The codecision procedure was introduced with the Treaty of Maastricht in 1993 and later amended by the Treaty of Amsterdam in 1999. With the entry into force of the Treaty of Lisbon in December 2009, it was renamed the ordinary legislative procedure, according to Article 294 of the Treaty on the Functioning of the European Union. The conciliation committee is the last chance for the European Parliament and the Council to solve disagreements arisen throughout the legislative process. If the Council does not approve the amendments of the parliamentary second reading, the presidents of the Council and of the Parliament convene a meeting of the conciliation committee to resolve the remaining differences between the two institutions. In other words, conciliation is necessary when the Council has failed to approve the amendments inserted by the Parliament after reading its common position. The conciliation committee is composed of members of the Council and Parliament in equal number. Unlike the Council delegation, which is essentially the Council, the Parliament’s rules of procedure prescribes the composition of its delegation to reflect the whole assembly by political groups (Rasmussen 2005; Rasmussen 2008). The parliamentary delegation must include the chair committee and the rapporteur of the dossier at hand as well as one of the three vice-presidents responsible for Conciliation, playing also the role of delegation chair. The Council delegation, on the contrary, is chaired by the minister holding the presidency. The objective of conciliation is to produce, within six weeks, a joint text supported by a qualified majority of Council delegates and an absolute majority of parliamentary delegates. The Commission takes part to the conciliation negotiations without a right to vote. If agreement is found on a joint text, this document is then voted upon within six weeks, under closed rule and by qualified and simple majority in the Council and Parliament respectively.

This procedure has changed over time. Before the Treaty of Amsterdam, the definitive adoption was a Council prerogative: the Council could make a final take-it-or-leave-it offer to the Parliament, which had to muster an absolute majority to halt irrefutably the proposed measure. This last procedural step strengthened, at least in principle, the negotiating hand of the Council (Garrett and Tsebelis 1996), but the adoption of a rule of procedure, stating that the parliamentary leadership would table a motion to reject in such circumstance, has presumably limited the Council’s potential gains (Hix 2002; Kasack 2004).

A second, less noted, procedural change was the modification of the voting rule in the Council. The Treaty of Maastricht, for instance, specified that measures in the fields of culture as well as the multiannual framework programme in research and technological development were to be adopted following the codecision procedure, but the Council will have to act unanimously. The Council’s bargaining hand was presumably stronger in these
cases as it could credibly threaten rejection if just a single minister was not happy with the proposal at hand. Qualified majority voting was extended to the framework programme by the Treaty of Amsterdam and to cultural policy by the Treaty of Lisbon.

During the first seven years the codecision procedure entered into force, the Conciliation Committee has been employed once every five Commission’s proposals. This indicates significant inter-institutional conflict. The Treaty of Amsterdam, that made early agreements possible, did not seem to ease up tensions. On the other hand, there has been a significant drop in the employment of the committee over the last two legislative terms. This could indicate, on the one side, better working of the mechanisms of inter-institutional cooperation, and, on the other side, a lower incidence produced by the extension of the ordinary legislative procedure to the majority of EU policy areas. In sum, conciliation appears to becoming now a proper mechanism to settle disputes, which is used only occasionally.

Who wins more frequently? What are the factors that determine bargaining success of the Parliament?

Although the conciliation committee has been depicted as the truly bicameral body in the legislative procedure, as stated above, upon a closer look we might argue differently. The conciliation committee, indeed, is a conference committee by half. The two chambers are structurally not on an equal footing, since it is a meeting between a full upper chamber – the Council – and a delegation of a lower chamber – the Parliament. On the one side, we have a fully represented collective actor, where each member can submit amendments. The joint text is then confirmed by the same actors involved in the conciliation. On the other side, we have a delegation of a collective actor, the Parliament, where delegates, individually, can propose amendments on the joint text, which will be then, collectively, voted under closed rule. This different institutional set-up makes the negotiations between the two delegations asymmetric. The outcomes of these negotiations should be biased in favour of the Council.

By comparing documents of the two institutions’ positions and the joint text of almost all the dossiers that reached conciliation from the entry into force of the Maastricht Treaty to February 2012\(^1\), we found out interesting results on the most successful institution. Figure 1 illustrates this general pattern: the final agreement is closer to the position of the Parliament in only thirty per cent of the dossiers. In each legislative term, the joint text has been on average more similar to the common position than to the second parliamentary reading, confirming the structural asymmetry within the committee.

Nevertheless, some factors are likely to increase the parliamentary success. First, the Parliament is more successful when the Council decides by qualified majority. Unanimity confers a veto power to the Council member that is the least accommodating towards the demands of the Parliament. This weakness, however, has been softening as the qualified majority has become the ordinary voting rule. Second, the reform of the codecision procedure introduced by the Treaty of Amsterdam seems to have actually strengthened the Parliament’s hand. This is in line with Garrett and Tsebelis’ (1996) analysis of parliamentary powers under the first version of codecision.

Beyond these two structural features, the Parliament may strengthen its position in the conciliation negotiations thanks to the leading role of the rapporteur and the implementation of measures. If the rapporteur comes from a large party – either the European People’s Party or the Party of European Socialists – the probability of parliamentary success increases. The reason why it happens is not so clear. Rapporteurs from large parties can benefit greater representativeness of the whole assembly (Costello and Thomson, 2011) and can pose credible threats of Parliament’s rejection against significant deviations from their advocating positions. Membership to a large party, however, lowers uncertainty for the Council, because rapporteurs offer more certainty about the type of parliamentary assembly and the negotiating mandate she receives from the plenary is broader, thus it may be detrimental to the Parliament.

\(^1\) We employed Slapin and Proksch’s (2008) computer-based Wordfish scaling algorithm, being able to compare documents and producing estimates positions based on word frequencies.
Additionally, having the Commission on Parliament’s side increases its chances of winning in conciliation. Aside of its informal role, the influence the Commission exerts on the final agreement is crucial. The Commission gives its opinion to the parliamentary readings and the Council common position. So, if it decides to reject all of the second reading amendments of the Parliament, rather than only half of them, the chances that the Parliament would win in conciliation decreases. When legislative provisions confer upon it the power to take policy decisions, it is directly in charge of implementation or it is entrusted with the power to initiate proceedings against possible infringements by national administration. The importance of implementation is far from trivial for politicians, they cannot ignore the effective delivery of a measure to their constituency. The relative involvement in policy executions vary across measures, and the mechanisms for overseeing implementation, that are available to ministers and parliamentarians as well (Franchino 2007: 240-4). When national administrations are relatively more involved in implementation than the Commission, parliamentarians are less accommodating because legislative design is the primary control mechanism at their disposal. On the other hand, ministers are more accommodating because they can rely on a wide array of ex-post control mechanisms. The probability of parliamentary success increases in case of directives.

Conclusions and recommendations
From the standpoint of the Parliament, this policy brief offers solace and annoyance. Solace because the Amsterdam Treaty reform appears to have delivered the benefits the Parliament expected and because the phasing-out of unanimity from Council proceedings has strengthened the hand of the assembly in conciliation negotiations. Annoyance because the set-up of the conciliation committee remains structurally biased against the Parliament. Perhaps counter intuitively, it is the strength of the parliamentary delegation vis-à-vis the full assembly that is the source of the latter’s weakness vis-à-vis the Council. Likewise, it is the weakness of each minister vis-à-vis her colleagues that is the source of strength for the whole Council.

Despite this structural weakness, getting to conciliation is not a foregone conclusion. The Parliament has managed to negotiate a joint text that is closer to its second reading in less than one third of dossiers that have reached conciliation. This proportion increases in the current setting (i.e., post-Amsterdam Treaty procedure and majority voting in the Council). What else explain parliamentary success? The partisanship of the rapporteur finds enough empirical support. The rapporteur’s party affiliation requires, in our view, more theorizing on both its uncertainty-reducing properties about the type of Parliament the Council is facing, and the broader consensus as well as the more credible threats the rapporteur may rely on in the whole assembly. Instead, the importance of implementation is more evident. Of whom the Commission takes side matters because, we contend, its role in implementation is far from trivial. Politicians cannot ignore the effective delivery of a measure’s benefits. Additionally, the asymmetry in the availability of ex-ante and ex-post control mechanisms for ministers and parliamentarians, when the Commission or national administrations are the main implementers, explain the more and the less accommodating attitudes of the two groups of legislators.

The Parliament could also take advantage of other weapons, such as explicitly setting credible restrictions over the set of acceptable solutions (Tsebelis and Money 1997: 176). Indeed, the self-imposed rules of representativeness of its delegation, which Rasmussen (2008) finds to be operating well, could actually be counterproductive if interpreted through the lenses of intercameral bargaining (Gailmard and Hammond 2011). We have noted the difficulties in determining the nature of the parliamentary delegation, but an area of future

2 At the end of the second reading, the Council approves by qualified majority those amendments that are supported by the Commission, unanimously the unsupported amendments.

3 Legislative design is an ex-ante control mechanism over implementation, while interpellations and inquiries are examples of ex-post control mechanism (e.g. Epstein and O’Halloran 1999; Huber and Shishan 2002)
research could be to understand if the Council’s negotiating stance influences the selection of parliamentary delegates.

REFERENCES


