

5 July 2023

## BACKGROUND DOCUMENT

### Treatment of files under the Ordinary Legislative Procedure in view of the end of the legislature\*

#### Executive summary

Following the adoption of Parliament's calendar for 2024, a more precise planning process for the end of the ninth legislature can be triggered. As regards files under the Ordinary Legislative Procedure (OLP), this requires a specific planning to ensure that certain deadlines and procedures are respected and that many OLP files can be concluded by the end of the legislative term.

As the end of the legislative term approaches, there are two factors that could influence the prioritisation of legislative files. There is still an **increased likelihood of urgent or fast track procedures** given the ongoing war in Ukraine as well as possible **pressure to finalise the Joint Declaration files**.

In addition to the logistical constraints set out in the letter from the Chair of the Conference of Committee Chairs to President Metsola<sup>1</sup> and addressed by a decision in the CoP, the limits on capacity for translation and legal-linguistic verification in both Council and Parliament will influence the feasibility to finalise files. The **number of ongoing files is 223** under the Ordinary Legislative Procedure. As in the previous term, it will **not be possible to conclude all these files in this term due to capacity and time limitations at Council and EP level**. In addition, there are still important files expected from the Commission until the end of the term. Therefore, an early priority setting and agreement among involved actors is especially important. There will be files that will have to be carried over to the next legislature.

It is clear already that in order for a file to have **visibility**, it would be recommendable that Committees aim to have Parliament's first reading **adopted during the January and February plenary sessions of 2024**. It is anticipated that the **March and April sessions of 2024 will be quite full** and might need to be reserved for urgent files.

#### Key dates and milestones:

1. **11 July 2023** - *CCC meeting* - first exchange of views with Chairs,
  - **Autumn 2023** - Committees should conduct a political prioritisation process for OLP files by October,
2. **21 November 2023** - *CCC meeting* - updated exchange of views on the priorities, also with the incoming Belgian Presidency,
  - **5-9 February 2024** - last week to reach **provisional agreements with Council** in order for the file **to be published before summer 2024**,
  - **11-15 March 2024** - last week to reach **provisional agreements with Council** in order for the file to be **published in autumn 2024** under the **corrigendum** procedure,

\*Prepared by the Legislative Affairs Unit.

<sup>1</sup> Letter of 13 April 2023 from CCC Chair Lange to President Metsola.

3. **12 March 2024 - CCC meeting** - follow-up on state of play on remaining OLP files and outlook on the new term,
- **22-25 April 2024** - last plenary session in the ninth legislative term.

***The Chairs of the Conference of Committees Chairs (CCC) are invited to:***

– consider and exchange on the note and start a prioritisation process in view of the end of the legislature.

## **Introduction**

This note looks at the main constraints related to the finalisation of the ongoing OLP files in the months before the 2024 European elections. It aims to provide essential information for committee chairs concerning the planning of the legislative files in their committees towards the end of the term. Although at this stage the progress on the outstanding dossiers is still difficult to predict, the note illustrates the different scenarios and their implications in line with our Rules of Procedure in view of the end of the parliamentary term.

There are currently **223 files** under the OLP:

- Of these 223 files, 210 are in EP first reading procedure. Of those there are 38 under negotiation, 45 have been provisionally agreed in trilogues and in 6 files Parliament has a negotiating mandate but the negotiations have not yet started. The remaining 123 files are still at committee level and we expect up to 30 more new proposals from the Commission later in the term (including around 27 Joint Declaration 2023-2024 files).
- Out of the 223 files, 12 files are awaiting Council's first reading position and one file is provisionally agreed awaiting Parliament's second reading position.
- Out of the 223 files, 14 files are blocked or considered obsolete.

The three March and April plenary sessions of 2024 - where the majority of files negotiated during the first months will be voted - will be extremely busy, and with little or no time for plenary debates. A high workload is also expected for translation and plenary services, and timely planning will be essential for ensuring a smooth running of the March and April part-sessions. Committees should therefore consider, voting their files during the January and February plenary sessions, as they should be less full and offer more visibility and debating time.

In general, **committees should therefore be encouraged to reflect in advance on the prospect of the different OLP procedures, as several scenarios are possible**, as described in part II.

## **I. Trends expected towards the end of the ninth legislative term**

Apart of the huge number of open files, several factors come together to make the end of this parliamentary term particularly complex and rather unpredictable:

### ***1. The increased use of the urgent procedure (EP Rule of Procedure 163)***

A bit more than one-fifth of the OLP files during this term were adopted under the urgent procedure, i.e. 57 out of 285 concluded files. It is still likely that more proposals will be made before the end of the term for which an urgent or a fast track procedure will be proposed (e.g. Industrial package). This could have an effect on the legislative planning for the plenary, as these files would need to be added to the agenda.

Besides, inter-institutional negotiations took place in only five of these urgent procedures. Therefore, the expectation is that most procedures based on Rule 163 will be dealt with within one plenary week, without a need for plenary mandates and trilogues.

## **2. Priority files - the Joint Declaration files**

The Joint Declaration process was set up in the second part of the eighth term in an attempt to establish joint legislative programming under the 2016 Interinstitutional Agreement on Better Law Making. Five Joint Declarations (2017; 2018-2019; 2021; 2022; and 2023-2024) have been agreed upon until now. This now yearly exercise also created a high level of expectation, especially from the Commission. This exerts a lot of pressure on the co-legislators to conclude these files before the end of the legislative term, despite the politically complex dimension of some of them and the difficult negotiations due to their cross-cutting nature.

In practice, the Joint Declaration constitutes a long list of files (currently 164) which de facto does not identify items of major political importance, neither does it necessarily translate into concrete additional support for those files or have an impact on the timely presentation of the proposals by the Commission. Despite of the length of the list of files included, the Joint Declaration primarily constitutes a list of Council priorities that fall within the responsibilities of the Commission Vice Presidents.

## **II. Different options for handling ongoing OLP files towards the end of the term**

Below is a description of the different scenarios for the OLP files at the end of the term.

### **A. Provisional agreement following interinstitutional negotiations**

#### **a) Files agreed in first reading to be published before summer 2024**

A provisional agreement should, in principle, be reached, in a **complete consolidated version** (no more work at technical level required), **by the end of the first week of February 2024** (calendar week 6) in order for the respective text to be published by summer 2024. This implies that Parliament should receive the Coreper letter by mid-February 2024. This would allow for the **eight weeks** necessary for translation (two weeks) and legal linguistic verification (six weeks) prior to the adoption of the EP first reading (in the last plenary sessions in April 2024), bearing in mind that the number of provisionally agreed files tends to grow significantly towards the end of the term, and that additional difficulties may arise.

#### **b) Files agreed in first reading to be published in the autumn of 2024 (following a corrigendum procedure)**

Trilogue negotiations may continue **until early March 2024** (calendar week 10) for a vote in the last March plenary, and **until mid-March 2024** (calendar week 11) for a vote in the last April plenary but this will not allow for publication before the EP elections and nearly always implies a corrigendum procedure. This scenario infers that Parliament should receive the Coreper letter by mid-March 2024.

An EP first reading agreed with the Council but not finalised would be subject to a **corrigendum procedure** under **Rule 241** (see Annex). This requires that the committee responsible examines the draft corrigendum and submits it to plenary for adoption (this is not possible during the election break, so all stages of the corrigendum procedure will take place at the beginning of the next parliamentary term). Normally, the Council would only adopt the text after the plenary vote on the corrigendum, and therefore the text would only be

published in the Official Journal during the autumn of 2024. Although the corrigendum procedure bears a certain risk, it was used a lot at the end of the last legislature to allow negotiations to continue for a few more weeks.

## **B. Dealing with the other OLP files**

If negotiations cannot be concluded with a provisional agreement, or if the negotiations do not start, a formal decision will be necessary for every individual file as to whether, at the end of the term, the files concerned should be adopted in plenary or on the contrary remain at the stage of committee reports or mandates (committee or plenary mandates). This decision will again impact on the planning of the plenary and the work of the translation services and the lawyer linguists. By the end of the **8th legislature** 130 files did not have a provisional agreement. Parliament adopted a first reading position for 86 of them, while 44 files were subject to Rule 240 concerning unfinished business (see below the explanation in Part III).

### **a) *Plenary first reading position (non-agreed)***

This is the most “stable” of the options as EP first readings are not unfinished business and therefore not subject to Rule 240. The file will be in the hands of the Council (early second reading).

An EP first reading position could be sought for many different scenarios (work at committee level or files with committee or plenary mandates). This includes files where negotiations have not started or could not be concluded successfully.

### **b) *Unfinished business (Rule 240)***

#### **1. *Plenary mandates (Rule 59 and Rule 60)***

If the current Parliament adopts a plenary mandate and refers it back for negotiations, the next Parliament could decide to resume on that basis, taking into account the result of the unfinished business exercise (Rule 240).

#### **2. *Committee mandates (Rule 71)***

For committee mandates announced in plenary, the next Parliament could decide to resume on that basis, taking into account the result of the unfinished business exercise (Rule 240). The next Parliament could also decide to adopt a plenary mandate.

#### **3. *Committee reports (Rule 59)***

For committee reports adopted but not placed on the plenary agenda during the current legislative term, the next Parliament could again decide to resume on that basis, taking into account the result of the unfinished business exercise (Rule 240).

## **C. Files where the Council first reading could be transmitted**

The Treaty foresees several deadlines for the second and third reading, which have to be observed, irrespective of election periods or summer recesses (see Annex). For this reason, it is crucial that the Council does not transmit Council first readings during the EP election break and before legislative work in Parliament resumes.

The usual practice is that the Council consults the responsible committee (and also the Commission) about the date of transmission of its first reading (see points 6 and 20 of the

Joint Declaration (see Annex)). To this end, it is crucial to discuss and agree with Council in advance the transmission times of future Council first reading positions. In case of early second reading negotiations after the election break, the Council first reading position is not transmitted until after negotiations have been successfully concluded.

### III. Outlook: Unfinished business in Parliament

As concerns the ordinary legislative procedure, "unfinished business" means any legislative proposal referred by the Commission to Parliament on which parliamentary work is ongoing (preparatory phase, (draft) committee report, committee or plenary mandate).

The Treaty does not contain any explicit provision with regard to the handling of possible unfinished business at the end of a legislative term, but it allows the Commission to alter its proposal as long as the Council has not acted (see Annex). Unfinished business is dealt with in the Parliament under Rule 240 (see Annex).

Rule 240 of the Parliament's Rules of Procedures stipulates that *"at the end of the last part-session before elections, all Parliament's unfinished business shall be deemed to have lapsed", unless* the Conference of Presidents – at the beginning of the new term – decides *"on reasoned requests from parliamentary committees and other institutions to resume or continue the consideration of such unfinished business"*.

Moreover, Rule 61 (see Annex) allows Parliament to ask the Commission to refer its proposal back to Parliament where elections have taken place. (Thus in theory, even where a first reading was adopted and Council has not acted.) The Commission is, of course, free to act or not on this request. Rule 61 has not been used so far for that purpose.

The box below outlines the 2019 experience and the steps taken for facilitating the decision of the Conference of Presidents on the resumption of business at the beginning of the current legislative term (including the consultation of the committees on ongoing files), which covered both exercises under Rules 240 and 61.

#### Handling "unfinished business" at the start of the current legislative term

In 2019, the following steps were taken to handle unfinished business:

- **11 July 2019:** EP President wrote to the Commission, Council, and Chair of the CCC recalling Rule 240 and announcing an upcoming decision of the CoP on the unfinished business of the last legislature;
- **24 July 2019:** Chair of the CCC wrote to the new Committees Chairs inviting them to list the unfinished business they would like to resume, the pending proposals they would like the Commission to withdraw and the unfinished procedures for which they would wish the Commission to prepare a modified position. The deadline of 19 September 2019 was given to committees.
- **18 October 2019:** EP President wrote to the President of the Commission and to the Finnish Presidency of the Council communicating the decision of the CoP with the list of files to be resumed. Work on files where the EP first reading had not been finalised before the elections was continued; Parliament asked the Commission to withdraw twelve proposals.