

Collusion in Bicameral EU Decision-making

Efficiency at the expense of transparency and representation?

Nikoleta Yordanova
Assistant Professor of European Politics
University of Mannheim
(yordanova@uni-mannheim.de)

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1 Introduction

Democratic representation can essentially be defined as the translation of the range of societal interests and preferences into governmental decisions and policies. In the European Union (EU) there are various channels of representation but as far as direct representation is concerned one features prominently – the European Parliament (EP). It is the only EU institutions whose members are directly elected by the citizens. As Article 10 of Treaty of the European Union itself specifies, the Parliament is there to represent directly the EU citizens, while the Council of Ministers represents the member states.

The Parliament spends most of its time and resources on legislating. While it has traditionally had only a consultative power, this has been steadily changing with each EU treaty, culminating in the Lisbon Treaty (2009). The EP now stands on equal footing with the Council of Ministers in shaping EU legislation whenever the ‘ordinary legislative procedure’ (ex co-decision) applies.

It is therefore representation in the legislative process and adopted policies by the European Parliament that this paper explores. The mode of legislating the Parliament employs can heavily affect not only the access of societal groups and interests to shaping legislative proposals (input legitimacy), but also the extent to which adopted policies match the preferences of the legislators’ constituents (output legitimacy). Arguing in favour of the ‘delegate’ (Mayhew 1974) rather than the ‘trustee’ (Davidson 1969; Eulau 1962; Hill 1929; Uslaner 1999) model of representation below, the benchmark for successful representation adopted in this paper is the level of perceptiveness and respon-

siveness of the members of the European Parliament (MEPs) to the preferences of their constituents rather than those of the general public interest.

Traditionally, the parliamentary committees have offered important venues for political involvement of extra-parliamentary actors due to the openness and transparency of their meetings. In the past fifteen years, however, the EP has been resorting ever more often to informal decision-making, whereby the parliamentary decisions are not reached internally following deliberations and debate in committee and plenary but in secluded trilogue meetings of limited number of representatives of the three EU legislative institutions – the EP, the Council of Ministers and the European Commission (Farrell and Héritier 2003; Héritier 2007; Rasmussen 2011; Reh et al. 2013; Yordanova 2012b) During the 6th EP term, 60% of all co-decision legislation was based on early agreements between the EP and the Council of Ministers in first reading (Yordanova 2012b).

Notwithstanding the possible efficiency gains of informal inter-institutional bargains, the democratic deficit problems they entail have been acknowledged even by the EP itself, leading to the revision of its Rules of Procedure in order to regulate the new informal procedure (see new Annex XXI European Parliament 2009). How successful has this rule change been in ameliorating the loss in transparency, legitimacy and inclusiveness of the legislative process? In particular, have the standing parliamentary committees regained control over policy-making, which they had lost with the transfer of decision-making to outside arenas?

To tackle these questions, a data set has been compiled of all legislative proposals considered under the ordinary legislative procedure, which underwent first reading in the 6th or the 7th EP (until April 2012). The analysis of this data shows that early inter-institutional agreements have become the norm rather than the exception, accounting for no less than 80% of legislation falling under the ordinary legislative procedure in the first three years following the EP rules revision. What has changed since the last parliamentary term is that it has become much more frequent for the informal deals with the Council of Ministers to be struck during the committee stage of decision-making and not only after committees have adopted their reports on the legislative proposals of the Commission – a practice which used to result in the complete dismissal of committee amendments on the floor (Yordanova 2012a). Thus, the legislative influence of the EP committees has been somewhat restored and, therefore, so have been the legitimacy benefits of the formal legislating mode in the open committee arena. Yet, I argue that both the potential for societal participation and the transparency of policy-making in the EP have declined in comparison to the time before the Amsterdam Treaty (1999) made early agreements possible.

In what follows, I first present different models of political representation and argue in favour of adopting the ‘delegate model’ as the benchmark for the EP representatives.

Thereafter, I introduce and discuss the process of fast-track bicameral EU decision-making, proceeding with the analysis of its impact on the legislative output of committees. I conclude with a discussion of the broader implications of informal decision-making for representation and democracy in the EU, and, in particular, for the ability of MEPs to fulfil their role as delegates of their constituents.

2 ‘Trustee’ and ‘delegate’ models of representation

Perhaps the most established micro-level models of political representation are the ‘trustee’ and the ‘delegate’ models. According to the former model, legislators represent what they consider to be in the national or general public interests (Davidson 1969; Eulau 1962; Hill 1929; Uslaner 1999). Based on their perceived level of competence, they are entrusted the role of legislating and are granted a high level of autonomy in formulating and pursuing the policies they themselves deem widely favourable. Following the latter model, legislators, or delegates, represent specifically the interests of their own constituents (Mayhew 1974). They are constrained in their policy choice by the narrow range of preferences that their constituents share.

If we conceive of politicians as ‘trustees’, it is difficult, if not impossible, to evaluate whether their decisions are representative of their constituents’ preferences. After all, according to this model, politicians ‘know best’ what is in the interest of their constituents, better than the constituents know themselves. If we adopt the ‘delegate’ model of representation, instead, we can analyse how closely legislators’ behaviour and the policies they adopt address the preferences of their electorate. In particular, we can evaluate, first, the extent to which constituents are able to upload their preferences in the decision-making process (the level of input legitimacy) and, second, the extent to which legislators’ policy stances reflect or respond to the demands of their constituents (the level of output legitimacy).

On the one hand, the ‘trustee’ model relies too much on individual competence and allows for a lot of individual discretion on what constitutes the common good. This is prone to lead to decisions that leave a wide range of societal interests, such as those of distinct regions and ethnic minorities, unrepresented. On the one other hand, the ‘delegate’ model can lead to ineffective government and legislative gridlock if decision-makers uncompromisingly protect their own vested interests.

Yet, given the vagueness of the notion of general interest and the increased sophistication of the nowadays voter, I argue here in favour of the ‘delegate’ model as best suited for modern democratic representation because it gives voice to the people’s preferences. Below I analyse the receptiveness (and the resulting level of input legitimacy)

and responsiveness (and the resulting level of output legitimacy) of the members of the European Parliament to the will of their constituents. Before that, however, I offer a brief overview of decision-making in the EP and the dangers of the nowadays popular informal decision-making mode in the EU.

3 The dangers of fast-track bicameral EU decision-making

The first challenge before we delve into analysing the extent to which legislators in the European Union, and in particular the MEPs, are receptive and responsive to the demands of their constituents is establishing who those constituents are. MEPs are elected by the European citizens via national (not European) party lists and only in a few countries do the citizens vote directly for candidates via the single transferable vote electoral system (Ireland, Malta and Northern Ireland in the UK). Thus, the MEPs' electoral fortunes generally depend on party leadership, and less so on regional or local constituencies.¹

Nevertheless, I conceive broadly of the MEPs' constituencies as the voters of their national parties and the voters in their electoral districts, whom they serve as 'delegates' to the European Parliament. Should we have adopted the 'trustee' model of representation, all the citizens in an MEP's member state or, even more generally, all the EU citizens should have been conceived as the constituency s/he is responsible to.

Besides during election time, when legislators receive a mandate from their voters to pursue a certain policy line, MEPs can get input in shaping specific pieces of legislation throughout their legislative terms. One venue for this are their constituency offices in the member states. Another one is the European Parliament itself and, in particular, its committees, which normally meet in public as Rule 103.3 states ([European Parliament 2009](#)). Furthermore, according to Rule 103.1:

Parliament shall ensure that its activities are conducted with the utmost transparency, in accordance with the second paragraph of Article 1 of the Treaty on European Union, Article 15 of the Treaty on the Functioning of the European Union and Article 42 of the Charter of Fundamental Rights of the European Union.

While Rule 103.2 (Title III Transparency of Business) states that 'Debates in Parliament shall be public', too, in practice often by the time legislation reaches the plenary, the

¹The legislators in the other legislative chamber of the EU – the Council of Ministers – represent the governments of the member states, instead, and are only linked to the voters via the national elections. The MEPs are, thus, the only direct representatives of EU citizens.

parliamentary position has already been decided in practice in one of the EP's standing committees (Mamadouh and Raunio 2003). As a result of their legislative influence and openness, the standing committees have been attracting lobby groups interested in monitoring and shaping the development of draft legislation.

Yet, as the official EP reports on Codecision acknowledge (European Parliament 2007) and a number of studies have recently established (Farrell and Heritier 2003; Héritier 2007; Rasmussen 2011; Reh et al. 2013; Yordanova 2012b), ever more often legislative texts are agreed upon by representatives of the EP and the Council of Ministers (as well as the European Commission) in informal trilogue meetings detached from the committee arena. The so-called 'fast-track' legislation, which the Amsterdam Treaty (1999) made possible, applied to 60% of all the codecision proposals in the 6th EP term (Yordanova 2012b) and over 90% of the codecision proposals in the 7th EP term so far (see Figure 1 and Figure 2). Contrary to some accounts (Centre for European Policy Studies 2009), this mode of bicameral decision-making has limited the legislative influence of the EP committees and empowered the limited number of committee representatives present at the informal inter-institutional negotiations (Héritier and Reh 2011). While according to the EP rules the plenary bases its position on the committee reports on Commission proposals, during the 6th EP it was common for the committee reports to be completely discarded on the floor if a bicameral agreement was reached after the committee stage (Yordanova 2012b).

Informal inter-institutional agreements are often justified with the increase in efficiency they are commonly expected to lead to. There is no definitive evidence that the practice of informal 'fast-track' decision-making has increased the efficiency of the EU legislative process. On the contrary, and 'first reading negotiations of trilogues and salient legislation take longer than first readings of similar files reconciled at second and third reading' and '[f]irst reading agreement also appear to last longer when considering all co-decision files submitted to the 5th and 6th European Parliaments...' (Toshkov and Rasmussen 2012, p. 1). Yet, it has led to a loss in transparency and de-facto exclusion of parliamentary actors and groups of actors with limited human resources from the informal negotiations and the formulation of bicameral deals. The implications of the switch to an informal mode of legislating for representation in the EP are twofold – decreased input and, potentially also, output legitimacy. Specifically, the decrease in committee influence has curtailed the channels of representation of interest groups to affect decision-making, depriving them of an effective tool to monitor and shape the legislative process and outcomes by raising timely demands. A possible implication of this is diminished receptiveness of legislators to constituents' interests. Moreover, the lack of transparency of the secluded inter-institutional meetings has limited the ability of constituents to monitor their representatives' policy bargaining, positions and the concessions, and, consequently, to evaluate how responsive legislators are to their pref-

erences and demands.

These problems were acknowledged by the MEPs themselves, leading to the modification of the EP rules on inter-institutional negotiation in 2009. The new Annex XXI of the EP Rules of Procedure sets the ‘Code of conduct for negotiating in the context of the ordinary legislative procedures’ (European Parliament 2009). It stipulates ‘how to conduct negotiations during all stages of the ordinary legislative procedure with the aim of increasing their transparency and accountability, especially at an early stage of the procedure.’ Addressing the loss of influence committees have endured due to early inter-institutional agreements, the Annex specifically states that ‘the lead parliamentary committee shall be the main responsible body during negotiations both at first and second reading.’ Furthermore, it outlines the prerequisites for entering into negotiations with the Council of Ministers, the requirements for the composition and mandate of the negotiating teams, the organisation of the trilogues, as well as the guidelines for feedback on reached decisions and their finalisation.

In the following section, I explore specifically the extent to which this revision of the parliamentary rules has affected the success rate of the EP committees in shaping the parliamentary decisions. A previous study shows that during the 6th EP whenever an early agreement was reached with the Council of Ministers, the proposed committee amendments tended to be discarded on the floor (Yordanova 2012b). Has this tendency to override committee reports whenever an inter-institutional deal is reached persisted or have the EP committees regained influence?

4 Evidence from the 6th and 7th EP term

To analyse the impact of the parliamentary rule change on the legislative influence of the standing committees, I have compiled a data set of all the legislative proposals falling under the ordinary legislative procedure that had their first reading in committee and plenary during the 6th and the 7th EP (until April 2012). The main data sources are the *EP Legislative Observatory* as well as the plenary minutes recording the outcome of votes on proposal amendments.

The dependent variable – level of success of a committee report on the floor – is measured as the proportion of adopted EP amendments stemming from the committee report on any given legislative proposal:

$$\text{Committee success} = \frac{\text{N of adopted committee reports}}{\text{Total N of adopted reports}} \quad (1)$$

The measure is constructed so because the EP operates under an open amendment rule,

Table 1: Mean committee success on the floor in the 6th and the 7th (July 2009 – April 2012) EP term per committee^a

Committee	EP6 (all)	EP7 (all)	EP7–EP6 (all)	EP6 (early)	EP7 (early)	EP7–EP6 (early)
CULT	0.75			0.65		
DEVE	0.96					
EMPL	0.86			0.81		
AGRI	0.17	0.43	0.26	0.02	0.43	0.41 *
ECON	0.38	0.59	0.21 *	0.24	0.55	0.31 **
ENVI	0.47	0.27	-0.20 **	0.11	0.00	-0.11 *
IMCO	0.44	0.57	0.13	0.25	0.48	0.23
ITRE	0.88	1.00	0.12	0.81	1.00	0.19
JURI	0.64	0.81	0.17	0.59		
LIBE	0.90	0.88	-0.02	0.88	0.92	0.04
REGI	0.97	0.80	-0.17		0.80	
TRAN	0.68	0.72	0.04	0.28	0.63	0.35 **
INTA		0.85			0.83	
PECH		0.73			0.67	
Total	0.65	0.67	0.02	0.46	0.64	0.18 **

Notes: ^aThe average numbers in the respective categories are displayed only if the sizes of the respective samples were bigger than 4. The committee success is the proportion of adopted final amendments stemming from the committee report. Significance levels from t-Test: * p<0.1, ** p<0.05

which means that all party groups as well as groups of at least 40 MEPs can propose amendments in addition to those drafted by the responsible committee (European Parliament 2009, Rule 156, ex Rule 150). The main independent variable – *Early agreement* – indicates the conclusion of an informal early agreement between the EP and the Council of Ministers at first reading.

Before proceeding to the analytical models, Table 1 shows the overall effect of informal inter-institutional deals on the legislative influence of committees in the 6th and the 7th EP. It offers a comparison of the average success rate of committees in the two legislative terms whenever the formal legislative process is followed and whenever an informal agreement is reached. It is clear that during the 6th EP term committees were always more successful if the formal process was followed (as can be seen by comparing the figures in columns 2 and 5). In the 7th EP this is no longer so clear (which a comparison between columns 3 and 6 displays). Furthermore, the last column shows that the mean success rate of committee in early agreement cases has increased since in the last parliamentary term (save for in the committee on Environment and Public Health), and this is not due to a clear overall increase of committee power between the two terms as the fourth column shows. These observations could be explained with the formalisation of the rules on trilogue negotiations. In most policy areas, a higher proportion of the early agreements are now concluded during the committee stage and not only after it (see

Figure 1 and Figure 2). Thus, the standing parliamentary committees have become able to exert higher influence over the bicameral negotiations and more often rubber-stamp informal early agreements.

To explore the robustness of the relationship between the level of success of EP committees on the one hand, and the conclusion of early agreements on the other hand, as well as the impact of the 2009 EP rules change, Table 2 presents the results of fractional logistic regression models of the proportion of adopted amendments in the EP position stemming from a committee report. The method is chosen based on the character of the dependent variable — a fraction bounded between 0 and 1 with bimodal skewed distribution towards the extremes (Papke and Wooldridge 1996).

The main variables of interest and control variables are introduced successively in five models. To account for the complexity and the level of importance of a legislative proposal, in all the models it is controlled for whether it is a *Directive* or a *Regulation* proposal (as opposed to a recommendation (non-binding) or a decision (limited in scope to a targeted group)) as well as how many EP committees were consulted for their opinion. Model 1 includes the main variables of interest accounting for the conclusion of an Early agreement on a proposal (0 if no, 1 if yes) and whether the proposal was considered in the 7th EP (*EP7* variable equals 1) or the 6th EP term (*EP7* variable equals 0). Model 2 adds an interaction between the parliamentary term and the conclusion of an early agreement (*EP7*Early*) to examine if the impact of the latter on committee influence has changed after the EP rules revision in 2009.

In Model 3, the party group of the rapporteur — the committee member assigned the task of drafting the committee report and leading the informal bicameral legislative negotiations — is controlled for with a number of dummy variables. Committee reports drafted by representatives of the biggest party groups could simply be more successful on the floor as Yordanova (2012b) demonstrated to be the case with the EPP-ED's reports. Thus, we can expect a positive effect of the dummy variables for membership in the European People's Party (EPP); the Socialist Group (PSE); and, potentially, the Liberals (ALDE), although the latter group is much smaller. A negative effect is expected for membership in the Green group (GREENS), the Independent Democrats (IND/DEM, ceased to exist after the European elections in 2009), Union for Europe of the Nations (UEN, also not in the EP since 2009), the European United Left-Nordic Green Left (GUE/NGL). Non-attached members as well as members of the European Conservatives and Reformists Group (ECR, founded after the June 2009 European elections) are used as the reference category.

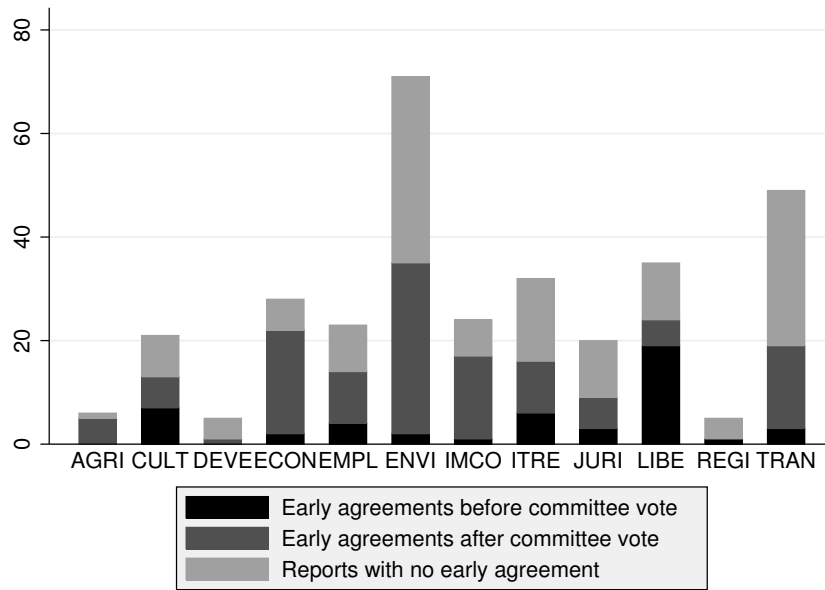


Figure 1: Number of legislative proposals that underwent different types of decision-making process in the 6th EP term

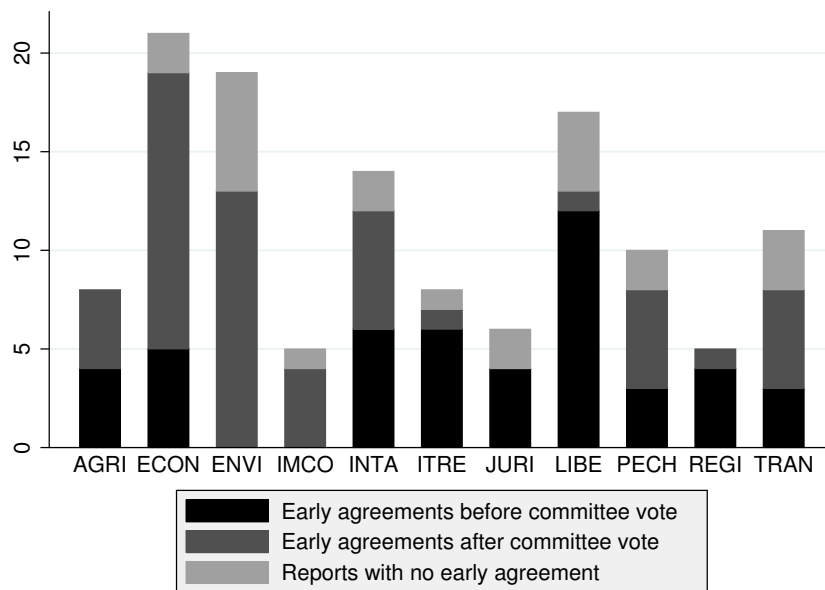


Figure 2: Number of of legislative proposals that underwent different types of decision-making process in the 7th EP term (July 2009 – April 2012)

It is important to control also for the stage at which early agreements are concluded, which could happen either before the responsible committee has had its final vote or after the committee stage but before the plenary stage. In the former case, the agreed upon text by the two EU legislative chambers becomes the committee report. In the latter case, the committee reports are most often fully discarded on the floor in favour of the early agreement text (Yordanova 2012b). Indeed, this does not necessarily mean that the inter-institutional deal does not include some of the committee recommendations. Yet, it is difficult to quantify the extent to which this is the case in a reliable way without having to conduct a detailed qualitative analysis of the legal content of all amendments in the early agreement and the committee report. In any case, however, after the formal committee stage has passed the committee is no longer consulted on the newly proposed amendments. In practice, this bypasses and potentially leads to overruling its position. Therefore, a distinction is made between early agreements concluded before (*Early_bf_com*) and after (*Early_af_com*) the committee stage in the analysis in Model 4. In Model 5 the variables accounting for the stage of the early agreement are further interacted with the parliamentary term to explore once again if their effect changes – something we would expect based on the aggregate descriptive statistics in Table 1.

The results demonstrate that indeed the conclusion of an informal bicameral deal overall has a negative effect on the level of success of committee reports in plenary (Model 1), although this is not the case if the agreement is concluded before the final committee vote (Models 4 and 5). As the significant positive interaction effect in Model 2 demonstrates, however, the generally negative effect of inter-institutional deals has become weaker after the 2009 Rules revision, i.e. in the 7th EP. Furthermore, Model 5 demonstrates that both the positive effect of early agreements reached during the committee stage (*Early_bf_com*) and the negative effect of early agreements struck after the committees stage (*Early_af_com*) on the level of committee success have decreased in the most recent term (as demonstrated by the respective significant interaction terms). Thus, the gap between the impacts of the two seems to be decreasing, implying that on average either committee reports are no longer fully drawn from early agreements struck before the final committee vote, or, more likely, that committee reports are taken more often on board in plenary rather than being completely replaced by early agreements struck only after the committee stage. In practice, inter-institutional deals may simply draw more on the committee positions. If so, the parliamentary rule change seems to have at least partly restored committee power.

While the effect of the number of consulted committees as a measure of proposal complexity is not significant, as could be expected committee reports on directives are most likely to be modified on the floor as compared to reports on regulations, recommendations and decisions. Directives are more controversial because they need to be subsequently transposed in each member state. Also unsurprisingly, reports written by

Table 2: Fractional logistic regression of the level of committee success on the floor

VARIABLES	Model 1	Model 2	Model 3	Model 4	Model 5
Early	-2.227** (0.494)	-2.491** (0.425)	-2.423** (0.423)		
EP7	0.635** (0.208)	-0.600 (0.356)	-0.589 (0.345)	0.096 (0.351)	-0.587 (0.356)
EP7*early		1.427** (0.381)	1.333** (0.377)		
Early_bf_com				2.229** (0.543)	4.189** (0.433)
Early_af_com				-3.043** (0.379)	-3.267** (0.360)
EP7*early_bf_com					-2.054** (0.796)
EP7*early_af_com					0.980* (0.395)
Regulation	-0.500 (0.324)	-0.537 (0.326)	-0.442 (0.369)	-0.049 (0.287)	-0.076 (0.289)
Directive	-1.232** (0.379)	-1.288** (0.377)	-1.266** (0.410)	-0.815* (0.356)	-0.849* (0.356)
No. consult. comms	-0.038 (0.053)	-0.038 (0.052)	-0.032 (0.055)	0.027 (0.052)	0.031 (0.053)
ALDE			-0.136 (0.467)	-0.057 (0.414)	-0.025 (0.424)
EPP			0.065 (0.605)	0.217 (0.603)	0.216 (0.622)
GREENS			-0.935* (0.405)	-0.719 (0.574)	-0.633 (0.493)
IND/DEM			-2.571** (0.565)	-1.705** (0.493)	-1.598** (0.506)
PSE			0.352 (0.491)	0.528 (0.432)	0.525 (0.436)
UEN			-0.549 (0.892)	-0.805 (0.820)	-0.862 (0.920)
GUE/NGL			-0.177 (0.527)	0.491 (0.528)	0.427 (0.539)
Constant	2.780** (0.457)	3.010** (0.438)	2.900** (0.556)	2.117** (0.481)	2.252** (0.501)
Observations	474	474	474	474	474
Log-likelihood	-241.2	-239.0	-233.3	-162.5	-160.9

Robust standard errors in parentheses; * p<0.05, ** p<0.01

rapporteurs from the biggest party groups are most successful on the floor, although the respective positive coefficients are not statistically significant.

4.1 Discussion

Concerned with the quality of political representation in the European Parliament, this paper explored the impact of informal bicameral decision-making in the EU on the legislative influence of the parliamentary standing committees. Traditionally the main arena for societal involvement in law-making due to their openness to the public and transparent decision-making, unlike other institutional bodies in the EU, the committees have for a long time enhanced the legitimacy of EP decisions. This role has been threatened by the increasingly common informal and non-transparent early agreements on EU legislation by the Parliament and the Council of Ministers struck in secluded settings and later only rubber-stamped by the parliamentary plenary.

The revisions of the EP Rules of Procedure in 2009, meant to re-formalize decision-making, appear to have partially solved this problem. While the practice of informal legislating continues and has become the norm rather than the exception despite the specific indication in the Annex XXI, the EP committees' proposals are less often discarded in favour of inter-institutional agreements concluded only after the committee stage. The informal bicameral legislative deals seem to be now more often channelled through and approved by the committees.

This suggests a renewed legislative influence of the parliamentary committees. Yet, legislative discussions and decisions continue to take place outside the committee meetings and external viewers are only able to observe ready-made deals and their smooth passage through committee and plenary rather than genuine debate and the actual policy-making. In other words, 'there is little chance for a politicised and controversial debate [...] crucial to capturing public attention' not only in plenary ([Centre for European Policy Studies 2009](#), p. 11) but also in committee. The problem does not necessarily lie in the faster adoption of controversial legislation due to early agreements, even if they are commonly referred to as 'fast track legislation'. Indeed [Toshkov and Rasmussen \(2012\)](#) find no evidence that an early agreement on a salient legislative proposal takes any shorter to conclude than is necessary to reach a decision when a formal legislative process takes place, although the latter can span to second and third reading. The real problem is that legislative debates and deliberations do not take place in an open to the public and transparent arena as they used to. This deprives societal groups from monitoring the legislative process and curtails their opportunities to upload their preferences in passed legislation. In other words, the input legitimacy the EP committees used to promote is still compromised. Moreover, the uncertainty about the level of output legitimacy of early agreements remains after the rules change. The bargaining positions and conces-

sions made by the representatives in informal inter-institutional meetings are unclear, which limits the electorate's ability to hold them accountable.

Thus, the generally positive empirical results presented in this paper have to be taken with caution. Formalizing the requirements for entering trilogue negotiations has been a step in the right direction in tackling the democratic deficit in the parliamentary decision-making, which has been aggravating for the past decade. It has restored committee influence and assured representation of all party groups in the informal bicameral negotiations. Yet, more needs to be done to increase the transparency of the informal bicameral decision-making and open it to societal participation. The Parliament still has a lot to do to enhance democracy in the European Union.

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