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REPORT

on amendment of Rule 70 of Parliament's Rules of Procedure on
interinstitutional negotiations in legislative procedures
(2011/2298(REG))

Committee on Constitutional Affairs

Rapporteur: Enrique Guerrero Salom

CONTENTS

	Page
PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....	3
EXPLANATORY STATEMENT	9
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS.....	13
RESULT OF FINAL VOTE IN COMMITTEE.....	20

PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on amendment of Rule 70 of Parliament's Rules of Procedure on interinstitutional negotiations in legislative procedures (2011/2298(REG))

The European Parliament,

- having regard to the letter from its President of 18 April 2011,
 - having regard to Rules 211 and 212 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Economic and Monetary Affairs (A7-0281/2012),
1. Decides to amend its Rules of Procedure as shown below;
 2. Points out that the amendments will enter into force on the first day of the next part-session;
 3. Instructs its President to forward this decision to the Council and the Commission, for information.

Amendment 1

Parliament's Rules of Procedure Rule 70 – paragraph 1

Present text

1. Negotiations with the other institutions aimed at reaching an agreement in the course of a legislative procedure shall be conducted having regard to the Code of Conduct *for negotiating in the context of the ordinary legislative procedure.*

Amendment

1. Negotiations with the other institutions aimed at reaching an agreement in the course of a legislative procedure shall be conducted having regard to the Code of Conduct *laid down by the Conference of Presidents.*

Amendment 2

Parliament's Rules of Procedure Rule 70 – paragraph 2

Present text

2. ***Before entering into such*** negotiations, the committee responsible ***should, in principle, take a decision*** by a majority of its members ***and adopt a mandate, orientations or priorities.***

Amendment

2. ***Such negotiations shall not be entered into prior to the adoption by*** the committee responsible, ***on a case-by-case basis for every legislative procedure concerned and*** by a majority of its members, ***of a decision on the opening of negotiations. That decision shall determine the mandate and the composition of the negotiating team.***

Amendment 3

Parliament's Rules of Procedure
Rule 70 – paragraph 2 – subparagraph 1 a(new)

Present text

Amendment

The mandate shall consist of a report adopted in committee and tabled for later consideration by Parliament. By way of exception, where the committee responsible considers it duly justified to enter into negotiations prior to the adoption of a report in committee, the mandate may consist of a set of amendments or a set of clearly defined objectives, priorities or orientations.

Amendment 4

Parliament's Rules of Procedure
Rule 70 – paragraph 2 a (new)

Present text

Amendment

2a. The negotiating team shall be led by the rapporteur and presided over by the Chair of the committee responsible or by a Vice-Chair designated by the Chair. It shall comprise at least the shadow rapporteurs from each political group.

Amendment 5

Parliament's Rules of Procedure
Rule 70 – paragraph 2 b (new)

Present text

Amendment

2b. Any document intended to be discussed in a meeting with the Council and the Commission ("trilogue") shall take the form of a document indicating the respective positions of the institutions involved and of possible compromise solutions and shall be circulated to the negotiating team at least 48 hours, or in cases of urgency at least 24 hours, in advance of the trilogue in question.

After each trilogue the negotiating team shall report back to the following meeting of the committee responsible. Documents reflecting the outcome of the last trilogue shall be made available to the committee.

Where it is not feasible to convene a meeting of the committee in a timely manner, the negotiating team shall report back to the Chair, the shadow rapporteurs and the coordinators of the committee, as appropriate.

The committee responsible may update the mandate in the light of the progress of the negotiations.

Amendment 6

Parliament's Rules of Procedure Rule 70 – paragraph 3

Present text

Amendment

3. If the negotiations lead to a compromise with the Council following the adoption of the report by the committee, the committee shall in any case be reconsulted before the vote in plenary.

3. If the negotiations lead to a compromise, the committee responsible shall be informed without delay. The agreed text shall be submitted to the committee responsible for consideration. If approved by a vote in committee, the agreed text shall be tabled for consideration by Parliament in the appropriate form, including compromise amendments. It may be presented as a consolidated text provided that it clearly displays the

modifications to the proposal for a legislative act under consideration.

Amendment 7

Parliament's Rules of Procedure Rule 70 – paragraph 3 a (new)

Present text

Amendment

3a. Where the procedure involves associated committees or joint committee meetings, Rules 50 and 51 shall apply to the decision on the opening of negotiations and to the conduct of such negotiations.

In the event of disagreement between the committees concerned, the modalities for the opening of negotiations and the conduct of such negotiations shall be determined by the Chair of the Conference of Committee Chairs in accordance with the principles set out in those Rules.

Amendment 8

Parliament's Rules of Procedure Rule 70 a (new) – title

Present text

Amendment

Rule 70a

Approval of a decision on the opening of interinstitutional negotiations prior to the adoption of a report in committee

Amendment 9

Parliament's Rules of Procedure Rule 70 a (new) – paragraph 1

Present text

Amendment

1. Any decision by a committee on the opening of negotiations prior to the

adoption of a report in committee shall be translated into all the official languages, distributed to all Members of Parliament and submitted to the Conference of Presidents.

At the request of a political group, the Conference of Presidents may decide to include the item, for consideration with a debate and vote, in the draft agenda of the part-session following the distribution, in which case the President shall set a deadline for the tabling of amendments.

In the absence of a decision by the Conference of Presidents to include the item in the draft agenda of that part-session, the decision on the opening of negotiations shall be announced by the President at the opening of that part-session.

Amendment 10

Parliament's Rules of Procedure Rule 70 a (new) – paragraph 2

Present text

Amendment

2. The item shall be included in the agenda of the part-session following the announcement for consideration with a debate and vote, and the President shall set a deadline for the tabling of amendments where one-tenth of the component Members of Parliament coming from at least two political groups or at least two political groups so request within 48 hours after the announcement.

Where no such request is forthcoming, the decision on the opening of the negotiations shall be deemed to be approved with immediate effect.

The decision as approved shall form the basis for the mandate of the negotiating team and shall be referred back to the committee responsible.

EXPLANATORY STATEMENT

The Conference of Committee Chairs held an extensive exchange of views on negotiations in the context of the ordinary legislative procedure at its meeting of 19 October 2010. The Secretaries General of political groups contributed comments and analysis in view of the discussion to be held at the Conference of Presidents. The Conference of Presidents took up the issue at its meeting of 10 March 2011. In his letter of 18 April, President Buzek informed Chair Casini about the outcome of that meeting and communicated the decision of the Conference according to which the Committee on Constitutional Affairs has been invited to review Rule 70 of the Rules of Procedure with a view to making the procedures more effective, more transparent and more inclusive through the incorporation of some key elements of the *Code of conduct for negotiating in the context of the ordinary legislative procedures*¹ in the binding part of the Rules, and in particular those parts on:

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

With regard to this referral, Mr. Lehne has sent recommendations² on best practices for the application of the Code of Conduct to Chair Casini. The inter-institutional context should also be taken into account, notably the joint declaration of the EP, the Council and the Commission on practical arrangements for the codecision procedure³.

Your rapporteur presented to the committee a working document and a draft report during the autumn of last year. In the light of the debates on those documents, various consultations have taken place with the Conference of Committee Chairs, with the shadow rapporteurs and within the political groups. These exploratory contacts contributed to fine-tuning the approach reflected in the working document and the draft report and led to this revised draft.

The issue of inter-institutional negotiations and agreements in legislative procedures is linked – through the principles of openness and democratic accountability – to the cause of representative democracy at European level⁴. Since the beginnings of parliamentary democracy, the public nature of debates and votes has been linked to democratic accountability: if voters are not able to know what their elected representatives have said and how they have voted, they will not be able to hold them to account at the next elections. In this context, the introduction of binding rules for negotiations in legislative procedures that increase openness, and thus accountability, would be a step towards strengthening

¹ Annex XXI to the Rules of Procedure (July 2011 edition).

² See annexed to the Working Document of 14 October 2011 (PE.472.201v01.00).

³ OJ C 145, 30.6.2007, p. 5.

⁴ Cf. Article 10 TEU: "*The functioning of the Union shall be founded on representative democracy. [...] Decisions shall be taken as openly and as closely as possible to the citizen*" and Article 15(1) TFEU: "*In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible*".

representative democracy at European level.

On the other hand, the reform should take into account the requirement of efficiency and namely the fact that first reading agreements have the advantage of being lighter and faster than going through three readings. Creating new cumbersome procedures would undermine this advantage. Equilibrium should thus be found between these requirements during the transposition of the already existing rules (set out in the Code of Conduct and in best practices) into the binding part of the Rules. Your rapporteur therefore proposes amendments which, on the one hand, reflect the already existing, albeit not binding, *acquis* in this domain and which, on the other hand, aim to take into account the requirements of both transparency and efficiency.

Such a reform of Rule 70 should first of all clarify the legal status of the Code of Conduct. Whereas all legislative negotiations have to respect the binding Rules, the role of the non-binding Code is to provide guidance or orientation. Negotiations have to be conducted having regard to the Code, but only in so far as the Code is not in contradiction with any binding Rule in the given situation, or in so far as it is appropriate to follow it in the light of political considerations or timing constraints.

Decisions on opening legislative negotiations before the adoption of a report for first reading should be taken on a case-by-case basis for each legislative procedure and taking account of the distinctive characteristics of each individual file, with regard to the criteria set out in the Code. This means that such a decision should be politically justified in terms of, for example:

- political priorities;
- the uncontroversial or "technical" nature of the proposal;
- an urgent situation; and/or
- the attitude of a given Presidency to a specific file.

The decision should contain a negotiating mandate. Defining too strictly in the Rules the form of such a mandate would be counter-productive in terms of flexibility and efficiency. On the other hand, the Rules should provide for forms of a mandate. It should therefore be spelt out that a mandate can consist of a set of amendments or clearly defined objectives, priorities or orientations. The decision should also provide for a politically balanced composition of the negotiating team. As the mandate is to be approved by the committee, the team should be led by a person who impartially represents the whole committee and not by someone who could be conceived as the representative of a certain political group. For this reason the team should be led by the Chair who could delegate this duty to any other member of the team (including the rapporteur). Naturally, the rapporteur should always be member of the negotiating team.

Efficiency and flexibility should, however, go hand in hand with transparency once the committee is considering a formal decision to open legislative negotiations. Therefore, such decisions should be translated, distributed to all members of Parliament, transmitted to the President and announced at the part-session following their adoption in committee.

Transparency should also be ensured by the provision according to which the negotiating team should regularly report back to the committee responsible on the progress and the outcome of the negotiations. Drafts available should always be distributed after each trilogue. As a general rule, the negotiating team should report back to the full committee. If such a

report is not deemed feasible for timing reasons because the full committee cannot be convened, at least the shadow rapporteurs, the Chair and the coordinators should be informed on the progress and outcome of the negotiations.

The possible role of the plenary of Parliament in the approval of the mandate and of the decision to enter into negotiations was discussed in the committee on the basis of alternatives set out in the rapporteur's working document and draft report. This is a very complex issue. One could argue that approval of the committee's negotiating mandate by the plenary would give more weight to Parliament's position and could in theory ensure the early involvement of all members in decisions concerning legislative files. Thus a general rule to submit all draft decisions containing negotiating mandates to a debate at and approval by plenary could at a first glance find its justification in improved democratic legitimacy. However, the disadvantages would also be considerable. A full and automatic involvement would risk making the procedure too heavy and would thus counteract the efficiency and relative speed inherent to first reading agreements. Moreover, if this would become the usual practice, important files could go unnoticed among dozens of others. It is also to be borne in mind that this solution would create increased workload for the EP's linguistic staff. Therefore, arrangements should be found that respond to the following criteria:

- they ensure democratic legitimacy,
- are flexible and pragmatic, but also
- are assorted according to the political importance of legislative files.

In the light of these considerations, your rapporteur proposes the following procedures:

Amendment 4: firstly, a procedure should be introduced which ensures transparency and the formal democratic legitimacy of *all* decisions on the opening of negotiations at first readings without being time-consuming and cumbersome. Such a procedure should be based on the common sense presumption of "*qui tacet consentire*", that is silence gives consent. (Such a presumption can already be found in Rule 211).

Amendment 5: secondly, a fast track or "emergency brake" procedure should be created which could result in a simple "yes or no" vote on the question of opening negotiations.

Amendment 6: thirdly, it should also be ensured that in *exceptional and politically important* cases the plenary can have a full debate, amendment and voting procedure on the negotiating mandate. Triggering such a procedure would require heavy-weight intervention: the conference of Presidents or at least two political groups representing one third of the house's component Members.

If negotiations lead to a compromise with the Council, the committee coordinators shall immediately be informed so that political groups are aware of the agreement and the discussion in the committee can be focussed on the agreement reached. Following this, the agreed draft should be considered by the committee responsible. The agreed draft should be approved by the full committee responsible and then it should be tabled by the committee for consideration in Parliament. It is appropriate to define more precisely the form of such a move, because following the approval by Parliament the agreed draft will become a legislative act. Therefore, according to the well established practice, it should take the form of

a report, of compromise amendments to the proposal or of a consolidated text consisting in the proposal and the amendments agreed.

Finally, where the draft legislative act is examined in the procedure with associated committees (Rule 50), or in the procedure with joint committee meetings (Rule 51) it is appropriate to apply the same Rules to the opening and to the conduct of legislative negotiations. Since it is necessary to rapidly settle any disagreement between the committees concerned about the application of these Rules, the chair of the Conference of Committee Chairs should be given the power to decide on the modalities to be applied in such cases.

4.7.2012

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Constitutional Affairs

on amendment of Rule 70 of Parliament's Rules of Procedure on interinstitutional negotiations in legislative procedures (2011/2298(REG))

Rapporteur: Sharon Bowles

Mod

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions in its report:

Amendments

Amendment 1

Parliament's Rules of Procedure Rule 70 – paragraph 2

Present text

2. ***Before entering*** into ***such*** negotiations, the committee ***responsible should, in principle,*** take a decision by a majority of its members ***and adopt a*** mandate, ***orientations*** or ***priorities***.

Amendment

2. ***Where the committee responsible considers it appropriate to enter*** into negotiations ***after the adoption of a report in the*** committee, ***it shall*** take a decision ***on the opening of negotiations*** by a majority of its members ***and on a case-by-case basis for every legislative procedure concerned. The negotiating*** mandate shall ***comprise the report adopted in committee until such time as any superseding*** mandate is adopted, ***either in committee*** or

plenary.

Amendment 2

Parliament's Rules of Procedure Rule 70 – paragraph 2 a (new)

Present text

Amendment

2a. The negotiating team shall invariably include the chair, the rapporteur and all the shadow rapporteurs, ensuring representation from all political groups. While deputising is discouraged, this may be envisaged when necessary, as also may be additional attendees for special circumstances such as the negotiation of packages.

The chair shall preside over trilogues, ensure that the correct procedures are followed and, where relevant, lead the negotiations on interinstitutional matters such as those contained in interinstitutional memoranda or comparable committee-specific variations. The rapporteur shall lead the negotiations on the substantive legislative issues. The rapporteur shall represent not the position of his or her political group but that of the committee.

Amendment 3

Parliament's Rules of Procedure Rule 70 – paragraph 2 b (new)

Present text

Amendment

2b. The decision on the opening of negotiations at first reading, as referred to in paragraph 2, shall be transmitted to the President and distributed to all members. It shall be announced by the President at

the opening of the part-session following its adoption by the committee responsible .

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Amendment 4

Parliament's Rules of Procedure Rule 70 – paragraph 2 c (new)

Present text

Amendment

2c. The item shall be included in the draft agenda of the subsequent part-session for consideration with a vote, and where appropriate a debate, on the opening of negotiations at first reading where:

– at least 40 members or two political groups, so request within 48 hours after the announcement, or

– the Conference of Presidents so decides at its ordinary meeting following the announcement.

Otherwise, the decision on the opening of the negotiations shall be deemed approved upon announcement.

In urgent cases trilogues may be held before the announcement.

Amendment 5

Parliament's Rules of Procedure Rule 70 – paragraph 2 d (new)

Present text

Amendment

2d. All documents, including written drafts and non-papers, shall be circulated to the whole negotiating team. Documents for discussion in trilogues shall be provided at least 24 hours in advance of each meeting. All written drafts and non-papers considered at the trilogue shall be

made available to the committee, which may be via the groups as appropriate.

The rapporteur shall inform the negotiating team in advance when any bilateral discussion is to take place with the Commission or the Presidency of the Council, and shall report back on the topics discussed and circulate any proposals or papers. Bilateral negotiations shall not replace trilogue negotiations and shall not result in the conclusion of any agreement.

The chair shall report formally on the progress of trilogue negotiations that have taken place since the previous committee meeting. Where substantial developments have taken place or priorities need to be determined, the rapporteur and the negotiating team shall lead a debate.

Where there are significant developments and it proves not to be feasible to convene a meeting of the committee in a timely manner, the negotiating team shall report back to the coordinators of the committee.

The committee responsible may update the mandate in the light of the progress of the negotiations.

Amendment 6

Parliament's Rules of Procedure Rule 70 – paragraph 3

Present text

3. If the negotiations lead to a compromise with the Council *following* the *adoption* of the *report by the* committee, the *committee* shall in any *case* be *reconsulted before* the *vote in plenary*.

Amendment

3. If the negotiations lead to a compromise with the Council, the *coordinators* of the committee *responsible shall be informed without delay and* the *compromise shall be presented in the committee responsible. In the absence of an objection from any member of the committee responsible, the agreed text shall be tabled by the committee for consideration by Parliament in the form of a report or*

compromise amendments which may be in the form of a consolidated text.

Should a member of the Committee object to the tabling of the agreed text in plenary, the matter shall be scheduled for a vote in committee and decided on by a simple majority. The vote may be added to the agenda of that sitting of the committee.

Amendment 7

Parliament's Rules of Procedure Rule 70 – paragraph 3 a (new)

Present text

Amendment

3a. Notwithstanding Rule 57(2), where a mandate has been sought in plenary but no final vote on the legislative resolution has taken place, when the final vote is taken, amendments may be tabled by the committee responsible, a political group or at least 40 Members.

Amendment 8

Parliament's Rules of Procedure Rule 70 – paragraph 3 b (new)

Present text

Amendment

3b. Where a draft legislative act is examined in accordance with the procedure with associated committees under Rule 50, or in accordance with the procedure with joint committee meetings under Rule 51, those Rules shall also apply to the decision on the opening of negotiations and to the conduct of such negotiations. Where Rule 50 applies, in the event of disagreement between the committees concerned, the decision of the lead committee on whether to open

negotiations shall prevail, without prejudice to the procedure referred to in paragraph 2a.

Where Rule 51 applies, failing an agreement between the two committees concerned, the modalities for the opening and the conduct of such negotiations shall be determined by the Chair of the Conference of Committee Chairs in accordance with the principles set out in these Rules.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	2.7.2012
Result of final vote	+: 33 -: 0 0: 0
Members present for the final vote	Elena Băsescu, Sharon Bowles, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Diogo Feio, Elisa Ferreira, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Wolf Klinz, Jürgen Klute, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Werner Langen, Ivari Padar, Alfredo Pallone, Anni Podimata, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Theodor Dumitru Stolojan, Sampo Terho, Marianne Thyssen, Pablo Zalba Bidegain
Substitute(s) present for the final vote	Herbert Dorfmann, Bas Eickhout, Sari Essayah, Danuta Maria Hübner, Sophia in 't Veld, Olle Ludvigsson, Roberts Zile

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	17.9.2012
Result of final vote	+: 20 -: 0 0: 1
Members present for the final vote	Andrew Henry William Brons, Carlo Casini, Andrew Duff, Roberto Gualtieri, Enrique Guerrero Salom, Zita Gurmai, Gerald Häfner, Daniel Hannan, Stanimir Ilchev, Constance Le Grip, Paulo Rangel, Algirdas Saudargas, József Szájer, Rafał Trzaskowski, Manfred Weber, Luis Yáñez-Barnuevo García
Substitute(s) present for the final vote	Zuzana Brzobohatá, Luis de Grandes Pascual, Isabelle Durant, Marietta Giannakou, Anneli Jäätteenmäki, György Schöpflin