailed and binding rules for the conduct of fast-track legislation. Initially propagated by the EP's Vice-Presidents in 2001, such reforms were subsequently backed by the Conference of the Presidents and the Conference of Committee Chairs in 2004, by the Working Party for Parliamentary Reform in 2008, and by the EP's plenary in 2009. However, as demonstrated in the

[6] The situation is different under conciliation with its established set of rules. For a comparison of the institutional provisions in all three stages see Rasmussen and Shackleton (2005).

previous section, these reform attempts did not principally target the Parliament's relations with the Council, and thus the interdependence of negotiation arenas; the routine use of early agreements by way of informal pre-negotiation seemed to have become widely accepted parliamentary practice. Instead, reforms pertained to intra-organisational relations, first and foremost, to the relationship between "relais actors" and the responsible parliamentary committee.

Yet, even the first successful reform resulted in a set of rules—the 2004 *Guidelines for First and Second Reading Agreements*—that were non-binding, not well-known and inconsistently applied (Working Party 2007, 3). The *Guidelines*, for instance, foresaw that concrete negotiations should usually wait until the committee had adopted its first reading amendments. Yet, whether the *rapporteur* did act on the basis of a committee mandate depended on the issue in question—the Committee on Civil Liberties (LIBE), for instance, would only vote once an informal compromise had been agreed, while the Committee on Environment, Public Health and Food Safety (ENVI) would require the *rapporteur* to be fully coordinated with the committee chair (Bunyan 2007; European Commission 2007). As summarised by the Working Party:

> "[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 for Negotiating Codecision Files* was a direct reaction to this diagnosis. As argued above, it is a set of more precise parliamentary rules about the internal conduct of fast-track legislation; and it is the first set of such rules that could summon wide political backing in the EP. Suggested by the Working Party on Parliamentary Reform in December 2007 and approved by the Conference of the Presidents in September 2008, the *Code* was adopted by the EP plenary in May 2009 as Annex XVI (in combination with Rule 65a) of the revised *Rules of Procedure*; the so-called "Corbett Report" was approved by 552 votes in favour, 101 votes against and 51 abstentions (European Parliament 2009). As a part of the EP's *Rules of Procedure* the document still contains informal—if codified—provisions that need to be enforced by Parliament itself, rather than formal rules that can be enforced by a third party (Knight 1992; Rasmussen/Shackleton 2005, 4-5). Against this backdrop, it remains to be seen whether the new provisions will be applied consistently across committees in the Seventh European Parliament. Yet, given the *Code*'s wide political backing, new status

and more explicit language, we can expect more constraints to be placed on the conduct of informal inter-organisational negotiations than under the 2004 *Guidelines*.

This development is difficult to explain through differential empowerment and the EP's management of inter-organisational relations alone; after all, neither institutional context nor institutional opportunities and constraints have changed since the introduction of fast-track legislation in 1999. What has changed, however, are the frequency and visibility of first-reading deals, as well as the discursive context of the reform negotiations. Both changes are relevant in view of our second explanation for successful institutional reform: even a decentralised organisation is likely to reform, we argued, where such attempts are widely perceived to redress challenges to an organisation's core principles and legitimate self-understanding.

Against this backdrop, the context in which the *Code of Conduct* was eventually adopted by the plenary seems important: the new provisions were proposed by the Working Party on Parliamentary Reform, set up in 2007 under the chairmanship of MEP Dagmar Roth-Behrendt, and they were negotiated under the party's *Second Interim Report on Legislative Activities and Interinstitutional Relations* (Working Party 2008). This latest debate over changed rules for shared decision-making was thus embedded in a much wider context then previous negotiations; as part of the EP's extensive reform agenda, the new *Code* was no longer of interest to empowered and constrained actors alone, but became a question of general parliamentary concern.

In view of our second explanation, it is equally worth pointing to the way in which this reform was presented in public documents and debates: the new rules were framed as a direct response to threats that fast-track legislation poses to the EP's self-understanding and to its role as a parliamentary—rather than an intergovernmental—actor. As early as 2001, the EP's Vice-President's referred to the challenged "agora function" of the Parliament (Imbeni et al. 2001, 2), while the EP's 2004 *Activity Report* appealed to the body's institutional self-interest, calling on Parliament to avoid

> "the danger of becoming an adjunct to the Council, a sort of 26th Member State. It 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)

As a collective actor, the EP explicitly stressed the need of a "successfully and fully parliamentarised" co-decision procedure (European Parliament 2004a, 8); and it clearly outlined what it meant by a "parliamentary" process: open debate within Parliament on the shape of legislation; scope for the public to follow the legislative procedure; transparent inter- and intra-organisational relations; and visible political contestation (European Parliament 2004a, 2007; Imbeni et al. 2001; Working Party 2007; Interv. EP1 2008). Under fast-track legislation these principles were seen to be challenged:

> "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, 2-3).

The new *Code* with its attempts 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 can, indeed, be read as redressing some of the above-identified challenges to the Parliament as a collective actor. Without having traced the positions taken by individual MEPs and political groups in this debate, we cannot at this stage demonstrate if and why previously opposed "winners" now accepted such organisational reform proposed by the "losers". The overwhelming support of the "Corbett Report" does, however, indicate broad political backing in the context of wider parliamentary reform.

Conclusion

This paper aimed to shed light on how the formal possibility of fast-track legislation has transformed Europe's legislative practice, and to explore the political and institutional consequences of this transformation for the European Parliament.

First, we argued that—contrary to early expectations and concerns—the everyday application of co-decision has made the EU's legislative process neither more "parliamentary" nor less efficient. Instead, the predominance of first-reading deals in the Sixth European Parliament has led to 1) an increasing recourse to informal political processes; 2) intensive inter-organisational cooperation between EP and Council; and 3) growing intra-organisational conflict over the conduct of co-decision in the Parliament.

Second, we theorised the consequences of fast-track legislation for the EP. Drawing on rational choice institutionalism, bargaining theory and organisational sociology we argued that increasing interdependence under shared decision-making creates new opportunities for "relais actors" who represent the EP vis-à-vis the Council—first and foremost, the *rapporteur*—and new constraints for those actors who predominantly play in one decision-arena—first and foremost, ordinary MEPs, small political parties, committees and committee chairs, and Vice-Presidents. We expected empowered actors to defend the institutional *status quo*, and constrained actors to challenge existing practice through internal reforms that a) redefine the interdependence between EP and Council; b) give them tighter control over "relais actors"; and c) grant them greater access to information flows. Such reform attempts, we argued, would be successful where an organisation manages shared decision-making centrally, or where reforms are perceived to bolster an organisation's legitimate self-understanding.

Third, an analysis of public documents about internal parliamentary reform offered a first empirical illustration of our argument. Indeed, once fast-track legislation was routinely used, and once differential empowerment was visible, the conduct of co-decision 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 under bargaining theory, reform attempts addressed the institutional role of committees, committee chairs and political parties in particular, seeking 1) to tighten control over "relais actors" (by strengthening the committee's role in mandating, and by broadening parliamentary representation in trilogues); and 2) to gain greater access to information (by defining the documents used in trilogues, by institutionalising feedback, by asking the Council to "come to committee", and by installing a "cooling off period" before the formal vote in plenary). Yet, these reforms seem to have met with great resistance: 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. These findings agree with our expectations—given the EP's decentralised management of shared decision-making as well as preference heterogeneity due to differential opportunities and constraints. However, in May 2009 the EP's plenary adopted a new *Code of Conduct for Negotiating Codecision Files* as Annex XVI to the revised *Rules of Procedure*. With its wide political backing, increased constraints and greater visibility, the *Code* can be read as a first step towards a successful redress of differential empowerment. While this development is puzzling for

bargaining theory—as neither the organisational context nor differential opportunities have changed—organisational sociology offers a possible alternative explanation: the *Code* was agreed in the wider context of EP reform, and it was framed as a direct response to the challenge of core parliamentary principles under fast-track legislation.

On the basis of the empirical material used in this paper, we are unable to trace the positions taken by individual MEPs and political groups in this—and earlier—debates, and we cannot demonstrate if and why previously opposed "winners" of fast-track legislation now accepted internal reform. Analysing the plenary debate about the "Corbett Report" as well as the discussions in and around the Working Party on Parliamentary Reform, and conducting in-depth interviews with representatives of all interested parliamentary constituencies, will therefore be the next steps in our research. Such research, we argue, 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 change of an organisation's core principles and self-understanding.

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