

TIME IS OF THE ESSENCE. EXPLAINING THE DURATION OF EU LEGISLATIVE DECISION-MAKING

by

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Abstract:

The purpose of this paper is to identify factors influencing the duration of European Union's legislative decision-making. Drawing from rational choice institutionalism and sociological institutionalism, seven main hypotheses are delineated predicting the impact of certain variables on the EU decision-making speed. A negative binomial regression is conducted to test above expectations on a dataset consisting of 599 regulations, directives and decisions that were adopted in co-decision between 1999 and 2009, and to which the European Parliament tabled at least one amendment. The analysis shows that the duration of EU legislative decision-making is systematically related to the proposal complexity, salience, impatience of legislators, ministerial involvement, proximity to the end of EP term and package deals. In addition, negotiations take more time when a proposal is directive, new and redistributive.

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INTRODUCTION¹

The duration of the European Union's legislative decision-making is a particularly important area of study. The reasons for this assertion are threefold. First, the study of decision-making speed holds theoretical importance, because it allows to verify the hypotheses and explain the decision phenomena. Due to such studies, it is possible to test rationalist expectations about, for example, the influence of actors' preferences or formal norms (such as QMV rule), but also constructivist suppositions emphasizing the role of informal norms, identities or socialization. Second, the study of EU decision-making speed also holds practical importance, because it allows to assess the implications of EU institutional reforms as well as important historical events, i.e. enlargements or Brexit. Based on the conclusions from such studies, future treaty reforms can be appropriately shaped to avoid potential fall in decision-making efficiency, avert gridlock and overcome delays in the implementation of EU acts. Third, the study of EU decision-making speed also holds normative significance. The duration of legislative negotiation plays a vital role in terms of democracy and legitimization, because it demarcates the boundaries of time and conditions for public debate over legislation. The shorter the negotiation time, the less time for discussion, and therefore the greater the probability that the final legislative outcome will be biased - not only won't it reflect the interests of citizens properly, but also it will not have legitimacy. The purpose of duration research is to identify and propose solutions to such problems, as exemplified by the normative assessment of trilogues and early agreements (Reh, 2014).

The importance of studies on EU decision-making speed is indicated by the growing number of publications devoted to this problem since the late 90s. The existing literature in this field can be divided into two groups of studies. The first analyzes the factors positively or negatively affecting the speed of EU legislative process (Golub 1999, 2007, 2008; Golub and Steunenberg, 2007; König 2007, 2008; Schulz and König 2000; Hertz and Leuffen, 2011). To a large extent, these are large-N studies which analyze the duration of legislative procedures since the beginning of the European Communities. They examine the impact of the following variables, *inter alia*, the Member States preferences, type of procedure (co-decision, cooperation), type of act (directive, regulation or decision) or policy area to which the proposal belongs, but also important treaty reforms (i.e. changes in the qualified majority

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voting definition) or events (successive EU enlargements, the presence of Thatcher's government in the UK). The dependent variable in these researches is usually the duration in months or days between the Commission's proposal and final adoption of the legislative act. In order to test the hypotheses, scholars of legislative duration often use the event history analysis (also known as survival analysis), in particular Cox proportional hazard regression and log-logistic regression. However, there is an ongoing debate over which method is the most reliable and superior as they both may lead to different results (see König, 2008).

The second group of studies deals with the so-called early agreements. These are legislative compromises negotiated in secret and informal trilogies by a group of representatives from the European Parliament, Council and European Commission which are later formally adopted without change in the first or early second reading of co-decision. These studies seek to explain the reasons for such agreements (Rasmussen, 2011; Reh et al., 2013; Hansen, 2014). The dependent variable is whether or not an early agreement was concluded, and a logistic regression is mainly used to test the hypotheses.

This paper seeks to contribute to this state of art. Its purpose is to answer the following question: what factors have impact on the duration of EU legislative decision-making in co-decision? As already mentioned above, the speed of EU legislative process has so far been scrutinized either from a historical perspective, where the purpose is primarily to evaluate EU treaty reforms, or by the studies of early agreements, which intrinsically does not allow to say much about the actual duration of EU negotiations. There is a shortage of studies that seek to identify factors related to the actors' preferences, characteristics of act or negotiators and negotiation techniques (i.e. package deals) affecting the genuine duration of EU legislative process under the co-decision measured in months or days. This paper aims to fill this lacuna.

The paper is organized as follows. The first section characterizes the course and duration of the co-decision procedure. The second section develops the hypotheses. They will be derived from two theories: rational choice institutionalism and sociological institutionalism. The hypotheses will predict that the duration of EU legislative decision-making under the co-decision is significantly determined by the following factors: complexity, urgency, salience, ministers' involvement, proximity to the end of the EP term, package deals as well as shared national identity of the rapporteur and the Council Presidency. In addition, four control variables will be included in the analysis: Council voting rule, the type of legislative act

(directive, regulation or decision), the novelty of act and the redistributive nature of the proposal. The third section describes the research design, that is the dataset structure, the operationalization of variables as well as the method for hypothesis testing - a negative binomial regression. The hypotheses will be verified on a dataset containing 599 EU directives, regulations and decisions adopted under the co-decision in 1999-2009 and amended by the European Parliament. The fourth section presents the results of hypothesis testing. The paper concludes by discussing the findings and their practical implications for the duration of EU legislative decision-making.

CO-DECISION AND ITS DURATION

After the Treaty of Lisbon entered into force on 1 December 2009, EU legislative acts are adopted under two procedures: the ordinary legislative procedure (commonly named co-decision) and the special legislative procedure. The former procedure is much more important as it accounts for about 89% of all EU legislative acts (European Parliament 2014). According to Article 289 TFEU, co-decision procedure "consists in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission". Although formally the Parliament and the Council are on an equal footing in this procedure, in practice their genuine positions vary and depend on many conditions. However, studies offer ambiguous results on the EP's and the Council's bargaining position in co-decision. According to empirical research based on the DEU II dataset (Thomson et al., 2012), the Council is more effective in pushing its preferences as this institution is on average 12 points closer to the outcome than the Parliament on a 1-100 policy scale (Costello and Thomson, 2013). On the other hand, Kardasheva (2013) found that the European Parliament succeeded in 62.5% of all issues it contested between 1999 and 2007 which is a pretty good result.

The course of the ordinary legislative procedure is specified in Article 294 TFEU. It consists of three readings. In the first reading, after the Commission submits a legislative proposal, the Parliament adopts its position. If the Council approves the Parliament's position, the act is deemed to have been adopted. If not, it enacts its own position at first reading and communicates it to the Parliament. This moment opens the second reading. The act is adopted at this stage if either the Parliament approves the Council's position or it does not take any decision. The Parliament may also reject the Council's first reading position which results in

the end of procedure, or propose amendments to it. If, within three months of receiving the Parliament's second reading amendments, the Council approves them, the act is adopted. If it does not, then the Presidents of the Council and the Parliament convene the Conciliation Committee. This organ, which is composed of the representatives from the Council and the Parliament (the Commission also takes part in the proceedings), prepares and negotiates a joint text on the legislative proposal. If, within six weeks, it does not reach agreement on a common text, the act is not adopted. If it approves that text, the third reading is started. Then the Parliament and the Council have six weeks to adopt the joint text. If either fails to do so, the act is deemed not to have been enacted.

Although formally co-decision consists of three readings, in practice the vast majority of EU legislative acts are adopted in the first reading. In the seventh EP term (2009-2014), 85% of legislative acts were adopted at this stage, compared to 13% in the second reading and only 2% in the third reading. The phenomenon of the early first reading agreements is the aftermath of two events that took place in 1999. First, the Treaty of Amsterdam, adopted in 1997, abolished the existing rule that co-decision legislation has to go through three obligatory readings (Maurer, 2003). As a result, since this treaty entered into force in 1999, it has become possible to conclude negotiations at first reading stage. Second, in the same year the Parliament, the Council and the Commission signed the *Joint Declaration on Practical Arrangements for the New Codecision Procedure* (revised in 2007), where they pledged to "cooperate in good faith with a view to reconciling their positions as far as possible so that, wherever possible, acts can be adopted at first reading" (European Parliament et al., 1999). This declaration established the practice of negotiating as many co-decision proposals as possible in trilogues (trialogues) - secret, secluded and informal meetings of representatives of three EU institutions (Brandsma, 2015; Roederer-Rynning and Greenwood, 2015). As soon as the proposal is submitted by the Commission, such meeting(s) between the representatives of the Parliament, the Council and the Commission is organized in order to reach a compromise on the legislative dossier. This compromise is subsequently presented at the Parliament's plenary session. In 96% of the cases the compromises reached in trilogues are accepted by the European Parliament without any modification (Kardasheva, 2009: 234). The Parliament's position is then accepted by the Council as it stood. In this way, the legislative procedure is completed as an early first reading agreement. It is also possible to conclude early agreement at the beginning of the second reading. It takes place when institutions reach an informal compromise after the Parliament adopts its position, but before the Council enacts its position

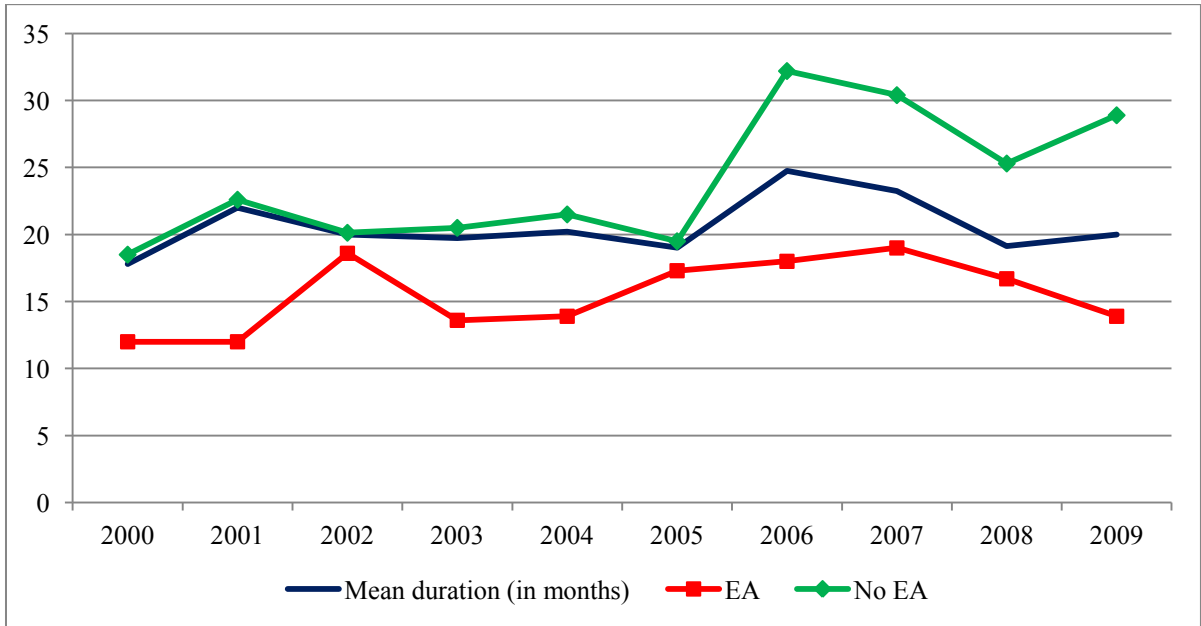
at first reading. In such a situation, the Council adopts a position which is a mirror reflection of the agreement reached in trilogues. It is then accepted by the Parliament without amendments at second reading.

In the literature, several studies can be found analyzing the determinants of early agreements. In their prolific article, Reh et al. (2013) found that, according to the rational choice institutionalism theory, fast-track legislation is strongly related to the number of participants, legislative workload, and complexity. Their findings also supports sociological institutionalism hypothesis that the likelihood of EA increases with the time co-decision has been in use. They also proved that early agreements are more likely when the main negotiators - the rapporteur and the Council Presidency - are from the same country and have similar political preferences. However, contrary to expectations, they found that the character of the act (redistributive or regulatory), proposal salience as well as the Council Presidency's preference for a specific dossier have no significant effect on fast-track legislation. Nevertheless, it appears that salience plays an important role in concluding early agreements. In her study based on the veto bargaining theory, Hansen (2014) showed that when legislative proposal is highly salient and the distance between the EP median and the Council pivot is large, fast-track legislation is significantly less likely. In addition, Rasmussen (2011) found evidence that legislative files are more likely to be concluded at first reading when rapporteurs come from the big EP party groups and the proposal is urgent, whereas inter-institutional disagreement, new act as well as the distance between the rapporteur from a big party group and the EP median decrease the likelihood of fast-track legislation.

In conventional wisdom, the trend to conclude the procedure at first or early second reading has a significant impact on the duration of EU legislative process as it results in a big reduction in decision-making time. This generates serious implications for transparency, public debate and democracy in the EU. However, the increasing number of early agreements does not intrinsically mean that the EU decision-making time shrinks dramatically. It should be stressed that no deadlines exist in the first reading according to which the legislators have to adopt their positions. As a result, they can permanently extend negotiations at this stage in order to reach a compromise. This assumption is confirmed by Figure 1 showing the average duration in months of the co-decision files adopted between 1999 and 2009. It is clear that, despite the dramatic growth of early agreements in this period, the average time of adopting EU legislative acts has not changed substantially. Moreover, no explicit acceleration of

negotiations under early agreements can be observed; on the contrary - there is even an increase in the length between 2004 and 2007. This observation is also confirmed by Toshkov and Rasmussen (2012) study which showed that the duration of the first reading is longer than that of files concluded at second reading, in particular in case of highly salient legislation. They conclude that the results "(...) indicate that the co-legislators compensate for some of the lost time from not going to second reading by extending the length of the first reading negotiations when the deals are salient" (Toshkov and Rasmussen, 2012: 17).

Figure 1. Average duration (in months) of EU legislative acts adopted under co-decision in the period 1999-2009



Source: EP Legislative Observatory.

THEORETICAL FRAMEWORK

The previous section has shown that early agreements do not lead to a dramatic reduction in the average duration of EU legislative decision-making under the co-decision. Hence, there must be other factors that are responsible for the variation in the legislative duration. In order to identify these factors, I delineate seven hypotheses in this section. They will be derived from two theories: rational choice institutionalism and sociological institutionalism.

Rational choice institutionalism (Pollack, 2007) assumes that individuals behave in accordance with the logic of expected consequences (March and Olsen, 1998). This means

that actors with fixed preferences calculate the expected outcomes of alternative courses of possible action and choose the action that is likely to maximize profits and minimize losses. However, when making a decision, they encounter the transaction costs, i.e. the costs of gathering information, monitoring or bargaining (North, 1992). These costs hinder and lengthen the decision-making process, thus, actors seek to save them. In the EU legislative process, the transaction costs are likely to increase when the Parliament and the Council negotiate complex legislative proposals which regulate multiple conflicting issues. Such pieces of legislation may be time-consuming as they push the costs of gathering relevant expertise, accommodating diverse policy preferences as well as coordinating positions within and between the institutions. As a result, it is more difficult for legislators to reach decisions quickly. Thus:

H1: The duration of EU legislative decision-making is longer when the legislative proposal is complex.

Rational choice institutionalism also highlights the importance of the actors' impatience about the adoption of legislation. Tsebelis and Money (1997) as well as Rittberger (2000) argue that when legislators are impatient, they are more likely to cooperate, give concessions and accelerate negotiations. The impatience of decision makers can in particular be generated by urgent legislative proposals which include a strict deadline before which they have to enter into force. The inability of EU legislators to adopt such files on time may impose significant economic and social costs on the Member States and the Commission. It also may block the launch of important EU programs as well as complicate their planning and execution. In addition, delayed adoption of the legislative act could result in expensive gaps in legislation and in a decline in the confidence of citizens in EU institutions who might perceive them as inefficient. Hence, in order to avoid these consequences, actors have a strong incentive to cooperate and adopt such proposals as soon as possible. Therefore:

H2: The duration of EU legislative decision-making is shorter when the legislative proposal is urgent.

The duration of the EU legislative decision-making may also be affected by the salience of legislation. This expectation can be justified by two arguments. First, salient proposals are likely to raise public interest. This creates a pressure to conduct broad public debates and consultations with stakeholders which may increase the duration of legislative deliberations. At the same time, decision-makers, especially MEPs and ministers, become less flexible in

negotiations, because being in the eyes of their electorates they want to get electoral benefits. Moreover, salient proposals are less likely to be concluded through informal fast-track process as this solution would be seen as undemocratic (Reh et al., 2013: 1124). Second, salient proposals are also linked with a strong divergence of the actors' preferences (Warntjen, 2012). Such pieces of legislation introduce far-reaching reforms in EU policy sectors which violate the interests of certain groups and are not acceptable to everyone. Where actors' preferences are diverse, the transaction costs are increasing, and therefore it takes longer to reach an agreement. Thus:

H3: The more salient the proposal, the longer the EU legislative decision-making.

Another factor that can influence the duration of EU legislative decision-making is the involvement of the Council ministers. Häge (2008, 2011) found that ministers often take an active part in EU legislative process, depending on the policy sectors to which the legislation is related. On the other hand, Häge and Naurin (2013) discovered that early first reading agreements have a detrimental effect on the likelihood of ministerial involvement. However, it can be expected that when ministers engage in the legislative process before the very first trilogue is organized or the European Parliament's position is adopted at first reading, the negotiations on the proposal are longer. This can be justified by two arguments. First, direct ministerial involvement is a major indicator for politicization as it increases the level of public interest and political opposition for a legislative act discussed in the Council (Häge, 2011). As a consequence, there is greater pressure for broad discussions which in turn prolongs the duration of legislative process. Second, the involvement of ministers at an early stage of first reading significantly politicizes and stiffens informal negotiations. At that time, the Presidency representing the Council in trilogues is equipped with stricter, politically endorsed mandate from which it can't depart too far. As a result, the Presidency has tied hands - it has fewer opportunities to give concessions to Parliament in order to build a quick compromise. In sum:

H4: The EU legislative process is longer if the Council's ministers are involved in decision-making.

The speed of EU legislative decision-making may also be affected by the so-called anticipation effect (Leuffen and Hertz, 2010). This statement can be derived from the expected utility theory (von Neumann and Morgenstern, 1944; Quiggin, 1982). It assumes that actors make decisions on the basis of their prospects and probabilities, assuming that they

act under uncertainty. In other words, actors forecast other actors' behavior and possible changes in the state of the world and after that they choose actions with the greatest expected utility. The anticipation of future consequences determines how decisions are made. By transferring this theory to the European Union ground, it can be assumed that actors will strive for a fast conclusion of negotiations on proposals which are examined near the end of the European Parliament's term. The reason is that EU legislators, in particular the Member States, anticipate the unpredictable consequences of the forthcoming EP elections related to, inter alia, change of coalitions in the EP, reconfiguration of the EP political groups or enlargements. Moreover, it is common in the EU that the start of a new EP term often coincides with significant institutional reforms. For example, the 2004 EP elections were combined with the introduction of new decision-making rules resulting from the east enlargement, whereas the 2009 EP elections were linked to the implementation of the Treaty of Lisbon provisions which, among many things, have established dual majority rule in the Council and have extended the co-decision procedure. Such changes can impose costs on actors and generate consequences which are difficult for them to assess. As a result, they have an incentive to adopt volumes of legislation as fast as possible before the end of the EP term in order to avoid the said consequences.

H5: The EU legislative decision-making is shorter when the proposal is negotiated just before the end of the EP term.

The central feature of EU legislative process is issue-linkage (König and Junge, 2009; Aksoy, 2012; Kardasheva, 2009, 2012). According to Kardasheva's (2013: 863) calculations, around 37% of all EU legislation adopted under the co-decision between May 1999 and April 2007 was decided through package deals. Package deals can be defined as informal legislative bargains between the European Parliament and the Council in relation to one or more proposals in which these institutions combine and exchange (trade) their preferences. For example, the Council accepts the Parliament's amendments on issue A (e.g., strengthening the protection of personal data), which is the most important for the MEPs, in return for which the Parliament agrees with the Council's demand on issue B (e.g. reduction of the budget), which is crucial for the Member States. Such package deals can take two forms: multi-proposal packages or single packages (Kardasheva, 2009). Multi-proposal package deal is concluded on several multi-issue proposals which can fall under the same or different legislative procedures. The exchange of preferences takes place on a number of issues which are bundled in a couple of interrelated and simultaneously negotiated acts. Single package deal is decided

on a single legislative proposal where multiple issues are bundled together. In this case, the Parliament and the Council trade their preferences within one act.

According to the logrolling theory (Buchanan and Tullock, 1962 [2004]; Stratmann, 1997), package deals are likely to speed up the EU legislative decision-making. Exchange of preferences serves as a simple, informal and fast solution for reaching compromises when transaction costs are high, time pressure is present and there are multiple issues on which actors have different intensities of preferences. Through the linkage of many conflicting issues and proposals, the Parliament and the Council can not only reach an agreement that satisfies both parties, but also avoid delays and gridlock in the legislative decision-making as well as reduce the transaction costs. Therefore:

H6: Package deals speed up the EU legislative decision-making.

Alongside rational choice institutionalism, a key place in European Union studies is occupied by the theory of sociological institutionalism or social constructivism (Christiansen, Jørgensen and Wiener, 2001; Checkel, 2007). It is based on the assumption that actors behave in accordance with the logic of appropriateness - they follow institutionalized rules that they see appropriate to the situation in which they find themselves, irrespective of their preferences and future consequences (March and Olsen 2011). As March and Olsen (1998: 951) point out: "Action involves evoking an identity or role and matching the obligations of that identity or role to a specific situation". On the basis of this assumption, it can be expected that the duration of EU legislative process should be decreased when the Parliament and the Council representatives in the first reading trilogues - the rapporteur and the Presidency - come from the same country. Shared national identity facilitates mutual interaction and cooperation, because it reduces cognitive, linguistic, cultural and communicative barriers. As a result, the decision-making becomes faster.

H7: The EU legislative decision-making is faster when the EP rapporteur is from the country holding the Council Presidency at the time of first-reading.

RESEARCH DESIGN

In order to test the hypotheses on the duration of EU legislative decision-making, I used three-step empirical approach. In the first step, I created a dataset. In the second step, I operationalized the dependent and independent variables. In the third stage, I conducted a

negative binomial regression to test the hypotheses. In this section, I discuss each of these steps in detail.

The dataset

The dataset is made up of EU legislative acts fulfilling three conditions. First, they were regulations, directives and decisions adopted by the European Parliament and the Council under co-decision procedure on a proposal from the European Commission. Second, they were adopted during the fifth or sixth EP term, that is between May 1, 1999 and July 13, 2009. Third, the dataset includes only legislative acts to which the European Parliament tabled at least one amendment. The main reason for such a step was to analyze only the confrontational and contentious pieces of legislation in which the Parliament and the Council had diverse and conflicting policy positions. In total, 599 legislative acts are found to comply with the specified requirements. The necessary information on legislative proposals and variables used in the analysis was gathered from three sources: the European Parliament's Legislative Observatory, the Council's Public Document Register and the Commission's Eur-Lex Database.

The operationalization of variables

Table 1 presents the descriptive statistics of variables used in the analysis. The dependent variable is the duration of EU legislative decision-making. It is defined as the difference between the date of the Commission's legislative proposal and the date of its adoption. The date of the adoption was specified peculiarly - not as the time of signature of the legislative act by both EU institutions, but as the date of adoption of either the Council's or the Parliament's position terminating the procedure. In the first reading, this is the Council's position accepting all EP amendments, whereas in the second reading - either the Parliament's position accepting the Council's first reading amendments (so-called early second-reading agreement) or the Council's position adopting without change the Parliament's amendments passed at second reading. On the other hand, in the third reading, the date of the adoption was defined as the moment when the last institution, usually the Council, approves an agreement reached in the Conciliation Committee. The main reason for above coding is twofold. First, actual negotiations under the co-decision end in practice when the institution's position terminating the procedure is adopted, and the subsequent signature of the legislative act is

only a formality irrelevant for the duration. Second, there is a time interval between the last position of the institution and the signature which is not constant across all procedures. As a result, this period could distort the empirical results by artificially and disproportionately lengthening the duration of decision-making in some cases.

Table 1. Descriptive statistics of the variables used in the analysis

| Variable | obs | mean | sd | min | max |
|--------------------------------|-----|-------|-------|-----|-----|
| Duration | 599 | 20.68 | 10.89 | 2 | 87 |
| Complexity | 599 | 3.4 | 1.96 | 1 | 12 |
| Urgency | 599 | .36 | .48 | 0 | 1 |
| Saliency | 599 | 16.5 | 10.6 | 1 | 77 |
| Ministers involvement | 599 | .40 | .49 | 0 | 1 |
| End of EP term | 599 | .19 | .39 | 0 | 1 |
| Multi-proposal package deal | 599 | .27 | .45 | 0 | 1 |
| Single package deal | 599 | .2 | .40 | 0 | 1 |
| Rapporteur Presidency relation | 599 | .05 | .21 | 0 | 1 |
| Council voting rule | 599 | .98 | .11 | 0 | 1 |
| Directive | 599 | .42 | .49 | 0 | 1 |
| New legislation | 599 | .52 | .50 | 0 | 1 |
| Redistributive proposal | 599 | .15 | .36 | 0 | 1 |

In addition, I operationalized seven explanatory variables measuring the factors included in the hypotheses. *H1* is tested with the *Complexity* variable. This continuous predictor measures the number of contentious issues that arose between the Parliament and the Council during the negotiation on a legislative act. It was assumed that the more issues were raised, the more complex the proposal was. In this case, I used an issue-based approach (Thomson et al., 2012; Kardasheva 2013) according to which each legislative proposal was examined in order to identify the issues contested by both the Council and the Parliament. The issue was included in the analysis if it had complied with two conditions. First, it was essential, substantive and related to the important change of the legislative proposal. As a result, issues concerned with minor and formal modifications of legislation were not included in the analysis. Second, a given issue was an important point of contention in the negotiations between both the Parliament and the Council. Therefore, no attention was paid to the postulates or

modifications which were not contested by at least one institution, although they modify the substantive part of the proposal.

To test *H2*, I created the dichotomous *Urgency* variable. It takes the value 1 if the legislative proposal included a specific deadline before which it had to be adopted or entered into force, and the value 0 if such deadline was not present in the act.

H3 is tested with the *Saliency* variable. This continuous variable measures the number of recitals included in the final legislative act. Recitals are the paragraphs/points placed at the introductory part of almost all EU legislative acts, except budgetary. Their aim is to give reasons for adopting a certain legislative proposal as well as to present previous legislative activity. The recitals approach is widely used in the literature as a measure of salience (Warntjen, 2012). As Häge (2007: 315) points out, the number of recitals "should give a good approximation of the importance of a proposal in the overall European legal order (...)". It is assumed that the more recitals the proposal has, the more important it is. It should be emphasized however that the operationalization of this variable departs from many previous studies which measure salience with the number of recitals incorporated in the Commission's proposal, and not in the final legislative act (see Häge, 2007; Reh et al., 2013). The reason for this coding is that the final version of the legislative act is the result of negotiations between the EU institutions, and therefore the number of recitals contained therein takes into account the actual importance of the act not only for the Commission, but also for the EP and the Council.

In order to verify *H4*, I coded the dichotomous *Ministers involvement* variable which captures the politicization in the Council. It is equal to 1 when the proposal was examined by the Council's ministers before the adoption of the EP position in the first reading, and 0 if such a situation did not occur, that is either ministers did not deal with the proposal at all or they examined it after the adoption of the EP position. Ministers can examine the draft proposal in many ways - not only can they discuss it, but they also may adopt guidelines in the form of a political agreement, general approach or Council agreement. The information on this variable was taken from the Eur-Lex database, where ministers' discussions are indicated as B points in the Council's agenda.

To assess *H5* - which captures the so-called anticipation effect - I created the *End of EP term* variable. Based on Reh et al. (2013) concept, this variable was coded dichotomously as: 1 - when the proposal was submitted by the Commission and adopted twenty months before the end of the fifth or sixth EP term, that is between October 1, 2002 and June 1, 2004 or between October 1, 2007 and June 1, 2009; and 0 - when the file was proposed and concluded in different period. I used the reference period of twenty months because this was the average duration of co-decision procedures contained in the above-mentioned dataset.

H6 is verified with the categorical *Package deal* variable. It has three categories: 1 - if the European Parliament and the Council concluded a multi-proposal package deal, that is they exchange their preferences across issues bundled together in several legislative proposals; 2 - if the European Parliament and the Council concluded a single package deal, that is they exchanged their support for issues bundled together within one legislative proposal; and 0 - if there was no package deal on a legislative proposal. The information on the occurrence of package deal was mainly obtained from the Council's Public Document Register.

H7 is tested with the *Rapporteur presidency relation* variable. This dichotomous predictor takes two values: 1 - when the Parliament's rapporteur came from the country holding the Presidency at the time of first reading; and 0 - if otherwise.

In addition to the explanatory variables, I created four control variables. The first is *Council voting rule*. It is dichotomous and takes value 1 if a legislative act was adopted by a qualified majority (QMV) in the Council, or 0 if a legislative act fell under unanimity rule. This variable was incorporated into the analysis in the light of several studies showing that QMV expedites decision-making, while the unanimity rule slows down negotiations (Golub, 2007; Golub and Steunenberg, 2007; Schulz and König, 2000; König, 2007; Hertz and Leuffen, 2011).

The type of the legislative act can also influence the decision-making time. Hence, the second control variable - *Directive* - was constructed. It is dichotomous and equals 1 when the negotiated proposal was a directive, and 0 if it was regulation or decision. This predictor was included in the analysis in the light of existing studies arguing that directives require more time than other policy instruments (Sloot and Verschuren, 1990; Schulz and König, 2000; Hertz and Leuffen, 2011). This is explained by the fact that, in comparison to regulations and

decisions, this type of act is "most likely to deal with important, complex and controversial issues rather than merely operational decisions and administrative matters" (Golub, 2007: 166). Another explanation is that directives require national implementation. As a result, the Member States are less flexible when negotiating them because of political opposition from domestic interest groups or lack of sufficient majority in domestic legislature (Schulz and König, 2000: 658). However, Rasmussen's (2011) study finds no evidence that directives have effect on the duration of EU legislative decision-making. This control variable is therefore designed to test the expectation that it takes longer to negotiate directives than other types of acts.

The third control variable is *New Legislation*. It is equal to 1 when the negotiated proposal is completely new, and 0 when the file in question amends or modifies the existing legislation. This variable was included in the light of Rasmussen's (2011) study which found that new legislative acts are less likely to be adopted early than those amending the status quo.

Finally, distributive nature of the legislative proposal may also have impact on the speed of EU decision-making. Distributive proposals are highly salient in particular for the Member States as they often take financial resources from one social group and allocate them to another (Burns, 2005). As a result, the distribution of benefits and costs becomes asymmetrical across states or groups, which generates political opposition and may slow down decision-making. Nevertheless, Reh et al. (2013) and Rasmussen (2011) did not find evidence that the redistributive character of the proposal have a significant effect on the likelihood of early agreements in co-decision. On the other hand, Kardasheva (2013) discovered that distributive proposals are more likely to be concluded through package deals. Since issue-linkage allows for faster negotiations, one can expect the distributive proposals to be adopted faster than regulatory ones. To test this claim, I created the fourth control variable -*Redistributive proposal*. It is dichotomous and takes value 1 when the legislative proposal included the allocation of EU funds, and 0 when it did not involve any budgetary resources and therefore had a more regulatory or technical character.

The negative binomial regression

As the dependent variable is a count of the months between the proposal and adoption of the legislative act, a count model should be estimated to test the hypotheses (Scott Long and

Freese, 2006). In general, there are many count models in statistics of which the most popular is the Poisson regression model. It is applied when, first, the dependent variable Y takes only the non-negative integer values $\{0, 1, 2, 3...\}$ resulting from counting rather than ranking (categorization); second, the dependent variable Y has a Poisson distribution, and, third, the conditional variance of Y is equal to the conditional mean of Y , in other words, the data is not over-dispersed. However, the Poisson model can't be used in this study due to over-dispersion of the data. This is indicated by the fact that the conditional variance (118.5) exceeds the conditional mean (20.7). A solution to the overdispersion is to use a negative binomial regression model (NBR). It is a generalization of the Poisson regression which loosens the restrictive assumption that variance is equal to the mean as it has an extra parameter to model the over-dispersion. The negative binomial model can be described by the following equation:

$$\mu = \exp(x_i\beta) \exp(\varepsilon_i)$$

where μ is the mean of the negative binomial distribution, expected number of events in a given time period; x_i is an explanatory variable; β is the regression coefficients; and ε_i is a random error that is assumed to be uncorrelated with x . By inserting the variables to this equation, the following product is received:

$$Duration = \exp(\alpha + \beta_k X_k) \exp(\varepsilon_i)$$

where: *Duration* - the dependent variable, expected number of month between the date of proposal and date of adoption of the legislative act; α - constant term; β_k - estimated coefficients for the k variable.

As can be seen above, NBR models the log of the expected count as a function of the predictor variables. Hence, the interpretation of regression coefficients is not straightforward, because they inform about changes in the log of expected counts of the response variable. To solve this problem, the effects of predictor variables in count models are often interpreted in terms of incidence rate ratios (*IRR*). *IRR* are obtained by exponentiating the β coefficients and their interpretation is as follows: if *IRR* is equal to 2, this means that for each unit increase in X , the expected number of Y will double. I will use *IRR* in this analysis.

By implementing NBR, I estimated three models. Model 1 includes all explanatory variables in order to test the hypotheses 1 to 7. Model 2 adds four control variables. Model 3 checks the robustness of the results - it contains only those predictors that were statistically significant at the 10% level ($p < 0.1$) in previous models.

RESULTS OF THE STATISTICAL ANALYSIS

Table 2 reports the results of a negative binomial regression. In a nutshell, the analysis confirmed six hypotheses. The duration of EU legislative decision-making is strongly related to the proposal complexity, urgency, salience, ministerial involvement, anticipation as well as conclusion of a package deal. Three of four control variables are also found to have impact: directive, new legislation and redistributive character of the proposal. Model 3 is the most efficient, because with 10 explanatory variables it has the lowest values of AIC (Akaike Information Criterion) and BIC (Bayesian Information Criterion). This model will be used to calculate and report *IRR* ($\exp(\beta)$).

H1 assumed that EU decision-making time is longer when the legislative proposal is complex. This expectation is corroborated in the analysis. The effect of the *Complexity* variable is positive and statistically significant in all three models. Holding all other variables constant, a one unit change in the proposal's complexity - that is, each additional conflicting issue - prolongs the negotiations by a factor of 1.08 (8%) which translates into 1.6 month increase in the duration. This result confirms that, in line with the rational choice institutionalism, when the transaction costs rise with the complexity of the proposal, legislative negotiations take more time to be completed.

As expected in *H2*, the impatience of EU legislators is a strong predictor of the duration. The β coefficient of the *Urgency* variable has the expected negative direction and is statistically significant in all models. More specifically, when the Commission submits a proposal with a deadline before which it has to be adopted, the negotiation time is 28% shorter in relation to non-urgent files, *ceteris paribus*. This implies 5.8 months decrease in the duration. The results obtained in the analysis is consistent with Rasmussen's (2011) finding that legislative proposals for which the existing legislation is to expire are more likely to be concluded early.

Table 2. Results of negative binomial regression explaining the duration of EU legislative decision-making

| | Model 1 | Model 2 | Model 3 |
|--------------------------------|----------------------|----------------------|----------------------|
| Complexity | 0.082*** (0.009) | 0.083*** (0.009) | 0.083*** (0.009) |
| Urgency | -0.269*** (0.034) | -0.216*** (0.037) | -0.219*** (0.037) |
| Saliency | 0.005*** (0.002) | 0.004** (0.002) | 0.004** (0.002) |
| Ministers involvement | 0.103*** (0.035) | 0.087** (0.034) | 0.086** (0.034) |
| End of EP term | -0.471*** (0.045) | -0.436*** (0.045) | -0.436*** (0.045) |
| Multi-proposal package deal | 0.003 (0.038) | 0.004 (0.037) | 0.007 (0.037) |
| Single package deal | -0.089** (0.043) | -0.103** (0.043) | -0.104** (0.043) |
| Rapporteur presidency relation | -0.072 (0.077) | -0.081 (0.076) | - |
| <i>Control variables</i> | | | |
| Council voting rule | - | 0.060 (0.142) | - |
| Directive | - | 0.143*** (0.035) | 0.143*** (0.035) |
| New legislation | - | 0.091** (0.036) | 0.091** (0.036) |
| Redistributive proposal | - | -0.097* (0.053) | -0.100* (0.053) |
| Constant | 2.778*** (0.041) | 2.629*** (0.146) | 2.684*** (0.045) |
| <i>AIC</i> | 4119.1 | 4101.6 | 4098.9 |
| <i>BIC</i> | 4163.0 | 4163.1 | 4151.6 |
| alpha | 0.102 | 0.095 | 0.096 |
| lnalpha | -2.285 | -2.349 | -2.344 |
| <i>N</i> | 599 | 599 | 599 |

Notes: Standard errors in parentheses. Significance: * p<0.1, ** p<0.05, *** p<0.01.

H3 predicted that the more salient the proposal, the longer the duration of EU legislative process. This supposition is confirmed in the empirical analysis. The coefficient of the *Saliency* variable is in the expected positive direction and statistically significant in all models. The effect is however small. *IRR* informs that a one unit change in salience - that is, each additional recital included in the final act - implies only 0.5% increase in the duration of negotiations, assuming other explanatory variables are held constant. Still, this result is in line with Hansen's (2014) finding that agreements are significantly less likely to be reached at the early stage of co-decision when legislative proposals are highly salient. Controversial legislative acts raise public interest and are associated with a strong preference divergence. As a corollary, negotiations become more conflicting and time-consuming - particularly since several studies discovered the culture of consensus in both EU institutions which prescribes to seek mutually acceptable compromises and 'bring everyone on board' when making a decision (Lewis, 2005; Settembri and Neuhold, 2009).

H4 expected the involvement of ministers at the early stage of first reading to have incremental effect on the EU decision-making time. This hypothesis is corroborated. The *Ministers involvement* variable has positive and significant effect in all three models. More specifically, when ministers take part in the decision-making process before the European Parliament adopts its position at first reading, the duration of the procedure increases by 11% or, in other words, by approximately 2 months. This finding is in line with previous studies (Häge and Naurin, 2013; Hansen, 2014) which revealed that ministerial involvement is negatively associated with the conclusion of first-reading agreements.

In line with *H5*, legislative files negotiated just before the end of the EP term take less time than those adopted in another period. In all three models, the effect of the *End of EP term* variable is in the expected direction, strong as well as statistically significant. *Ceteris paribus*, the negotiation speed is increased by 37% (between 7 and 8 months) when a proposal is examined 20 months preceding the end of the EP term. This result confirms once more the presence of the so-called anticipation effect in the European Union decision-making. Leuffen and Hertz (2010) study showed that legislative output significantly increases prior to the accession of new Member States as incumbent Member States fear the costs of enlargement. In addition, Reh et al. (2013) found the likelihood of early agreements to increase prior to the 2004 and 2009 EP elections. This analysis contributes to above research by showing that the anticipation effect is also present in the duration of EU legislative process.

As expected in *H6*, issue-linkage speeds up the legislative process under co-decision. However, this effect holds only for single package deals and not for multi-proposal packages. This is evidenced by the β coefficient of the *Single package deal* variable which is negative and statistically significant in all models. *Ceteris paribus*, an exchange of preferences within a single legislative proposal leads to about 9% shorter negotiations in comparison to the reference category (no package deal), which translates into approximately 2 months decrease in the duration. This result confirms the expectation that issue-linkage serves as a fast solution for reaching compromises as it reduces the transaction costs, limits the time pressure, helps to avoid delays and provides mutually acceptable agreements on legislation (Kardasheva, 2013). By contrast, the effect of the *Multi-proposal package deal* variable is not significant and even has unexpected positive sign.

H7 expected the duration of EU legislative decision-making to be shorter when the rapporteur is from the country holding the Council Presidency at the time of first reading. The analysis does not support this hypothesis. The coefficient of the *Rapporteur presidency relation* variable has expected negative direction, though, it is not significant. The sociological institutionalism argument is therefore not backed by the results. While the shared national identity of the rapporteur and the Presidency increases the likelihood of concluding early agreement (Reh et al, 2013), it does not result in a visible reduction in the average duration of EU legislative negotiations.

Turning now to the control variables, it was expected that legislative acts adopted by a qualified majority in the Council take less time than those enacted by unanimity. The coefficient of the *Council voting rule* variable is in the expected positive direction in Model 2, however, it is not statistically significant. This means that the voting rule in the Council does not have a substantial effect on the duration. This result is surprising in the light of previous studies showing that QMV expedites EU legislative decision-making. This non-finding may be explained in two ways: either as a result of a consensus-reflex within the Council which obliges to make as many decisions as possible by consensus, irrespective of the voting rule (Lewis, 2005; Heisenberg, 2005) or as an effect of the triple majority rule introduced in 2003 by the Treaty of Nice, which, according to several studies, would have lengthened the decision-making speed as well as have increased the danger of deadlock in the Council (Felsenthal and Machover, 2001; Hosli and Machover, 2004).

By contrast, the second control variable - the type of act - has a strong influence on the duration of EU legislative process. The effect of the *Directive* variable is in the expected, positive direction and statistically significant in Model 2 and 3. When holding other explanatory variables constant, the decision-making time for directives is 15% longer (about 3 months longer) than for the other types of EU acts adopted under co-decision - regulations and decisions. This result is in line with previous studies according to which directives take more time to be passed than regulations and decisions (Sloot and Verschuren, 1990; Schulz and König, 2000; Hertz and Leuffen, 2011). The explanation for this effect is twofold. The first is directives provide the most conflicting and salient EU issues, whereas the second is these acts require national implementation which limits the Member States' flexibility as they may be faced with domestic political opposition and lack of sufficient majority in national legislature.

The third control variable - *New legislation* - also has a statistically significant effect on the duration of the EU legislative decision-making. The β coefficient - albeit small - has a positive value which means that it takes longer to negotiate completely new proposals than the acts modifying or amending the existing legislation. As shown by the *IRR*, the decision-making time is reduced by approximately 2 months in case of new legislative files, compared to other acts. This result is in line with Rasmussen's (2011) finding that the likelihood of early agreement is significantly lower for the new act than for the modifying one.

The redistributive nature of the proposal - the fourth control variable - has a modest effect on the duration. The coefficient of this predictor is small, however, it is negative and statistically significant - albeit at the lowest level. This result leads to the conclusion that redistributive proposals require considerable less time to be passed than the regulatory ones. The *IRR* coefficient is 0.90 which means that, *ceteris paribus*, the negotiation duration for the distributive files is 2 months shorter than for the other pieces of legislation.

CONCLUSION

The purpose of this paper was to identify the factors influencing the duration of EU legislative decision-making under the co-decision procedure. After a brief description of the co-decision procedure, seven hypotheses were delineated predicting the impact of certain variables on the EU decision-making speed. Six of these hypotheses were derived from rational choice

institutionalism and one from sociological institutionalism. A negative binomial regression was conducted to test above expectations on a dataset consisting of 599 regulations, directives and decisions that were adopted in co-decision between 1999 and 2009, and to which the European Parliament tabled at least one amendment.

In a nutshell, the analysis showed that rational choice institutionalism theory explains well the speed of EU decision making. This is indicated by the following results. First, the proposal complexity prolongs the duration of legislative negotiations. Complex pieces of legislation increase the transaction costs of coordination, bargaining and expertise gathering; therefore, EU legislators need more time to reach agreement. Second, the impatience of EU legislators plays a vital role in EU decision-making speed. The analysis showed that urgent proposals with a specific deadline before which the legislative act has to enter into force are adopted much faster than files without such a deadline. Third, the speed of EU decision-making is strongly related to the salience. Important legislative proposals last much longer than irrelevant pieces of legislation due to the fact that the former generate greater public interest and divergence of the actors' preferences. Fourth, EU decision-making lasts longer when the Council ministers engage in negotiations at an early stage of the procedure. The explanation is that the ministerial involvement increases the politicization of the legislative process as well as stiffens the Presidency mandate for the negotiations in trilogues. Fifth, the analysis also revealed the presence of the anticipation effect as predicted by the expected utility theory. Legislative proposals which are submitted and negotiated 20 months before the end of the EP term are concluded considerably faster than the others. The reason is that EU legislators, in particular the Member States, want to adopt as many legislative acts as possible in a given parliamentary term in order to avoid the unpredictable consequences of the forthcoming EP elections as well as the introduction of treaty reforms. Sixth, package deals speed up the EU legislative decision-making as they allow to reach mutually acceptable compromises when actors have different intensities of preferences for many conflicting issues. However, this effect holds only for single package deals and not for multi-proposal packages.

On the other hand, sociological institutionalism hypothesis was not corroborated. While the shared national identity of the rapporteur and the Council Presidency increases the likelihood of concluding early agreement (Rasmussen, 2011; Reh et al. 2013), it does not make the legislation negotiated much faster in terms of number of months. Moreover, no link was found between the EU decision-making speed and the Council voting rule. This result is

striking in the light of previous studies showing that QMV rule expedites EU legislative decision-making. This non-finding can be explained in two ways: either as a result of the culture of consensus in the Council or as an effect of the triple majority rule introduced by the Treaty of Nice. However, the analysis revealed that the characteristics of the proposal have relevance to the speed of EU decision-making. As expected in the literature, directives are negotiated significantly longer than regulations and decisions. The novelty of the act also seems to be relevant as new proposals are negotiated longer than files amending or modifying the existing legislation. Finally, redistributive proposals are adopted considerably faster than regulatory ones.

The analysis also revealed results with some practical application. The first is concerned with the Commission's right of initiative. According to this study, it is not a good idea in terms of democratic accountability to submit legislative proposals with an urgent deadline or in the end of the EP term. The analysis showed that such proposals are concluded much faster than others. This means that the time for public debate and gathering expertise is significantly limited in their case, which may result in the lack of legitimacy and emergence of unintended consequences of these acts. In addition, Kardasheva (2013) found evidence that urgent proposals are more likely to be adopted through package deals. As package deals are concluded informally and in a quick manner, this may negatively affect the legitimacy of urgent proposals. Notwithstanding these observations, practice shows that the most co-decision files are negotiated and enacted near the end of the EP term (European Parliament, 2014).

The second practical conclusion - once again aimed at the Commission - is that there is no association between the duration of EU legislative process and the presence of multi-proposal packages. In recent years, the Commission has increasingly submitted legislation packages consisting of several legislative proposals bundled together and negotiated simultaneously (European Parliament, 2009). This practice aims to facilitate and accelerate the negotiations between the Parliament and the Council. Package deals allow both institutions to exchange their preferences across multiple issues in order to get mutually beneficial compromises, which is easier and faster than negotiating each file on a case-by-case basis. However, the analysis revealed that multi-proposals packages do not lead to a visible reduction in the duration of EU decision-making. In this regard, the Commission's practice does not produce the expected results.

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