

The Corridors of Power in Brussels:
Informal Communication, Coordination, and
Compromise in EU Trilogue Negotiations

William Kjærgaard Egendal

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William Kjærgaard Egendal
Aarhus, April 2025

Chapter 1.

Motivation and Introduction

Some people, when they talk about the EU, the first sentence they say is that ‘Everything about the EU is so complicated’. What happens then? Three quarters of the audience stop listening and don't hear a single damn thing that's being said – their stares turn blank, and they're gone. That's the stupidest thing you can do! (Interview 20, MEP)

It is true that the EU is often criticized for being overly complicated, technocratic, and far removed from the lives of EU citizens. Whether or not this assessment is fair, it is indisputably true that EU legislation fundamentally affects the lives of its citizens in areas as diverse as nature restoration, artificial intelligence, product safety standards, customs, and migration. Therefore, knowledge of how these rules are made, rather than eliciting blank stares, should be of keen interest to any reader. The aim of this dissertation is to provide new insight into precisely this process by examining how legislative compromises between the Commission, the European Parliament, and the Council of Ministers are negotiated informally in so-called trilogue meetings.

Indeed, it is no secret that trilogues are now *the* way EU legislative compromises are made under the ordinary legislative procedure (OLP). Since their first introduction as a means of informal preparation for the Conciliation Committee at third reading under the German Presidency in 1994 (European Parliament, 1999), they have proliferated. In the ninth EP legislature (2019-2024), every single legislative agreement was adopted at first or early second reading – what is usually termed an *early agreement* (European Parliament, 2024a). A first-reading agreement means that the Council accepts the European Parliament's position without amendments. This indicates that a compromise has already been prepared before the first reading in the EP, and this mostly occurs in trilogues – informal tripartite meetings between representatives of the three institutions. Despite being a key step in the OLP, our knowledge about how the three institutions bargain and reach compromises is sparse. This lack of knowledge stems in part from the fact that trilogue meetings are *informal* and held *in camera*, meaning that there is little to no public access to the meetings themselves – indeed it is doubtful whether official minutes are even taken.

1.1 Research Question and Relevance

Previous studies have examined the relative power of the institutions in trilogues (Delreux & Laloux, 2018; Haag, 2022; Kirpsza, 2018; Roederer-Rynning & Greenwood, 2017), the proliferation of trilogues over time (Farrell & Héritier, 2004, 2007), the (potential) empowerment of *relais* actors¹ (Brandsma & Hoppe, 2021; Judge & Earnshaw, 2011; Kirpsza, 2023; Reh, 2014), the transparency and legitimacy of trilogues (Curtin & Leino, 2017; Hillebrandt & Leino-Sandberg, 2021; Huber & Shackleton, 2013; Häge & Naurin, 2013; Novak & Hillebrandt, 2020), and the development of a specific *culture of trilogues* (Brandsma, Dionigi, et al., 2021; Roederer-Rynning & Greenwood, 2015, 2021). This thesis builds on the literature on *relais actors* and *culture* by focusing specifically on the social relations that develop between negotiators during the trilogue process. The main relations studied are, to use two-level game terminology (Putnam, 1988), *across the table* with the *relais* actors from the other two institutions; *behind the table* with constituents in a negotiator's own institution; and finally between the *relais* actors at the political level and their subordinates at the *technical* level, who play a crucial role in the process because they carry out a substantial portion of the actual negotiations under the guidance of the political negotiators (in Council, cf. Fouilleux et al., 2005; Häge, 2013). The thesis aims to contribute to our understanding of EU legislative decision-making, and of informal and social negotiation dynamics more generally. It tackles questions such as how trust is developed and maintained between negotiators, how they handle the cross-pressures of defending their institution's position on one hand and delivering a compromise on the other, and whether the negotiators' institutional backgrounds shape how they perceive and thus approach trilogue negotiations. The thesis is structured around the following overall research question:

How are EU trilogue negotiations conducted in practice, and how do central actors view their own role(s) in them?

The research question contains two components, one descriptive and one interpretive. The descriptive portion aims at examining trilogue practices. (Bevir & Rhodes, 2015: 15) define practices as 'a set of actions, perhaps a set of actions that exhibit a pattern, even a pattern that remains relatively stable across time'. As such, answering this part of the question entails describing the different actions that take place in a trilogue process: what different types of meetings are held at various stages in the process? Who attends these

¹ Collective name used for the main negotiators in trilogues because they act as relays (French: *relais*) between inter- and intra-institutional negotiations.

meetings, and is there any regularity in how they are conducted? And who talks to whom outside (and in the margins) of meetings?

The second part of the research question aims at the participants' own understandings of these practices and their roles in enacting them. Answering both parts of the question requires access to the field, whether directly through observations or second-hand by means of either interviews with insiders or diary studies. This dissertation combines ethnographic fieldwork in the European Parliament with comprehensive interview material with negotiators at all levels across the three institutions. Because detailed knowledge of the trilogue process is sparse, the dissertation follows an abductive logic of inquiry in which both theory and empirical material guide the analyses.

1.2 Structure of the Dissertation

The dissertation consists of 14 chapters split into four parts. Along with this introductory chapter, Chapters 2 and 3 introduce the empirical context of the dissertation and the state of the art in research on trilogues. Chapter 2 introduces the empirical setting of this dissertation, explaining what trilogues are, how they came to play a central role in the EU legislative process, and the formal intra- and interinstitutional rules which govern their use. This is followed, in Chapter 3, by a review of the extant literature on trilogues.

The second part of the dissertation sets up the theoretical and methodological framework. Chapter 4 presents the theoretical approach and lenses employed in the study. The dissertation follows an abductive approach and employs three distinct theoretical lenses: first, rational choice-inspired theories drawing particularly on two-level games and the principal-agent model. The second lens is sociological institutionalism, particularly focusing on negotiators' role perceptions and the logic of appropriateness. And the third is practice-oriented diplomacy theory, focusing particularly on practices of informal interaction. Chapter 5 outlines the methodology and methods employed in this study. Methodologically, the point of departure is an interpretive epistemology, while the methods employed are primarily elite interviews and ethnographic fieldwork supported by official documents, press releases, and social media posts relating to trilogues.

The third part of the dissertation contains the empirical analyses. These are found in Chapters 6 to 13 and are structured to follow the typical steps in a trilogue process, from submission of a legislative proposal to final agreement and finalization of the text. Chapter 6 focuses on the intra-institutional negotiations carried out to provide the relais actors with a mandate for trilogue negotiations, while Chapter 7 introduces the typical members of each institution's delegation and analyses the different cross-pressures facing the negotiators as they enter into trilogues. Chapter 8 explores the negotiation culture

in trilogues, focusing on the structural challenges for the development of a uniform trilogue culture, the informal steps taken by negotiators ahead of the first trilogue meeting to accommodate this lack of a ‘settled’ procedure, and the conduct of the first trilogue. Chapter 9 examines the distinction between negotiations at the technical and political levels over the course of a trilogue process and how a policy issue can move up and down between levels. Chapter 10 discusses the use of breaks in trilogue meetings, Chapter 11 the informal communication and coordination which takes place between trilogue meetings, and Chapter 12 the conduct of the final trilogue meeting leading to a provisional agreement between the institutions. Chapter 13 acts as an analytical epilogue and details the work which takes place *after* the final trilogue, demonstrating that this entails substantive negotiations carried out at the technical level, and not merely ‘legal scrubbing’ and translation before the text is formally adopted.

Finally, the fourth part (Chapter 14) looks back at the dissertation, summarizing and discussing the findings of the analyses, outlining the contributions this thesis makes to the study of EU legislative politics, and pointing towards areas for further research.

Chapter 2. Empirical Context: Trilogues in the EU Legislative Process

Today, trilogues are an essential feature of EU legislative decision-making (Laloux, 2020), but this has not always been the case. Even to EU insiders, trilogues are still to some extent shrouded in mystery, decried as a ‘black box’ (Roederer-Rynning & Greenwood, 2021) and subject to criticism regarding lack of transparency and accountability (Curtin & Leino, 2017; European Ombudsman, 2016; Huber & Shackleton, 2013; Reh, 2014). To people outside the Brussels bubble, even the word ‘trilogue’ does not carry any special meaning.

While this book aims to enlighten the reader about the inner workings of these trilogue meetings, this chapter aims to impart an understanding of the formal rules governing what trilogues *are* in the context of EU legislation. This will help set the stage for the remainder of the book, which deals primarily with the *informal* aspects of trilogues, and how negotiators navigate within the formal rules of the EU’s ordinary legislative procedure (OLP).

To this end, the chapter proceeds as follows: first, there is a section defining trilogues and describing their introduction and subsequent spread over the past 30 years, which took place as codecision became the dominant procedure for EU legislation and thus increased the need for coordination between the European Parliament and the Council of the European Union as co-legislators and the European Commission as broker/facilitator. The next section introduces the most important actors representing the three institutions in trilogue negotiations. Lastly, there is an introduction to the formal intra- and interinstitutional rules governing trilogue negotiations. While these meetings are technically informal as they are not foreseen in the EU treaties, there are several interinstitutional agreements that form the basis for the conduct of trilogue negotiations.

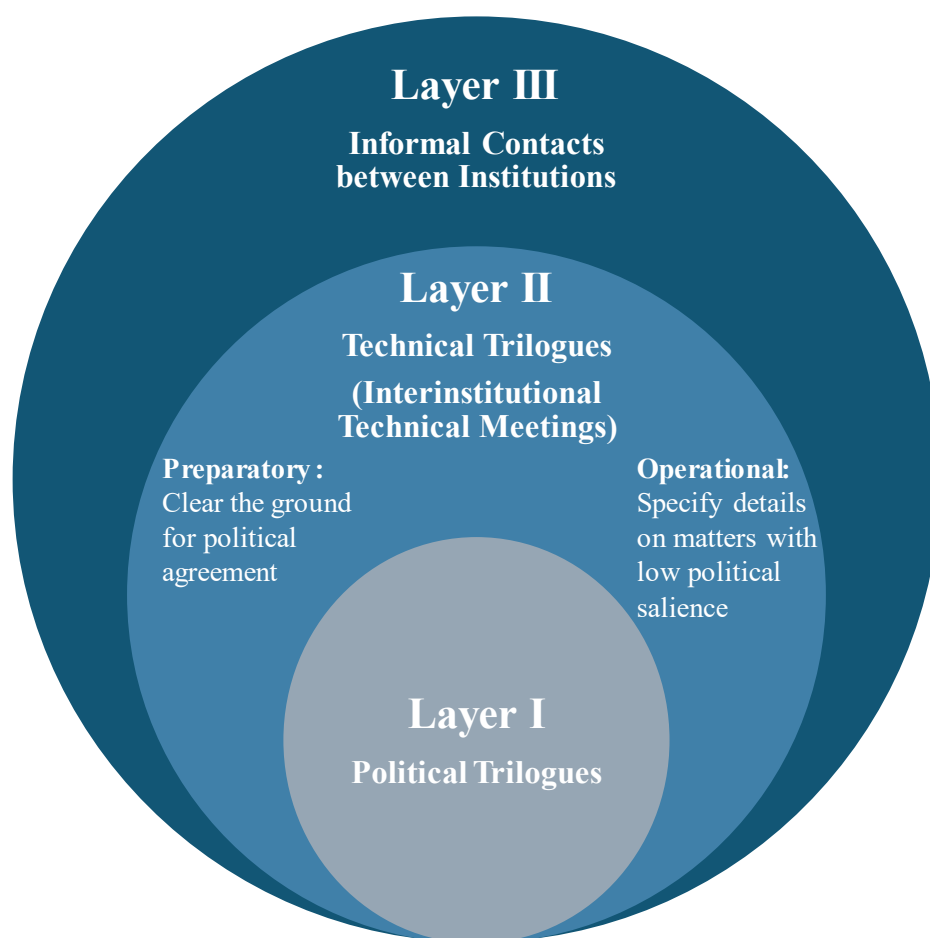
2.1 What are Trilogues?

Given that trilogues are not mentioned in the EU treaties and are thus considered informal, there is a distinct lack of clarity among practitioners and researchers alike regarding what trilogues are. Therefore, the first task of this chapter is to delineate what trilogues are (and are not). In the context of EU legislation, the term ‘trilogue’ mainly denotes two things: first, the trilogue meetings themselves, where high-level representatives of the three institutions meet to discuss a compromise text for a legislative proposal. These

meetings are often called political trilogues to differentiate them from other types of meetings that take place during interinstitutional negotiations. These different meetings are illustrated in Figure 2.1a.

Second, the term ‘trilogue’ mostly refers to a specific phase in the OLP, namely when the EP and the Council have each formulated positions internally and then enter interinstitutional negotiations before the first formal reading in the EP. A simplified version of this is illustrated in Figure 2.1b. However, it is worth noting that trilogues may take place at any point in the legislative process, the second most common time being before the EP’s second reading in cases where a first-reading agreement was not reached. Both the meeting and process usages of the term will appear in this dissertation as interviewees use both, but when it is not immediately clear from the context, the former will be referred to as a ‘trilogue meeting’ or ‘political trilogue’, while the latter will be referred to as a ‘trilogue process’ or ‘interinstitutional negotiations’.

Figure 2.1a: Trilogues as a Multi-Layered Institution



Note: Adapted from Roederer-Rynning & Greenwood (2015).

Figure 2.1b: Trilogues as a Step in the OLP



Note: This presentation is highly simplified and only meant to illustrate that trilogues, understood as a specific step in the legislative process, most often take place ahead of Parliament's first reading.

It is also worth noting that while the main actors in political trilogues are those negotiating on behalf of their institutions, a host of other actors help prepare for these in technical meetings and in informal bilateral contacts that take place over the course of a trilogue process. Both the main actors and their teams are introduced later in this chapter. Finally, it is worth noting that compromises reached in trilogue negotiations are *provisional agreements*. This is because any agreement reached is subject to formal adoption by the co-legislators. The work undertaken between provisional agreement and formal adoption is detailed in Chapter 13.

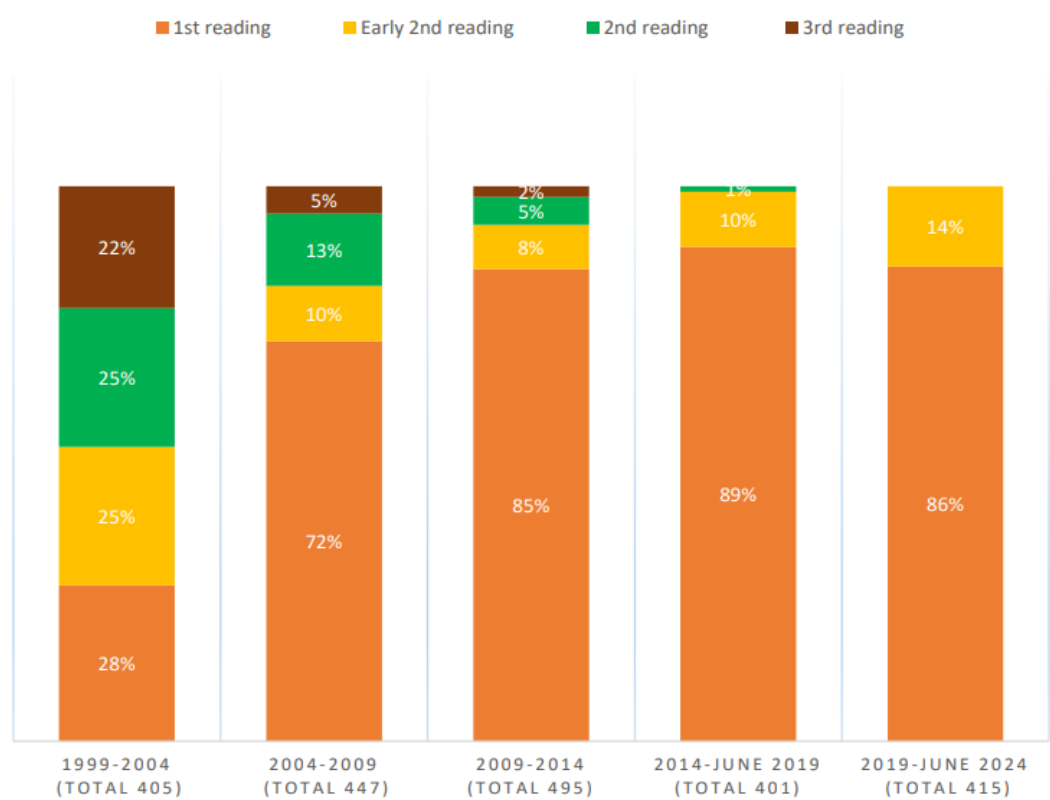
2.2 Where Did They Come From?

According to the European Parliament (1999), trilogues were first introduced as a means of preparation for meetings in the Conciliation Committee² as foreseen in the codecision procedure under Article 189b in the Treaty of Maastricht. Conciliation has sometimes been referred to as a *formal trilogue*, but to avoid conceptual confusion, this term will not be used in this dissertation. The Treaty of Amsterdam introduced the possibility of first-reading agreements if neither institution amends the Commission's proposal, or if the Council adopts amendments identical to those adopted by the EP (European Union, 1992). The procedure then spread from pre-conciliation into 'direct exploratory contacts' between the co-legislators at the first-reading stage (European Parliament, 1999), and has 'continued to increase, becoming the norm in EU legislative decision-making' (Laloux, 2020).

² Under the OLP, if no agreement has been reached at second reading, representatives from each of the 27 member states and 27 MEPs will form a Conciliation Committee to negotiate a compromise for the legislative proposal. If no compromise can be found in conciliation, the act is not adopted.

One clear sign of the proliferation of trilogues is the proportion of legislation that is agreed at first reading or ‘early second reading’,³ collectively known as early agreements. As the figure below clearly illustrates, the trend over the past 25 years has been decisively in the direction of more early agreements, to the point that there was not a full second reading in the entire ninth EP legislature and has not been a single conciliation procedure since the seventh.

Figure 2.2: Stage of Adoption for OLP Proposals, 5th to 9th European Parliament



Source: European Parliament (2024a).

The tendency towards early agreements is enabled by the fact that neither the Council nor the EP have anything to gain in terms of formal procedural power by pushing the formal procedure to a third-reading agreement. This is because the majority requirements for both institutions are virtually identical for first- and third-reading agreements. These are illustrated in the table below.

³ A first-reading agreement is reached when both EP and Council adopt identical texts at the first reading. An early second-reading agreement occurs when the Council adopts a text at first reading that modifies the EP’s position. If the EP adopts that same text at their second reading, no second reading in Council is needed.

Table 2.1: Voting Rules Under the Ordinary Legislative Procedure

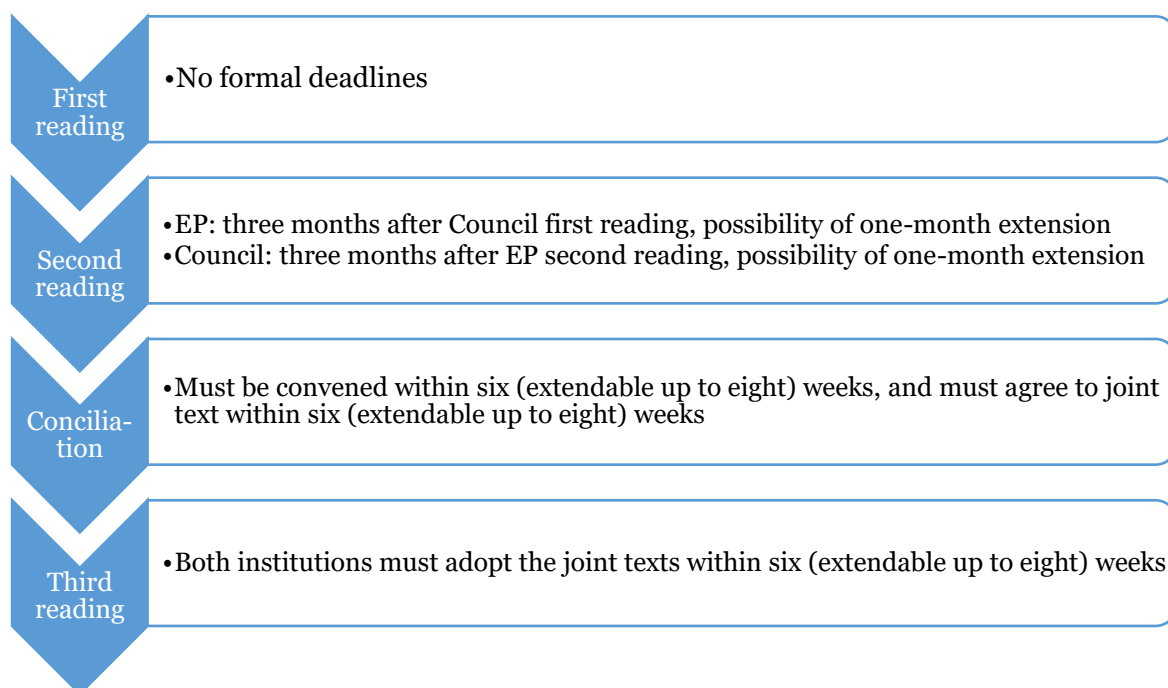
	European Parliament	Council of Ministers
First reading	Simple majority	Qualified majority*
Second reading	<u>Simple majority</u> if no amendments to Council first-reading position.** <u>Absolute majority</u> if amending or rejecting Council's first-reading position.	<u>Qualified majority</u> for EP amendments on which the Commission has delivered no opinion or a positive opinion. <u>Unanimity</u> for amendments on which the Commission has delivered a negative opinion.
Conciliation	<u>Absolute majority</u> of the 27 participants in the Conciliation Committee	Qualified majority
Third reading	Simple majority	Qualified majority

Note: OLP voting rules are laid down in TFEU Article 294 (European Union, 2009). *: unless the Commission has expressed a negative opinion on proposed amendments, in which case unanimity is required. **: This results in 'early second-reading' adoption.

While the table clearly demonstrates that the second reading has significantly steeper voting requirements, particularly for the EP, the fact that first- and third-reading requirements are identical in practice⁴ means that any compromise that does not make it through the first reading would also fail at third reading. Thus, neither institution has a real incentive to go into the formal procedure. In principle, however, the Commission gains a veto threat when negotiations are conducted before the first reading, as they may withdraw the proposal 'as long as the Council has not acted' (Kotanidis, 2021). Another factor incentivizing early agreements is the fact that going into formal procedure imposes formal deadlines on the co-legislators. This is in contrast to the period after the Commission's proposal is launched until the first reading, where no formal deadlines exist:

⁴ This point has been contended in the literature. For an account arguing that negotiators use *backwards induction* and thus de facto apply third-reading rules to first-reading agreements, see Tsebelis & Garrett (1997).

Figure 2.3: Deadlines at Different Stages of the OLP

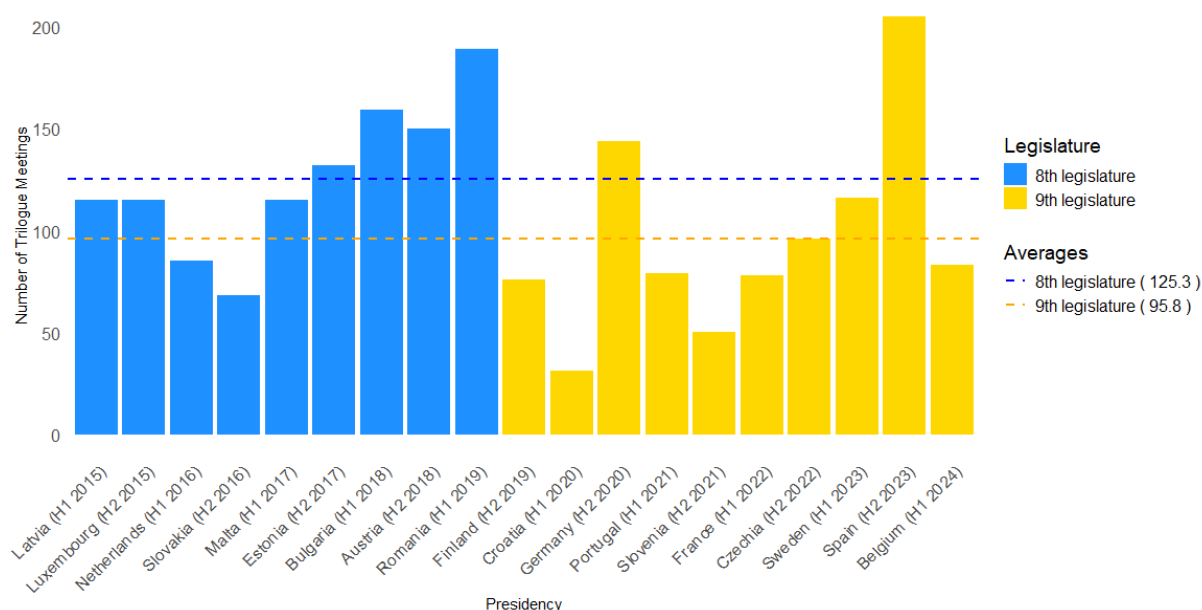


The absence of formal deadlines is obviously appealing as it gives more flexibility to the institutions, both to negotiate their own positions and to postpone negotiations for which no progress can be made, rather than having to let them run their course to start over with a new Commission proposal. This does, however, entail the risk that controversial files can get stuck indefinitely in interinstitutional deadlock, where this was previously only the case if either of the co-legislators could not agree to a common position internally. Whether the tendency to early agreements has led to an increase in efficiency is debated by scholars, as will be elaborated in Chapter 3.

2.3 How Trilogues Are Conducted Today

As mentioned at the beginning of this chapter, trilogues are now the main forum for legislative negotiations in the EU. But what do we know about the practices of trilogues today? We know that the second- and third-reading agreements are never used, and ‘Codecision has de facto become a single-reading legislative procedure’ (Roederer-Rynning & Greenwood, 2015). This, however, does little to inform us about how often trilogues are conducted, or how many trilogues it takes (on average) to reach a compromise. The Council Secretariat publishes overviews of the legislative activities conducted by each Presidency, and since 2015 this has included a tally of the number of trilogue meetings conducted. These are summarized below.

Figure 2.4: Number of Trilogue Meetings per EU Council Presidency



Note: Numbers are taken from the Council Secretariat's report on OLP files concluded since the entry into force of the Treaty of Amsterdam (EU Council, 2024a), which contains data on trilogues only for the 8th and 9th legislatures. The figures for Latvia and Luxembourg (2015) contained only data for the full year, so they have been split evenly for illustrative purposes.

The average number of trilogues is slightly lower in the ninth legislature than in the eighth. In an early study of the spread of trilogues, Brandsma (2015) manually collected data on trilogues for all legislative acts completed between the entry into force of the Treaty of Lisbon and the 2014 EP elections. He finds that there was a total of 852 trilogues over his selected period, spanning nine presidencies. This yields an average of 94.6 trilogues per presidency, which is comparable to the average for the ninth and substantially lower than for the eighth legislature. It should be noted that this number does not include trilogues held on files that were not concluded during the seventh legislature, so the total number of trilogues is likely to be slightly higher than Brandsma finds.

Additionally, Brandsma reports that the average number of trilogues per legislative proposal was just under three during the seventh legislature, but that this figure masked significant variation (from 0 to 49 trilogues) (ibid). This notion is supported by the EP's own OLP activity reports covering the seventh to ninth legislatures, which report similar average numbers of trilogues per file (4.3, just under 4, and 2.3⁵ respectively), and confirm the high degree of variation (European Parliament, 2014, 2019, 2024a).

⁵ 3.3 on average if you exclude the 118 which were concluded with no trilogues, mainly on account of Covid-19 crisis decision-making (European Parliament, 2024a)

The increase and subsequent drop in number of trilogues from the seventh to the ninth legislature is a potentially interesting development, but two caveats are worth mentioning. First, we have no knowledge about the duration of trilogue meetings, so it may well be that the trend has been towards fewer but longer meetings. Second, the first half of the ninth legislature was marked by Covid-19, which may have resulted in a slump in legislative activity (European Parliament, 2021) that has only partially been made up for during the second half. Another potential explanation is that a larger portion of negotiations are delegated to the technical level. This is hard to ascertain as no available record of the Interinstitutional Technical Meetings exists. However, this notion will be pursued exploratorily in Chapter 9. Table 2.2 below illustrates the legislative timelines for two recent pieces of EU legislation, namely the AI Act and the Nature Restoration Law.

Table 2.2: Legislative Timelines – AI Act and Nature Restoration Law

AI Act		Nature Restoration Law	
Event	Date	Event	Date
Commission Proposes AI Act	21 Apr. 2021	Commission Proposes Nature Restoration Law	22 June 2022
Council adopts general approach	6 Dec. 2022	Council adopts general approach	20 June 2023
European Parliament adopts mandate in plenary	14 June 2023	European Parliament adopts mandate in plenary	12 July 2023
First political trilogue	14 June 2023	First political trilogue	19 July 2023
Second political trilogue	18 July 2023	Second political trilogue	5 Oct. 2023
Third political trilogue	2-3 Oct. 2023	Third political trilogue & provisional agreement	9 Nov. 2023
Fourth political trilogue	24 Oct. 2023		
Fifth political trilogue & provisional agreement	6-8 Dec. 2023		
Additional technical meetings after provisional agreement	Jan. 2024	Additional technical meetings after provisional agreement	10, 13, 14 Nov. 2023
Adoption by European Parliament at first reading	13 March 2024	Adoption by European Parliament at First Reading	27 Feb. 2024
Adoption by Council at first reading	21 May 2024	Adoption by Council at First Reading	17 June 2024

Note: Both timelines are based on analyses of the agreements prepared for Coreper which identify important steps in the legislative process (EU Council, 2023b, 2024c).

Three things are worth noting about the two timelines. First, the longest ‘pause’ between steps occurs between the time when the Commission submits its legislative proposal, and the co-legislators approve their respective negotiation mandates. This does not mean that nothing happens in this period, but rather that reaching a mandate can be complicated, as will be elaborated in Chapter 6. Second, there are differences both in the number of trilogues and the spacing between them, which indicates that there is no set formula for scheduling them. Third, there are references to additional technical work being carried out after a provisional agreement was reached, a tendency that will be discussed in Chapter 13. However, there is no mention of the interinstitutional technical meetings carried out during the trilogue process, though this should not be taken to mean that these are not important.

2.4 Rules Governing Participation

In principle, each of the three institutions can unilaterally decide who will represent them in trilogue negotiations. However, participation is strongly institutionalized, and, to different extents across the institutions, governed by their internal rules of procedure. This section elaborates these formal rules governing participation. The composition of each delegation as well as strategic and diplomatic considerations in this regard are further discussed in Chapter 7 on cross-pressures. Rule 75.1 of the European Parliament’s Rules of Procedure clearly defines which political-level actors should be present at trilogue meetings:

Parliament's negotiating team shall be led by the rapporteur and shall be presided over by the Chair of the committee responsible or by a Vice-Chair designated by the Chair. [...] [T]he negotiating team shall consist of the shadow rapporteur from each political group that wishes to participate. (European Parliament, 2024c)

Three types of actors are identified here: the *rapporteur*,⁶ the *committee chair*, and *shadow rapporteurs*. The name rapporteur signifies that the responsible MEP is tasked with writing up a report and presenting it at the monthly plenaries (European Parliament, 2006). On legislative files, this report subsequently forms the mandate that the rapporteur is to defend in trilogue negotiations with the other institutions. Rapporteur selection happens in an elaborate, auction-like system in which the political groups bid on individual files; the number of points available depends on the size of the group (Corbett et al., 2016: 184). Many potential determinants of report

⁶ Or rapporteurs (plural) in cases where the legislative act in question is assigned to two committees in a so-called ‘Rule 58’ or ‘joint committee procedure’.

allocation have been proposed, among them education level, issue-specific expertise, and seniority (Daniel, 2015). While the rapporteur is generally recognized as the EP's chief negotiator, the chair (or vice-chair) of the relevant committee is also present. Their role in negotiations can be more or less active, but importantly they will chair those trilogue meetings that are held on EP premises. Finally, representatives from the other political groups, the so-called shadow rapporteurs, are invited to participate in the meetings.

Unlike the EP, the Council's Rules of Procedure make no mention of who should represent the Council in trilogues. It is, however, stipulated in Article 26 that 'The Council shall be represented before the European Parliament or its committees by the Presidency' (EU Council, 2009), and this logic has seemingly extended to the conduct of trilogues, which is one of two main tasks facing a Council Presidency according to the Council's own website (EU Council, 2024b). The Presidency seems to have some leeway when deciding who will represent them, but it is often the Permanent Representative (PR, Coreper II) or his Deputy (DPR, Coreper I). In some cases, however, the Presidency may, however, decide to send either a minister or a (very) high-ranking civil servant from the capital. While the other member states are not represented in trilogues, the Presidency is accompanied by the General Secretariat of the Council.

There are no formal rules determining the size or composition of the Commission's delegation in trilogues. There is a general expectation that Commissioners will prioritize trilogues, but this expectation is not always met. The determinants of whether the Commissioner participates will be discussed in Chapter 7. In the Commissioner's absence, the Commission delegation will usually be headed by either the Director General of the relevant Directorate-General (DG), or one of her deputies. Additionally, if a proposal is cross-cutting, representatives from other DGs may be present as well.

2.5 Formal Regulation of Trilogues

While trilogues are informal in the sense that they are not mentioned in the EU treaties, there are mentions of them in various inter- and intra-institutional documents, which offer some insight into their status as the de facto standard operating procedure for legislative negotiations under the OLP. This section briefly introduces these, starting with their non-mention in the treaties, followed by the interinstitutional agreements and guidelines mentioning trilogues and lastly the intra-institutional rules and guidelines that govern the conduct of each relais actor.

As mentioned earlier, the treaty basis enabling trilogues is rather straightforward: the codecision procedure was first introduced in Article 189b of the Maastricht Treaty (the Treaty on European Union, TEU). The most important

change with regard to trilogues, however, came with the Amsterdam Treaty, which, in addition to expanding the scope of codecision to more than 40 legal bases, allowed legislative acts to be adopted at first reading. Finally, the Treaty of Lisbon extended codecision to 85 different areas of EU action and enshrined it as the ‘ordinary legislative procedure’ (OLP)⁷ (European Parliament, 2024b).

Interinstitutional agreements

While the treaties are silent on trilogues, there are three formal, interinstitutional agreements governing their use: the *Joint Declaration on Practical Arrangements for the Codecision Procedure* (EUR-Lex, 2007), the *Interinstitutional Agreement on Better Law Making* (EUR-Lex, 2016), and the *Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of European Union Legislation* (European Commission: Legal service, 2015). For the sake of conceptual clarity, it is important to distinguish between *interinstitutional agreements*, which address ‘administrative and institutional affairs concerning legal, procedural, and financial aspects’ (Loewenthal, 2019), and *provisional agreements* introduced in this chapter, denoting compromise reached at the end of a trilogue process.

The Joint Declaration (2007, published jointly by the Commission, the EP, and the Council) is the main interinstitutional document addressing the role of trilogues under the OLP. Though joint declarations have no legal status, these practical arrangements provide interesting insights into how the EU institutions aim to structure these informal meetings. Over five pages and 49 articles, the document details both general principles and provisions for cooperation as well as specific guidelines for informal contacts at each stage of the OLP. First, it is declared that trilogues have proven their worth (Article 1) and must be encouraged (Article 2), and that they must be conducted ‘in line with the principles of transparency, accountability and efficiency’ (Article 3). It is further noted that trilogues have demonstrated their ‘vitality and flexibility’ (Article 7) and are usually conducted in an informal framework with each institution being free to designate its own participants (Article 8).

Article 11 stipulates that the institutions should negotiate in good faith, so ‘wherever possible, acts can be adopted at first reading’. To that end, the Commission is tasked with facilitating contacts between the institutions (Article 13), and Coreper are instructed to send a letter to the relevant committee chair confirming that a preliminary agreement has been reached (Article 14).

⁷ The dissertation generally uses OLP rather than codecision. The latter is used when directly referenced by interviews or other sources

Inversely, if agreement is reached at Council's first reading (leading to an early second-reading agreement), the committee chair is tasked with sending a letter to the chair of Coreper (Article 18). Then follows several articles regarding second readings and conciliation, of which Article 33 is particularly worth noting. This specifies that the Conciliation Committee shall have available to it a joint working document outlining the Commission proposal and the amendments proposed by the Council and the EP, enabling 'users to identify the issues at stake easily and to refer to them efficiently'. This description resembles that of the 'four-column' document that has become a standard working tool for trilogue negotiations, and which will be introduced in depth in Chapter 9. Overall, the content of the Joint Declaration demonstrates the institutions' commitment to trilogues, the need for some degree of structure in informal cooperation, and the reluctance to make binding agreements about trilogue negotiations, safeguarding the flexibility of these preparatory processes.

The other two interinstitutional agreements do not focus specifically on trilogue negotiations, but contain relevant provisions, nonetheless. Under the heading of 'Transparency and Coordination of the Legislative Process', the Interinstitutional Agreement on Better Law Making emphasizes that contacts between the institutions 'at all stages of the procedure' (Article 32) form the basis of the OLP. It is also emphasized that 'close contacts already in advance of interinstitutional negotiations' (Article 34) and efforts to 'compare indicative timetables' (Article 35) should be undertaken. Finally, it addresses calls for transparency by noting that the institutions commit to 'an appropriate handling of trilateral negotiations' (Article 38), to which end the institutions undertake to establish a 'dedicated joint database on the state of play of legislative files' (Article 39). At the time of writing, such a database has yet to be launched. Like the 2007 Joint Declaration, this document contains declarations of intent and no real constraints. However, these non-binding commitments do demonstrate that the practice of informal contacts at all stages is recognized, institutionalized, and encouraged. The 2013 Joint Practical Guide contains no guidelines for the conduct of negotiations as such but is worth mentioning here as it is quite detailed, co-authored by the legal services of each institution. This demonstrates, perhaps unsurprisingly, that interinstitutional cooperation at the technical level as regards the legislative drafting of OLP files is rather developed and structured.

The Institutions' Own Rules

The interinstitutional documents contain no binding constraints on the negotiators representing each institution and tend to reconfirm that the institutions are free to act 'in accordance with their internal rules of procedure' (Joint Declaration, 2007: art. 6). However, there are rules of procedure and other

intra-institutional documents which provide binding rules for the conduct of negotiations by each relais actor. This section introduces these.

The Commission

The Commission's rules of procedure are mainly concerned with the internal decision-making procedures of the Commission and thus do not address trilogues specifically. They also provide surprisingly little guidance regarding relations with other institutions. They specify that the Commission's Secretary-General 'shall be responsible for *official* relations with the other institutions' (European Commission, 2020, Art. 20.5. Author's italics), as well as ensuring coordination between the Commission's departments (ibid). More specific guidance is found in *The Working Methods of the European Commission*, a 32-page document sent in the form of a 'Communication from the President to the Commission' at the beginning of the legislative cycle. Here, Section IV on 'Interinstitutional and External Relations' is particularly instructive. It specifies that '[a]n important aspect of collegiality is that all Members of the Commission fulfil their responsibilities in terms of attendance to the European Parliament, both in plenary debates, Committee meetings *and trilogues*' (European Commission, 2024: 6. Author's italics). It is then specified that the (executive) vice-presidents and the HR/VP should focus on cross-cutting issues while 'normal' commissioners should attend (among other things) trilogues. Additionally, the document mentions that 'Services [DGs] are required systematically to send reports on progress of negotiations in [...] trilogues to their Cabinet(s) and the Secretariat-General' (ibid: 20). Each Commissioner is also tasked with specifying working arrangements between her cabinet and the services that report to them to ensure coordination of all activities, including the provision that a weekly 'jour fixe' meeting should be held (ibid: 8).

Additionally, there are provisions about the Groupe des Relations Interinstitutionnelles (GRI), specifying that it 'examines the positions to be adopted by the Commission in interinstitutional matters, in particular files pending before the European Parliament and/or the Council' (ibid: 18). This and other fora for intra-institutional coordination will be elaborated in Chapters 6 and 7. The expectation of Commissioner participation in trilogue meetings was repeated in von der Leyen's mission letters to the individual Commissioners in both 2019 and 2024 (e.g. von der Leyen, 2024), highlighting that they are prioritized at the highest level. It is worth noting that none of these documents specify who else is expected to participate, meaning that the individual Commissioner (and the individual DG) has some discretion in setting their team from meeting to meeting.

The European Parliament

As alluded to earlier, the EP's Rules of Procedure contain specific provisions regarding the conduct of interinstitutional negotiations. First is a rule on the appointment of rapporteurs and the required content of the resulting reports at the committee stage (Rule 51). Rules 60-63 specify the procedure to be followed during the first reading, and 64-70 those during the second reading. The most relevant rules for this study, however, are the rules that address interinstitutional negotiations ahead of a first reading (72-73) and the conduct of interinstitutional negotiations (75). Rule 72 stipulates that a committee may decide to enter into interinstitutional negotiations on the basis of the legislative report produced by a rapporteur. Such a decision shall be put to a vote in plenary if the medium threshold⁸ request it. Rule 73 stipulates that for negotiations before the Council's first reading, the EP's first-reading position constitutes their mandate. It also stipulates that the committee may decide to enter into interinstitutional decisions, but that such decisions shall always be announced in plenary, so members have the opportunity to request a debate or vote to introduce amendments. Rule 75 specifies the composition of the EP delegation, as introduced above. Furthermore, there are rules regarding reporting duties, namely that the committee chair and rapporteurs shall report back after each trilogue (75.3) and in case of 'provisional agreement, the committee responsible shall be informed without delay' (75.4) so the committee may vote whether to approve it and table it in plenary. In comparison with the rules of procedure of the other two institutions, the EP's chief negotiator is significantly more constrained when it comes to picking her own negotiation team.

The EP's rules of procedure are supplemented by two other, non-binding documents, a *Code of Conduct for Negotiating in the Context of the Ordinary Legislative Procedure* (European Parliament, 2017) and a *Handbook on the Ordinary Legislative Procedure* (European Parliament, 2020). The former is at the time of writing a three-page document, approved by the EP conference of Presidents, which contains provisions about preparation for negotiations, conduct and finalization of agreements, and assistance to the negotiating team. It is mostly formulated in everyday language and mainly summarizes what is already agreed in the two interinstitutional agreements and in the EP's Rules of Procedure. However, a few sections are worth noting. First, it states that 'Parliament should make use of all possibilities offered at all stages of the ordinary legislative procedure', and that whether to enter into negotiations

⁸ EP Rules of Procedure, rule 186.1(b): "“medium threshold” means one-tenth of Parliament's component Members, made up of one or more political groups or individual Members, or a combination of the two'.

‘shall be considered on a case-by-case basis’. Second, it is noted that ‘trilogues shall be based on one joint document (usually in the form of a multicolumn document), indicating the position of the respective institutions with regard to each other's amendments and also including any provisionally agreed compromise texts’. This is another indication that the four-column document is an institutionalized standard operating procedure across policy areas. Third, it specifies that the negotiating team shall include ‘at least the Legislative Affairs Unit, the legal service, the directorate for legislative acts, Parliament’s press service, as well as other relevant services’, and that the political group advisers must be invited to meetings that either prepare or follow up trilogues.

The OLP Handbook is written by the Legislative Affairs Unit (LEGI) and ‘aims at informing Parliament’s members and EP Staff [...] without prejudice to any position expressed by the Parliament’, as well as to ‘strengthen Parliament’s role as a co-legislator [...] and to enhance democratic legitimacy’ (European Parliament, 2020: foreword). The section on trilogues includes several clues as to just how institutionalized these negotiations are. First, it is stated that reaching an early agreement ‘requires that the institutions talk to each other, which takes place in the form of trilogues’ (ibid: 2) and then defines trilogues as ‘informal tripartite meetings on legislative proposals between representatives of the Parliament, Council and Commission’. Here, it is worth noting that this is stated without qualifications, such as ‘usually’ or ‘often’. Furthermore, the definition is worth keeping in mind because, as far as I can tell, it is the only time trilogues are defined explicitly in an official document published by any of the three institutions. It also introduces the four-column document as the ‘main working tool’ in trilogues, noting that these documents sometimes contain a different number of columns. Additionally, it identifies the end of a parliamentary term and/or a rotating presidency as ‘specific political circumstances’ which may create an ‘impetus’ on the actors to ‘conclude certain files’ (ibid: 29). There is then an explanation of the procedure and rules for votes in committee and plenary and an overview of the different actors (usually) present in each delegation.

The Council

Unlike the other two institutions, there are very few limitations on the Presidency in terms of conduct in trilogues. As mentioned earlier in this chapter, the Council’s rules of procedure make no mention of them and only stipulate that ‘The Council shall be represented before the European Parliament or its committees by the Presidency’ (EU Council, 2009: Art. 26). This logic seems to have extended to representation in trilogues. The lack of formal rules does not, however, mean that the Presidency is unconstrained; rather that the constraints are more likely informal, in keeping with the poignant description of

the Council as an institution held together by ‘thick trust, mutual responsiveness and diffuse conceptions of reciprocity’ (Lewis, 2010: 659). These informal constraints are probed throughout this dissertation, particularly in Chapters 7 and 11.

2.6 Summary

The above examination of the inter- and intrainstitutional documents setting the framework for trilogue negotiations under the OLP has provided several relevant insights. First, the three interinstitutional agreements demonstrate that trilogues constitute an institutionalized set of negotiation practices which are governed by at least some degree of standardization and socially shared norms. Indeed, early agreements are directly encouraged, and trilogues are stated to have ‘proven their worth’. The interinstitutional agreements also demonstrate, however, that the institutions are reluctant to impose binding restrictions on each other (and themselves), as the texts offer very few of these and clearly specify that they do not prejudge the treaties and each institution’s rules of procedure.

Second, it shows that there are important differences in the degree to which each institution’s internal rules constrain the negotiators. The Council seems content to leave decisions about representation in the hands of the Presidency and the General Secretariat of the Council (GSC), though the brunt of the work falls on the two Coreper ambassadors. The Commissioners, similarly, seem to enjoy some liberty in deciding whom they choose to represent them in trilogues, though they are all tasked in their mission letters and the Working Methods document to prioritize participating in trilogues. The EP Rules of Procedure, on the other hand, clearly specify which actors should lead the negotiation team and also which other actors must be invited. These rules are further fleshed out in the Code of Conduct. The potential effects of these differences are explored in Chapter 7.

Finally, this chapter’s examination has found that the Commission, while not formally a co-legislator, does have a mandate and an institutionalized procedure for green-lighting changes made to its original proposals. Thus, its role as neutral broker is not as straightforward as is often presented. Chapter 6 will empirically examine this assertion, and I argue throughout the dissertation that it is analytically fruitful to treat the Commission as a negotiator rather than a broker.

Chapter 3.

Literature Review:

What Do We Know about Trilogues?

As the main forum for legislative negotiations under the ordinary legislative procedure (OLP) in the EU, trilogues have attracted some scholarly interest since their introduction thirty-odd years ago. In this chapter, I examine the existing literature and offer my interpretation of what the main lines of inquiry are, as well as how this dissertation contributes to this literature specifically and to the broader literatures on EU politics and international negotiations. In the past few years, two works by Thomas Laloux (2020) and Alexander Hoppe (2020) have provided excellent reviews of the trilogue literature. Thus, the first part of this Chapter will introduce and compare their readings of the literature, which are in many respects similar but also diverge on a few important points.

The existence of these reviews does not mean that an independent review of literature before 2020 will be neglected in this dissertation, but rather that, building on this strong basis, special attention will be devoted to the works that have been published in the past five years. Following an introduction to the existing reviews, the remainder of the review is organized along five streams of study: first, the emergence and spread of trilogues; second, the power distribution between the co-legislators (and the Commission); third, the intrainstitutional procedures and changes resulting from trilogues, including studies of the *relais* actors' ability to pursue their own interests in negotiations; fourth, the trade-off between efficiency and transparency in trilogues; and fifth, studies that deal with the conduct of trilogues, including the informal rules and norms guiding actors' expectations and behaviour.

3.1 The Other Reviews

The two recent reviews of the trilogue literature both came out in 2020, and it should be no surprise that their findings are broadly similar. The first, by Laloux (2020), is a systematic review of the literature using the PRISMA guidelines (Page et al., 2021) to identify and review 46 articles on trilogue negotiations. The second review, by (Hoppe, 2020), is a chapter from his PhD dissertation which examines the trilogue negotiation process in a comparative case study of four legislative proposals. While broadly in line with Laloux's findings, Hoppe's review focuses more on the negotiation process than the former. The main lines of inquiry identified by the two authors are presented in the table below.

Table 3.1: Comparison Between the Two Reviews

Laloux (2020)	Hoppe (2020)	Differences
The emergence of trilogues (1)	The evolution of trilogues (1)	Broadly similar
The occurrence of informal negotiations (2)	Why negotiate legislation in trilogues? (2)	Broadly similar
Comparison with the formal procedure (3)	Consequences of trilogues on the legislative system (3) Intra-institutional adaption to trilogues (4)	Similar, but Hoppe argues that the studies comparing formal and informal procedures focus on intra- and interinstitutional dynamics respectively
The process of trilogues (4)	Procedural aspects of trilogue negotiations (6)	Hoppe argues that many of the studies identified by Laloux do not actually focus on procedural aspects and that this strand is thus understudied
The legitimacy of trilogues (5)	Democratic credentials (5)	Broadly similar

Note: Numbers in brackets indicate the ordering of the research topics/streams identified by the two authors.

The two clearest differences identified between the two reviews are Hoppe's decision to focus separately on the inter- and intrainstitutional consequences of trilogues, and Hoppe's argument that the process of trilogues is understudied. Hoppe argues that although Laloux identifies the trilogue process as the most commonly studied feature, 'many of these studies only focused on very specific aspects or parts of the process' (Hoppe, 2020: 24), and that it would be more correct to categorize these in other research streams. In addition to the topical review, Laloux considers the research methods and operationalizations employed by the studies. On methods, he finds that most studies (57%) employ qualitative methods, particularly those dealing with the process and legitimacy of trilogues. 39% employ quantitative methods, particularly those comparing formal and informal procedures (Laloux, 2020: 454).

Laloux furthermore identifies some variation in operationalizations both of trilogues as a phenomenon and of what constitutes an early agreement, arguing that this 'may be problematic when one wants to draw connections between different findings' (ibid: 447). Particularly, he points out three problems: first, including so-called *trivial agreements* – agreements which were adopted at first reading not due to trilogue negotiations, but because no disagreement between the co-legislators existed in the first place – may skew

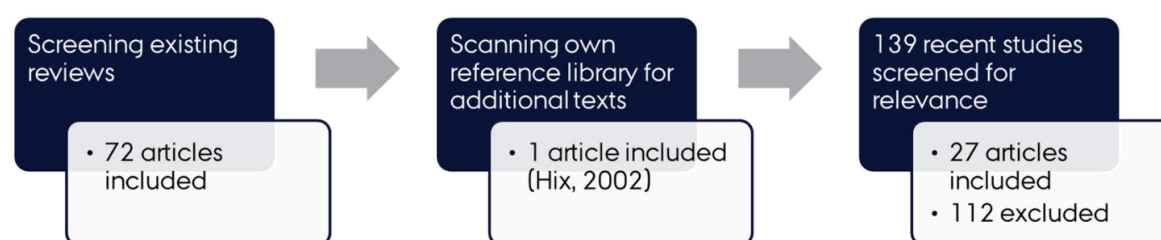
results. Second, the conflation of first- and early second-reading agreement risks overlooking procedural differences between the two readings. Third, Laloux argues, by focusing on early agreements as the outcome, one risks overlooking the fact that trilogues may happen at all stages of the legislative process.

To complement these two reviews for the purposes of this dissertation, three steps were taken. First, I downloaded, screened, and included the references identified by Laloux and Hoppe. Second, I screened the reference library in my citation management software, which led to the inclusion of one additional article. Third, the search string used by Laloux was replicated and applied in SCOPUS but restricted to research published after the period covered by his study (i.e. 2019–present). The full search string was as follows:

SCOPUS Search String: TITLE-ABS-KEY(("European Union" OR "EU") AND ("legislative bargaining" OR "legislative negotiation" OR "trilogue" OR "trialogue" OR "early agreement" OR "fast track" OR "first-reading agreement" OR "inter-institutional")) AND (LIMIT-TO(SUBJAREA, "SOCI")) AND (PUBYEAR > 2018)

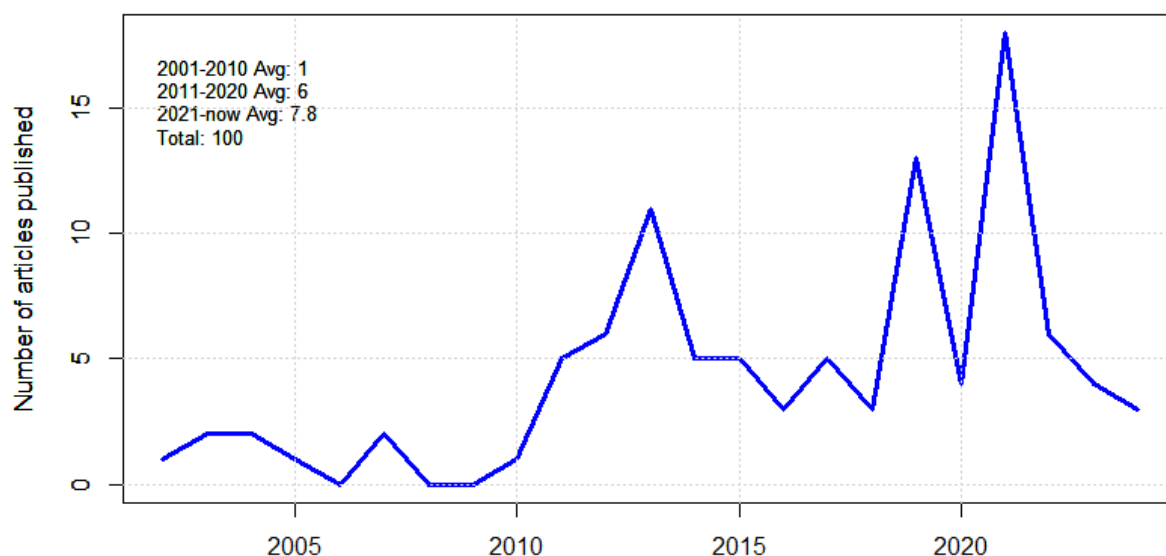
This yielded 139 articles, which I then manually screened for relevance by reading the abstract. When reading abstracts, the inclusion criterion was that it explicitly mentioned legislative negotiations, the negotiation process, or trilogues as a point of focus in the article. Excluded papers had a range of foci, including how the EP understands and uses evaluations, the EU's Trust Fund for Colombia, and the precarity facing Ukrainian agricultural workers in Denmark. This diversity of studies indicates that the search string was not too restrictive. The screening yielded 27 articles which were included in the review. These steps are visualized in below:

Figure 3.1: Steps Taken in Review Process



Through these three steps, a total of 100 articles dealing with trilogues have been identified, published over the past 23 years. The graph below shows the number of articles per year as well as the average number of articles per year for each decade. A full list of the included studies can be found in Appendix A.

Figure 3.2: Research Articles on Trilogues 2002-2024



Note: Sources for articles included in the review are Hoppe (2020), Laloux (2020), the SCOPUS search specified above, and the author's own reference library.

The figure illustrates quite clearly that the literature on trilogues is still rather young, as most articles have been published since 2010, with a limited number of publications per year. The increase in scholarly interest coincides with the entry into force of the Lisbon Treaty and the subsequent 'triumph of trilogues' (Hoppe, 2020: 18) as the default mode of decision-making under the ordinary legislative procedure.

The two previous reviews also produce some recommendations for future research. Laloux identifies the need for further study of interinstitutional dynamics: 'trilogue negotiations encompass different layers of negotiation involving different actors. Yet, there is still a need to investigate how the different levels of informal contract and the actors involved interact with each other' (Laloux, 2020: 456). He adds that more work is also needed to understand intra-institutional dynamics as well, both in terms of delegation and control, and particularly in the Council and the Commission. He further argues that future studies should examine whether an effect of trilogues on policy (and not just politics) can be identified, how other actors (for instance, the European Council or interest groups) may try to exert influence in trilogues, and finally whether differences between files and policy areas can be explained systematically.

Hoppe mainly identifies the need for linking the trilogue process to policy outcomes because previous studies have tended to 'blank out the negotiations process' (Hoppe, 2020: 27) and to assign 'limited value to the actual process' (ibid). This dissertation mainly addresses the gap in knowledge regarding inter- and intra-institutional dynamics and to some extent offers insights on

what can explain differences between individual files and policy areas by focusing specifically on negotiation practices and relations between negotiators.

3.2 Stream 1: The Emergence and Spread of Trilogues

Following the introduction of codecision with the Treaty of Maastricht and the possibility of early agreements with the Treaty of Amsterdam, the first wave of studies examined the codecision procedure as such without focusing specifically on trilogues, as these did not yet constitute anything resembling a uniform set of practices. Hix (2002a) offers a rational choice institutionalist explanation of why the EP's powers under codecision were increased between Maastricht and Amsterdam. He argues that the Treaty of Maastricht was an incomplete contract which allowed the EP to act as a 'constitutional agenda-setter' by threatening not to cooperate, thereby forcing the Council to enshrine their interpretation of the rules in the Treaty of Amsterdam, simplifying and extending the scope of codecision, enabling early agreements, and making conciliation the *de jure* end of the legislative procedure (previously, conciliation would be followed by a take-it-or-leave-it offer by the Council). Farrell & Héritier (2003) argue that particularly the Council Secretariat were pushing for the introduction of 'fast track' legislation with the Treaty of Amsterdam because they were worried about the potential workload from extending codecision, and trilogues had already proven their effectiveness between 1994 and 1999. Mühlböck & Rittberger (2015) argue that the goal of efficiency explains what they call 'the paradox of inter-institutional cooperation', while Farrell & Héritier (2007), in a study of the relationship between formal and informal rules, find that informal institutions (such as trilogues) develop as responses to existing formal rules. These may be formalized if there is unanimous support for them, but they may also stay informal for as long as they are contested.

Another angle pursued in some early studies of trilogues stems from the fact that 'codecision has dramatically increased the level of interaction between the European Parliament and the Council' (Shackleton & Raunio, 2003: 171), and aims at explaining how informal interactions have developed, often in comparison with the formal procedure. Studies have found that factors such as number of participants, legislative workload, complexity of files (Reh et al., 2011), level of disagreement, salience (Hansen, 2014), perceived urgency, political priorities of the co-legislators, and bargaining uncertainty all increase the likelihood of the co-legislators opting for informal negotiations with a view to reaching an early agreement (de Ruiter & Neuhold, 2012; Rasmussen, 2011). In addition to this, Christiansen & Neuhold (2013) suggest that trilogues constitute an example of *accommodating informal institutions* (cf. Helmke & Levitsky, 2004), and that '[r]esearch on informal governance [...]

most likely will need to rely on qualitative research methods [...] ensuring that also those aspects of EU politics that are usually hidden from view are receiving the attention they deserve' (ibid: 1204).

Finally, Brandsma (2015) studied the extent of trilogues ahead of early agreements, finding that there is great variation in the number of trilogues needed per file, but that on average, it took just under three meetings to reach a compromise during the seventh EP legislature. All in all, these early studies demonstrate the empowerment of the EP and the subsequent increased need for contact and cooperation between the co-legislators. However, it was not clear from the beginning that trilogues would come to dominate the legislative process.

3.3 Stream 2: Power Distribution and Comparisons with the Formal Procedure

In the introduction to a special issue taking stock of '20 years of practicing and studying codecision', Burns et al. (2013: 941) argue that 'codecision has had implications for how the EU operates as a political system, but that its impact may be slighter than hitherto assumed' (ibid: 948). One reason for this assessment is that the EP has not reached parity with the Council, and one of the most pertinent questions in relation to the proliferation of early agreements is why that might be. This has been studied in several ways: by comparison between early agreements and files adopted at later stages through the formal procedure, in large-n studies comparing the initial positions of each actor with final outcomes, and in detailed case studies of policies as diverse as road pricing (Dyrhaug, 2014), corporate sustainability due diligence (Ciacchi, 2024), and whistleblowers (Yurttagül, 2021).

Power Distribution and Process in Formal and Informal Negotiations

Even though the EP and the Council are formally equal under codecision, it has long been the conventional wisdom that the Council is the more powerful institution, something which is also backed in empirical studies (e.g. Costello & Thomson, 2013; Kreppel, 2018; Laloux & Delreux, 2018). Some have tackled this puzzle by comparing early agreements with the formal procedure. In an early example, Häge & Kaeding (2007) found that the EP is more successful under informal than formal negotiations (a notion supported by Broniecki (2019) and Kirpsza (2018)), arguing that the Council agrees to informal negotiations in spite of this because they are less able to bear the increased workload of a formal procedure than the EP. Others argue that the EP is at a disadvantage in informal meetings because they are represented by politicians who

are less experienced in last-minute drafting than the Council, ‘which is dominated by professional diplomats and civil servants’ (Huber & Shackleton, 2013: 1046). To counteract this, some argue, the EP has significantly strengthened its secretariats (Bürgin, 2019).

Others have studied the effects of early agreements on the legislative process itself. Toshkov & Rasmussen (2012) set out to examine whether early agreements had led to a rushed process with little time for deliberation between the co-legislators, finding that early agreements are actually slower on average than proposals following formal procedure. This is explained by the fact that there are no formal time limits before the first reading. The authors argue that the positive effect of having more time for deliberation should be weighed against the more limited opportunities for outsiders to provide input to the legislative process. Several factors affect legislative duration, among them the level of disagreement and whether the proposal is part of a multi-proposal package (Kirpsza, 2021). Kirpsza (2023) also notes, however, that issue linkages *within* a legislative file lead to higher satisfaction with the outcome for both the Council and EP, whereas the opposite occurs with issue linkage *between* legislative files. Regarding the number of amendments, Cross & Hermansson (2017) find that files agreed at first reading on average contain more amendments to the Commission’s original proposal, a finding which has recently been challenged by Laloux (2024), who does not find such an effect when taking trivial agreements into account. Regarding timing of amendments, Laloux & Delreux (2021) find that most of the final compromise text stems from the Commission proposal (63%), a good deal of new text is introduced at the intra-institutional bargaining phase (33%), and only a minor amount is introduced in the trilogue phase (4%). It is of course worth noting here that this approach counts all words as equally important, and that the 4% introduced in trilogues might well represent the most crucial and/or controversial parts of the proposal. Furthermore, Hoppe (2020) makes a compelling argument for focusing on the trilogue negotiation *process* as an independent factor influencing outcomes, finding that the *intensity*, *venue*, and *mode* of interactions all affect the final outcomes of a legislative process.

Yet others have studied the conditions which can explain this power disparity and the strategies employed by particularly the EP to achieve parity. Broniecki (2019) argues that the EP is more successful in trilogues because the EP’s level of transparency is lower vis-à-vis the Council than in the formal procedure. Some studies have also shown that EP amendments are more likely to succeed if the rapporteur shares characteristics such as nationality with the Council Presidency (Kirpsza, 2018) or the Commissioner (Kirpsza, 2024). The characteristics of the rapporteur also matter in other ways: it is beneficial to be a member of a national governing party (Costello & Thomson, 2011), close

to the EP median (ibid), and *not* to be in a formal EP leadership position (ibid). The former makes it easier to gain information about the Council's win-sets while the latter two make it easier to create a credible tied hands situation (Delreux & Laloux (2018) demonstrate the tied hands logic in a case study of the Market Stability Reserve). The tied hands logic seems only to apply to the EP, who are found to have more bargaining success when there is either a very high or very low degree of intra-institutional preference heterogeneity, whereas no such relationship is found for the Council (Haag, 2022). Finally, Dionigi & Koop (2019) have found that the EP may sometimes make substantial concessions to gain oversight powers in crisis legislation.

The Influence of the Commission and Other Actors

Trilogue negotiations do not take place in a political vacuum, and several studies have sought to explain how other actors influence the process. First, there is some disagreement about the role of the Commission in trilogues. On the one hand, there seems to be broad agreement that 'the Commission is present to defend its proposal *and* foster a deal' (Laloux & Panning, 2021: 41; italics added), signifying that while they participate in trilogues as *neutral brokers*, it is a neutrality tinged by preference for their original proposal. On the other hand, there is disagreement about whether the Commission has any real influence in trilogues. Some maintain that informalization has shifted power away from it (Cross & Hermansson, 2017) to the point that 'the position of the Commission is practically irrelevant in trilogues' (Häge & Kaeding, 2007: 347). This notion is to some extent supported by the analyses of Costello & Thomson (2013) and Kreppel (2018), the former finding that assigning the Commission 0% influence produces the fewest errors in a predictive model, while the latter finds that the Commission now plays mainly a 'congruent role', depending on one of the co-legislators to have preferences closely aligned to those of the Commission. This does not mean, however, that the Commission is completely toothless at the trilogue stage, as it can employ various strategies to achieve its policy goals in trilogues. It may form alliances with one of the two co-legislators on specific amendments (Kirpsza, 2018; Kreppel, 2018) and leverage national or political ties to relais actors from the other institutions (Kirpsza, 2024). Additionally, some argue that the Commission may exploit its informational advantage and expertise to convince the co-legislators to support their positions, having carried out all the preparatory work (impact assessments etc.) ahead of launching the proposal (Laloux, 2024).

Actors 'at the edge of the negotiations' are also able to influence legislative outcomes in trilogues (Brandsma, Greenwood, et al., 2021). Bressanelli & Chelotti (2016) argue that the European Council can to some extent curb the EP and the Commission in legislative negotiations by 'threatening to adopt

new rules or move to other decision-making settings'. The Commission may also refer to European Council conclusions (if such exist regarding the file in question) during negotiations to put pressure on a recalcitrant Council of Ministers. National parliaments and interest organizations have also been demonstrated to influence trilogue negotiations to some extent. According to de Ruiter (2013), the move to more secluded decision-making in trilogues has resulted in fewer opportunities for national parliaments to scrutinize EU legislative negotiations. However, Finke & Dannwolf (2013) have demonstrated that there are different drivers of domestic scrutiny, where strong oppositions scrutinize to gain information about Council positions to transmit to their EP delegations while weak domestic oppositions scrutinize to gain information about the national government's conduct specifically. Jensen & Martinsen (2015) argue that national parliaments constitute one half of the 'dual legitimacy of EU decision-making' (the other being the EP), and that their being sidelined by fast-track legislation in secluded fora is problematic for the democratic legitimacy of the ordinary legislative procedure.

It is no surprise that interest organizations seek to influence legislative outcomes – it is part of their *raison d'être*. Andlovic & Lehmann (2014) find that interest group influence has been challenged by trilogues, but that 'business stakeholders seem to adapt better to the more secluded setting' than other organized interests, putting them at an advantage. Greenwood & Roederer-Rynning (2015, 2019a) argue that the EP strategically wields the threat of public opinion to pressure the Council, which entails some role for interest groups, and that this is part of the explanation why trilogues have become politicized. They also argue that extensive ties between civil society organizations and trilogue decision-makers indicate that trilogues are *permeable*, though not transparent. Permeability is viewed as positive in terms of input legitimacy, but not as a substitute for transparency (Greenwood & Roederer-Rynning, 2021).

Summary of Stream 2

Three general conclusions can be drawn from the foregoing discussion. First, while the Council and the EP are formally equal under the OLP, the Council still seems to be more successful in negotiations, compromises being (on average) closer to the Council's preferred outcome than that of the EP (and the Commission⁹). However, it is unclear whether the informalization of the OLP

⁹ For diverging views of whether the Commission has agency to table proposals reflecting their genuine preferences or whether they rather anticipate the views of the co-legislators, see e.g. Crombez & Hix (2011); Hodson (2013); Häge & Toshkov (2011); Pollack (1997).

embodied in the switch to trilogues has alleviated or exacerbated this power disparity. Different reasons are presented for this: on one hand, the Council is argued to fare worse in trilogues than under the formal procedure but to accept informalization because they are less able to shoulder the increased workload of a formal procedure than the EP. On the other hand, the EP is argued to be at a disadvantage because officials from the Council and the Commission are more experienced in the last-minute drafting of legislative texts which often takes place in trilogues. The characteristics of the rapporteur and the level of disagreement within the EP were also found to influence the relative bargaining success of the co-legislators. Second, the role and influence of the Commission is debated. While some argue that the Commission is largely irrelevant once a file gets to the trilogue stage, others argue that the Commission may influence trilogue negotiation outcomes through its role as mediator and by leveraging the expertise it builds up in the preparatory work ahead of the legislative proposal. Third, the role of several other actors has been studied. The European Council indirectly influences the Commission and the Council, and interest groups have some success in permeating the barriers surrounding trilogue negotiations, particularly business interests. National parliaments, on the other hand, are found to have been sidelined in trilogues compared to the formal OLP.

3.4 Stream 3: Intra-institutional Adaption and the Relais Actor Thesis

While the spread of codecision (OLP) with successive treaty changes fundamentally changed the relationship and power distribution *between* the three institutions, much research has also been devoted to the intra-institutional adaptations to this shift, particularly on the part of the EP. A prevalent fixture of this strand of the literature is the so-called relais actor thesis, which contends that chief negotiators within each institution will be able to exploit their central position and information advantage to move the compromise closer to their preferred outcome. Others have focused on the adaptation within one of the three institutions, most studies focusing on adaptation within the EP, which is arguably also the institution which has undergone the most fundamental changes in becoming a co-legislator under the OLP.

The Relais Actor Thesis

Springing from the contention that ‘exogenous changes in macro-institutional rules, which result in a move from formal and sequential to informal and simultaneous interaction between collective actors, will lead to changes in individual actors’ respective influence over outcomes within organizations’

(Farrell & Héritier, 2004: 1184), a number of studies have tried to conceptualize the ways in which the relais actors may be able to influence the outcome of negotiations, and in which ways they are constrained. The earliest attempt at making sense of this comes from Farrell & Héritier (2004), who argue that codecision has changed the internal power structures of both the Council and the EP, empowering relais actors. These, they argue, ‘are the “gatekeepers” to the organization and broker information between the organization and its interlocutors’ (ibid: 1188), and they may use this informational advantage to bias outcomes in their own favour. They also theorize that intra-institutional rules and procedures will be changed to rein in this advantage. Whereas the Council had little trouble in accommodating these changes and constraining the Presidency as relais actor, the EP has had more difficulties, particularly because it ‘has no effective central means to discipline these actors’ (ibid: 1209).

Subsequent studies of this thesis can be split into two overall categories: quantitative studies which find no evidence of the relais actors being able to systematically achieve outcomes closer to their policy preference, and qualitative studies which find that relais actors *are* to some extent able to influence negotiations and bias outcomes in their favour. Using network capital as a proxy for a ‘relais actor effect’ in the Council, Häge & Naurin (2013) find no substantial increase in the network capital of a member state holding the Presidency. Combining the DEU dataset (Arregui & Perarnaud, 2022; Thomson et al., 2012) with original data (Reh et al., 2011), Rasmussen & Reh (2013) find no support for the thesis. A similar finding is reported by Laloux (2021), who concludes that the ‘extent of deviation in trilogues does not appear to be the result of negotiators defending positions that are not representative of those of their institutions’. Interestingly, however, Laloux & Delreux (2018) measure how much negotiators deviate from their mandates in trilogues, finding that they *do* deviate more than minimally needed to bridge the gap between their initial positions. This suggests that negotiators do not merely split the difference, but also that this ‘extra’ deviation does not systematically favour the relais actors’ positions. Another qualification to these non-findings is Costello & Thomson (2010), who find that the rapporteur can bring the EP’s position closer to that of their home member state.

In a study of the advanced therapies regulation, Judge & Earnshaw (2011) find that the rapporteur tried to introduce his preferred amendments, leading to him being undercut by the shadow rapporteurs. They argue that the concept of the relais actor should be broadened to also include shadow rapporteurs. Studying the Market Stability Reserve negotiations, Delreux & Laloux (2018) argue (and empirically support) that ‘interactions between intra- and inter-institutional negotiations are crucial to fully understand legislative policy-making in the EU today’. They show that relais actors, acting as links between these

two fora, can influence intra-institutional decision-making by ‘bringing in allies from the other institution’ (ibid: 300). Finally, Brandsma & Hoppe (2021) argue that the ‘procedural framework governing trilogues has been tightened significantly’ and that this development calls for ‘a reappraisal of the relais actor thesis’. In a case study of the EU’s fourth railway package, they examine whether the relais actors can use their position to steer the negotiation *process* and thus obtain their policy goals. Specifically, they add that they ‘can now alternate between more formal and more informal venues for interaction and use the distinction as a resource’ (ibid: 360).

There is no obvious explanation to square this apparent incongruence between the findings of the qualitative and quantitative studies. A critical reading of the quantitative studies might suggest that they rely on imprecise data to approximate the ideal positions of each actor and the distance between this and the legislative outcomes. The qualitative studies may in turn be criticized for not taking sufficiently into account the challenges posed by *post hoc* rationalizations and potential wishes to exaggerate one’s own role in the legislative process (Berry, 2002). A more constructive reader might square the circle by arguing that the preferences of the negotiators can evolve over the course of the legislative process, and that relais actors may have successfully negotiated provisions that they are happy with even though they are different from their initial preferences.

Intra-institutional Adaptation and Dynamics

Other studies examine the changes in internal power distribution and procedures following the spread of codecision and trilogues – particularly within the EP. Some have focused on the selection and characteristics of the EP’s rapporteurs. Early on, Kaeding (2004, 2005) noted that the group of rapporteurs in the Environment Committee did not mirror the composition of the full EP (2004), and that a disproportional number of rapporteurs were ‘members with high demands for the policy in their jurisdiction’ (2005: 82). He further argues that this disproportionality ‘contradicts the overall principle laid down in the standing rules of the EP’ (ibid). Further studies have shown that MEPs from new member states were initially allocated fewer rapporteurships than ‘old’ member states after the eastern enlargement (Hurka & Kaeding, 2012). A follow-up study by Schädler & Brandsma (2021) no longer found this disparity with regard to number of rapporteurships, but did find that MEPs from ‘old’ member states tend to be overrepresented on codecision files, while ‘new’ member state MEPs were mostly in charge of ‘short and relatively uncomplicated files’ (ibid: 697). Party group coordinators play a key role in selecting rapporteurs, and Obholzer et al. (2019) find that they select rapporteurs who are close to the coordinators’ *national* party’s ideal position.

On shadow rapporteur appointment, Häge & Ringe (2020) find that it is driven primarily by bottom-up self-selection but controlled by group coordinators. Their role is important, as it has recently been demonstrated that ‘shadow rapporteurs can successfully check the rapporteur’ at the committee stage, decreasing the risk of agency loss in trilogues (Steinecke, 2022). According to Häge & Ringe (2019), the degree to which shadow rapporteurs are successful depends on the size of their political group in two opposing ways: being a member of a large party offers obvious structural advantages, but these are found to be partially offset by the relational advantages of being in a small party and thus forced to ‘more frequently engage with a greater number of colleagues from other parties across a wider range of policy areas’ (ibid: 209). The main intra-institutional forum for deliberations between the rapporteur and her shadows are the so-called shadow meetings, which Ripoll Servent & Panning (2019b) find are used both for coordination and for anticipating the positions of the Council and the Commission in trilogues. Looking to the technical level, Dobbels & Neuhold (2013) find that civil servants play a substantial role in legislative negotiations, particularly if the file requires technical expertise, is not deemed politically important, and if they are trusted by their MEP. Pegan (2017) specifically studies the role of accredited parliamentary assistants, finding that they are more oriented towards internal EP work, less on interinstitutional negotiations. Political group advisers, on the other hand, play an important role in technical negotiations, relying on the trust of their MEPs, informal networks, and political sensitivity to both represent their MEPs at the technical level and to help formulate negotiation strategies (Ruiter, 2022).

Héritier & Reh (2012) examine the steps taken by the ‘losers’ of codecision (identified as ‘rank-and-file MEPs, small political parties and Parliament’s leadership’ (ibid: 1152)) to rein in the power of the ‘winners’ (rapporteurs and committee chairs), finding that changes in the EP’s rules of procedure and the addition of a *code of conduct* for trilogue negotiations coincided with the spread of early agreements between 1999 and 2009. These were deemed moderately successful and met with some resistance by the rapporteurs. While agreeing that committee chairs are ‘winners’, Bürgin (2019) argues that the EP President has also gained influence with the spread of early agreements as the need for horizontal coordination has risen. With the committees increasingly playing a consensus-building role, their expert role is found to have eroded to some extent (Burns, 2013). The institutionalization of trilogues as the main negotiation forum has also had consequences for how the EP views itself and for the policy positions it takes. Greenwood & Roederer-Rynning (2019b) argue that the EP has found a ‘heightened consciousness of its role and identity as a normal parliament’, which entails some concern about

transparency, as ‘trilogues carry more risk for the legitimacy of the EP than for the Council’ (ibid: 137).

Studying decision-making in the LIBE committee, Ripoll Servent (2011, 2012) finds that the EP takes a more centrist approach, offering both rationalist (accepting a suboptimal outcome at first reading to avoid a no-deal scenario) and constructivist (being viewed as a ‘mature’ co-legislator) explanations for this. Others have found that frequent use of early agreements has led to increasing voting cohesion among the centrist parties because the ‘cost’ of failing a vote has increased (Bressanelli et al., 2015), and that the policy positions taken by the EP as a whole reflect the ideological profile of the ‘grand coalition’ (S&D, EPP and, after 2019, Renew) rather than that of the median MEP (Costello, 2022). Some argue that the level of preference cohesion in the EP has limited impact on the strategies they pursue in trilogues (O’Keeffe et al., 2016), while others have found that internal polarization in the EP makes it difficult to build stable coalitions, which in turn makes it harder to be effective in trilogue negotiations (Ripoll Servent, 2019). Finally, Ripoll Servent & Panning (2019a) have studied the role of ‘hard Eurosceptics’, finding that they participate less in trilogues both because of the *cordon sanitaire*¹⁰ and their own lack of willingness to engage in legislation.

Some studies have also examined the institutional adaption to trilogues within the other two institutions. Häge & Naurin (2013) argue that the extension of codecision was initially positive for the politicization of Council decisions, but that lack of transparency in trilogues has to some extent offset this effect. Others have noted that the widespread use of trilogues has caused ‘member states [to] increasingly depart from traditional Council norms of trust, mutual responsiveness, diffuse reciprocity, and a culture of compromise, and focus on stricter monitoring of the Presidency’ (Brandsma, Dionigi, et al., 2021: 25). Finally, the informal power resources (Perarnaud, 2022), strategies (Kirpsza, 2019), and voting cohesion (Bicchi & Arregui, 2023) of member states in Council have been studied. Perarnaud finds ‘notable asymmetries’ in the power resources available to the permanent representations of member states in terms of both personnel and coordination processes, while Bicchi and Arregui find that southern member states generally fare worse in ensuring cohesion than northern ones.

The Commission’s adaption to trilogues has largely been overlooked, but two studies address their internal procedures and explore which factors

¹⁰ Literally ‘sanitary cordon’, indicating the principled refusal to cooperate with one or more political parties. In the EP, the *cordon sanitaire* has involved refusal to grant committee chairmanships to the far right, though it is unclear whether this cordon also applies to distribution of rapporteurships.

influence Commission success in trilogues. Panning (2021) describes how two groups within the Commission, the Groupe de Relations Interinstitutionnelles (GRI) and its junior counterpart, pre-GRI, have become ‘key fora in which actors form their positions and mediate intra- and inter-institutional conflict’. She conceives of the Commission as a ‘*committed broker*’; an institution that indeed sees its job in facilitating negotiations and providing expertise for the co-legislators, but also tries to safeguard its own preferences and interests’ (Panning, 2021: 48, italics in original). This contrasts with the conventional view of the Commission as a *neutral broker*. Laloux & Panning (2021) set out to uncover whether intra-institutional conflict within the Commission adversely affects its ability to defend its proposals in trilogue negotiations. They find that the number of DGs involved (their proxy for intra-institutional conflict) correlates with more amendments to the Commission’s proposal. They further argue that preference divergence within the Commission might indicate that ‘the Commission could very well have its own “relais actors issues”’ (ibid: 49), and that it could thus matter for policy outcomes which DG represents the Commission in trilogues on a given file.

Summary of Stream 3

The EU institutions have had to adjust their internal procedures and practices following the expansion of codecision and, subsequently, trilogues. Participants in trilogues, the so-called relais actors, now play a central role linking intra- and interinstitutional negotiations. Some argue that this central position gives relais actors informational advantages and control of the process, both of which can be leveraged to bias outcomes in their favour. There has not, however, been much quantitative evidence supporting this. This may partly be due to the intra-institutional adjustments made in part to constrain the relais actors. The EP has changed fundamentally, altering its rules of procedure, adopting a code of conduct for negotiations under the OLP, and to some extent changing its decision-making style to be more centrist and consensus-seeking. The intra-institutional changes in the Council and the Commission have received less scholarly attention, but it has been found that the Council is on familiar ground in the opaque trilogue negotiations, while some efforts have been made to constrain the Presidency in what has been called a deviation from the usual reliance on trusting relations, which is a hallmark of Council negotiations. The Commission’s role as neutral broker has recently been brought into question as it spends considerable resources on coordinating positions between the different DGs in the GRI and since it has been demonstrated that involvement of more DGs in Commission decision-making adversely affects its ability to defend its original proposal from amendments by the co-legislators.

3.5 Stream 4: Trilogue Legitimacy – Transparency and Efficiency

Another fundamental question raised in the scholarship on trilogues regards their democratic merits. The debate on the EU's democratic deficit has been ongoing for at least as long as the EU has been a Union (see e.g. Reh (2014) or Follesdal & Hix (2006) for an excellent overview), and the informalization of the OLP in trilogues has done little to alleviate these concerns. As noted above, the 'dual legitimacy' of national parliaments and the EP were challenged by the diminished role of the national parliaments in first-reading agreements. Within this stream of the literature, three main lines are pursued: studies focusing on the (perceived) trade-off between efficiency and transparency in trilogues, those focusing on the EU institutions' responses to ongoing calls for more transparency, and those which focus on accountability and control measures as other (though not substitutive) ways to provide legitimacy to trilogues.

The Trade-off Argument

The tension between efficiency and transparency/legitimacy has been central to the debate on trilogues since its inception and is still ongoing (e.g. Hoppe, 2023; Rasmussen & Reh, 2013; Shackleton & Raunio, 2003). The overarching argument is that the use of early agreements has made the EU legislative process more efficient, but that this has come at a price in the form of a more opaque process (e.g. Leino, 2017; Rasmussen & Reh, 2013; Rosén & Stie, 2022). Curtin & Leino (2017) distinguish between active and passive transparency, argue that four-column tables should be published systematically, and are strongly critical of appeals to efficiency to curtail attempts at increasing transparency. The same goes for Berthier (2016: 423), who concludes that 'opposing efficiency to transparency is a misguided approach' (a notion also supported by Novak & Hillebrandt (2020)), and that transparency provisions at present are insufficient. In a broader theorization of the legitimacy of codecision, Lord (2013) finds that it presents a 'predicament that can only be managed, not solved', pointing to opaque decision-making as one area in need of management. To this, Roederer-Rynning (2019: 970) adds that OLP is a step in the right direction for the EU's democratic credentials, but that 'its democratic effects are ultimately bound up with the evolving institutions of legislative trilogues. Trilogues must become more transparent.'

But if opacity in trilogues is at odds with the EU institutions' commitment to transparency and harmful to their legitimacy, why is most legislation still concluded in early agreements? As identified by Toshkov & Rasmussen (2012), early agreements actually take *longer* on average, so efficiency by that

metric cannot explain it. However, some scholars have argued that transparency provisions themselves might drive further informalization because the institutions must implement transparency provisions (Bodson, 2021), which increases the transaction costs of negotiating formally (Coremans, 2020). Broniecki (2019) argues that there is an ‘inverse relationship between transparency and power’ in EU legislative negotiations – specifically, the EP is more successful when it manages to remain opaque vis-à-vis the Council. With the EU institutions defending their ‘space to think’ (Leino-Sandberg, 2023) away from the scrutiny of the media and other outsiders, other scholars have looked to different ways of ensuring post-hoc transparency and accountability in trilogues. Bauerschmidt (2021) argues that ex-ante selection and ex-post control of agents in trilogues may not be enough to secure their legitimacy but subsequently argues that it is better than in the Conciliation Committee because the ex-post control is less of a *fait accompli* in trilogues. In a similar vein, (Rosén & Stie, 2022) distinguish between the internal and external accountability of trilogues as well as between transparency in process and transparency in rationale. They find that ‘the democratic problem with trilogues is not their informal or secluded character per se’ (ibid: 383), but that there are not sufficient linkages between internal and external accountability. In other words, transparency in process (i.e., more public access to trilogues) is not strictly necessary if there is sufficient transparency in rationale – that trilogue participants give detailed accounts of their behaviour during the trilogue process in an externally accessible forum.

Based on the idea of transparency in rationale, Brandsma (2019) has studied the reporting of trilogue results in EP committees, finding that ‘the majority of trilogues is not reported back on at all, or not in time’, arguing that transparency via that route is a ‘promise unfulfilled’ (ibid: 1464). Similarly, Pennetreau & Laloux (2021) studied the reporting of trilogue results in the EP *plenary*, finding that ‘interinstitutional negotiations are discussed in only 64% of cases, and even when they are, the extent of information about trilogues is generally small’. Thus, the empirical record supports Rosén and Stie’s argument that internal and external accountability are not sufficiently linked. This distinction between internal and external dimensions of transparency and accountability has also been addressed by Hoppe (2023), who argues for the need to broaden the scope of transparency beyond publication of documents as trilogues are problematic in other ways as well, e.g. in terms of access to the process. Finally, as mentioned above, a few studies have examined the ability of interest groups to *permeate* trilogues (Andlovic & Lehmann, 2014; Greenwood & Roederer-Rynning, 2021), some arguing that transparency enables them to provide input in the political process, ensuring that risks and alternatives are properly assessed (Leino-Sandberg, 2023).

Institutional Response

It is not only scholars who call for more transparency in trilogues. Both the CJEU and the EU Ombudsman have addressed this issue. The former did so most famously in the *de Capitani* case, in which Emilio de Capitani, a former EU civil servant, sued the European Parliament for denying him full access to legislative documents regarding ongoing trilogue negotiations about EURO-POL. The court delivered a ruling (Case T-540/15) which, among other things, finds that ‘trilogue tables form part of the legislative process’ (para. 75) even though trilogues are informal and shoots down an argument about the need for a restricted negotiation room by quoting an EP resolution in which it is stated that trilogues are ‘a substantial phase of the legislative procedure, and not a separate “space to think”’ (para 105).

Around the same time (May 2015), the EU Ombudsman opened a strategic inquiry concerning the transparency of trilogues, which was followed up by a set of concrete proposals to increase trilogue transparency, arguing that it is ‘an essential element of EU law-making legitimacy’ (European Ombudsman, 2016). At the same time, however, the Ombudsman acknowledged that it is ‘necessary to balance the interest in having a transparent process with the legitimate need to ensure a privileged negotiating space’ (ibid), an assessment very much in line with the scholarly literature on the transparency-efficiency trade-off.

A few legal scholars have examined whether these calls have been met by substantive changes in the institutions’ practices regarding trilogue transparency. Hillebrandt & Leino-Sandberg (2021) examined the role of external watchdogs in trilogue oversight, focusing on the European Ombudsman and the CJEU, finding that they can play a positive role in bringing ‘both publicity and clarity’ about the application of principles of transparency in trilogues (ibid: 68). They argue, however, that blind spots may emerge if the watchdogs are too close to the political system, finding that the ombudsman has an equally complex accountability relation with the EU institutions (ibid), while the CJEU is not so affected by external relations (ibid: 69). They conclude that ‘there is no silver bullet for trilogue transparency. External oversight must therefore continue to calibrate between different actors, methods, and styles’ (ibid).

Rebasti (2021), who is an official at the Council Legal Service and was part of the Council’s legal team in the *de Capitani* case, published a short comment three years after the *de Capitani* ruling arguing that there have been some improvements, particularly regarding the release of documents *post hoc*, but that much still remains to be settled as the court ruling is not very clear about the extent and timing of document publication:

having regard to the relevance that the Court gives to the possibility of having a free exchange of views and effective negotiations during trilogues, it would not seem appropriate to apply the same standard of assessment on one hand to documents that report the result of the negotiations and on the other to documents that are tabled before the trilogues and contain compromise proposals to be discussed during those forthcoming negotiations. (ibid: 298)

Rebasti clearly outlines that there is a difference between outcome documents and process documents, and that different degrees of transparency should apply to those two. This highlights a central dilemma of trilogue oversight: how to balance making transparency requirements detailed enough to ensure accountability and legitimacy while also ensuring enough discretion for the institutions to avoid driving further informalization of the negotiation process?

Summary of Stream 4

The main takeaway from this stream is that trilogues leave much to be desired in terms of transparency, though some steps have been taken in the past ten years, particularly following the de Capitani case and the recommendations of the European Ombudsman. The literature generally finds that trilogues are efficient but that their opacity is detrimental to the legitimacy of the OLP. An oft-touted argument for limiting transparency in trilogues is that it would hamper open and efficient negotiations, and that it might even drive further informalization of the EU legislative process. A useful distinction is that between transparency in process and rationale. There is broad agreement that the former is lacking, and that access to the process favours those (primarily business interests) who have the resources to directly lobby participants. Regarding the latter, there have been improvements in terms of the systematic publication of documents, while there is still room for improvement regarding reporting in EP committees and plenary.

3.6 Stream 5: Trilogue Norms and Culture

The final stream in this review concerns the norms and emerging culture governing the conduct of trilogue negotiations. The underlying logic of this line of research seems to be that trilogues, though not perfect in terms of transparency and democratic credentials (cf. the previous section), are now a seemingly permanent feature of the OLP and that it is therefore warranted to study how they are carried out in practice. Some earlier studies have touched briefly upon changing norms affecting the EP's internal decision-making style: Costello & Thomson (2011: 353) argue that there is 'a strong norm that rapporteurs should serve the interests of the plenary as a loyal agent', Burns (2013: 1001) argues that 'new norms of consensus and informal decision-making' challenge the expert role of EP committees, while Huber & Shackleton

(2013: 1041) argue that the EP has to some extent adopted the Council's consensus-driven way of conducting negotiations, leading '[f]rom a clash of cultures to smooth working relations'. However, it remained unclear whether an independent set of norms could be found in trilogue negotiations, and whether they are a mixture of already-established norms stemming from the Council, the EP, and the Commission respectively.

In their seminal article, Roederer-Rynning & Greenwood (2015: 1148) argue that 'trilogues today are underpinned by norms, standard operating procedures [SOPs] and practices linking formal and informal institutions'. They argue that SOPs are organizational expressions of norms, and that these in turn generate *practices* followed by negotiators once the SOPs are 'internalized and adequately policed' (ibid: 1152). Furthermore, they take *institutionalization* to mean 'the process whereby formal organization and technical procedure becomes infused with value' (ibid). The authors conceptualize trilogues as a 'an onion-like construct encompassing three main layers of practices' (ibid: 1153): layer I is *political* trilogues between the relais actors, layer II is *technical* trilogues between officials from each institution, and layer III is 'informal bilateral contacts between the EP and the Council' (ibid). They further argue that while 'layers I and II form a rather coherent, well delineated and ritualized sequence of meetings' (ibid), this is less the case for layer III, which is nonetheless described as 'important and, to an increasing extent, ritualized' (ibid: 1156).

The first and arguably most prevalent SOP identified is the use of four-column documents as the basis for negotiations. In addition to this, they identify six norms which have been somewhat successfully imposed on the Council: 1) no negotiations are to take place without the Committee Chair present, 2) no negotiations are to take place before both institutions have mandates, 3) no political-level actors should participate in technical trilogues, 4) trilogues hosted in the EP are generally chaired by the Committee Chair, 5) the EP team does most of the drafting, and 6) trilogues are mostly held in the EP (ibid: 1157-8). However, they concede that 'the EP's approach to trilogues has historically been contextually defined, as different committees developed their own compass in inter-institutional negotiations; and inevitably there will continue to be variation in practice' (ibid: 1158), so it is relevant to examine empirically which SOPs are indeed *standard* across the board, and which vary between policy areas and files. Finally, they conclude that the EP has gained an advantage through 'dominance of logistical arrangements in trilogues, and the advantage conferred by numbers' (ibid: 1159).

Following up on this piece, Roederer-Rynning and Greenwood have worked to systematize and broaden this research agenda. They have introduced a typology to explain the institutionalization of trilogues (Roederer-

Rynning & Greenwood, 2017), described them as an ‘evolving institution’ (Roederer-Rynning, 2019), and described the negotiation style as *politicized diplomacy*, indicating that trilogues possess features of both Council and EP negotiating styles (Roederer-Rynning & Greenwood, 2021). It remains unclear whether the Commission, theorized recently as a *committed broker* (Panning, 2021), exerts an influence on the negotiation culture in trilogues. Finally, it is worth noting that the fact that codecision has changed the internal negotiation norms within *both* the EP (to be more consensus-seeking, cf. Ripoll Servent (2019)) and the Council (Brandsma, Dionigi, et al. (2021)) indicates that the negotiation style in trilogues is indeed different from that of either of the two institutions.

The surprising lack of knowledge about the conduct of trilogues was first identified ten years ago (Roederer-Rynning & Greenwood, 2015). As this section has demonstrated, we now know a bit more, though this research stream is still in its infancy. Much of this can be attributed to the fact that studies of informal, opaque negotiations ‘require thorough, time-consuming and in part frustrating digging into inaccessible data in order to produce fruitful outcomes’ (Hoppe, 2020). An important goal of this dissertation is to further our knowledge of the norms governing trilogues, and whether they are viewed in the same way by actors from the different institutions – this is specifically addressed in Chapter 8. This section has demonstrated that, while informal, there is an *institutionalized* set of norms governing trilogue negotiations. Strongest among these seem to be the use of the four-column document and the rather strict split between technical and political negotiations. It remains unclear, however, how exactly the distinction is made between technical and political issues in practice, an issue which has also been studied with regard to internal Council negotiations (Fouilleux et al., 2005). How this distinction is handled in trilogues will be explored in Chapter 9.

3.7 Summary

This chapter has demonstrated that there is a growing literature on trilogues which pursues several different streams of inquiry, and which has already been subject to two excellent systematic reviews (Hoppe, 2020; Laloux, 2020). The findings of these reviews have been scrutinized, and this chapter has proceeded along similar lines, updated with research published since 2020 and with the important addition of a separate research strand on trilogue *culture*. Early studies described how trilogues came to be, from the introduction of codecision with the Treaty of Maastricht to subsequent expansion to more policy areas and introduction of early agreements with the Treaty of Amsterdam and the subsequent *informalization* of EU legislation and the ‘triumph of trilogues’. The second strand of literature focuses on the

consequences of negotiating in trilogues rather than in the formal procedure, both in terms of legislative duration and power distribution between the co-legislators. There seems to be no consensus on whether the Council or the EP benefit from negotiating in trilogues; the Council is argued to be either empowered by dragging the EP into the opaque style of negotiating to which it is more accustomed or weakened by its lack of experience in confrontational negotiations with democratically elected politicians. The EP, on the other hand, is argued to be either empowered by an apparent command of the legislative process or weakened by a lack of administrative resources. Similarly, there are diverging views on whether the Commission has any power in trilogues. Some argue that it has no real power, while others find that it may wield information advantage and its role as mediator to steer the outcome towards its policy preferences.

The third stream deals with intra-institutional consequences of trilogues in two ways. First, it examines whether relais actors representing each institution in trilogues can use their central position to bias outcomes in their favour. There is mixed evidence for this: quantitative studies have not identified a systematic effect, while qualitative studies have identified some signs of relais actors being able to steer the negotiation process. Second, this strand of literature examines how internal rules within the three institutions have changed to accommodate the increased use of trilogues and to institute some control over the relais actors. The EP seems to have undergone the most changes: its rules of procedure now specify who must be invited to participate in trilogues, and the role of the EP committees is argued to have changed from that of an expert body to that of a consensus-building group. The Council has not faced as many changes to its internal structure, and the Presidency still enjoys a great deal of freedom when it comes to organizing the Council delegation in trilogues. The biggest change in the Commission seems to be the empowerment of the GRI as a forum for trilogue coordination.

The fourth stream concerns trilogue legitimacy, particularly the trade-off between transparency and efficiency. Most studies find that trilogue opacity is detrimental to the input legitimacy of the OLP, while there is more debate surrounding whether there are enough efficiency gains to offset this in terms of output legitimacy. It is also found that transparency may be divided into two categories, namely *process* and *rationale* transparency. In terms of the latter, some improvements have been made with regard to publication of documents *post hoc*, particularly following a CJEU judgement and a strategic inquiry from the European Ombudsman, while reporting in the EP is still unsystematic and inadequate. In terms of the former, trilogues are still mostly a black box which is to some extent *permeable* to those who have the resources, but not *transparent*.

The final research stream is concerned with the culture and conduct of trilogues. Here, it has been found that while trilogues remain informal, they are to some extent institutionalized in the sense that some standard operating procedures and norms regarding negotiation behaviour exist. These include the use of four-column documents as the main working tool and a sharp distinction between *participants* at technical and political meetings, though the demarcation between technical and political *issues* is less clear. The negotiation culture has also been examined, some arguing that it does not correspond completely to the negotiation style of either the Council or the European Parliament but is rather a hybrid, termed *politicized diplomacy*. The role of the Commission is also debated, some arguing that they are a *committed* rather than a *neutral broker*. Finally, this chapter noted that this fifth research stream is quite small and warrants further inquiry. First, it is unclear whether the perceptions of trilogues are shared by actors across institutions and levels. This study contributes here by providing thick descriptions of both observed behaviour in trilogues and reflections from interviewees in different roles at all three institutions about their own practices. Second, the degree to which participants have internalized trilogues and their norms remains unclear. This study gauges whether they consider options other than trilogues, or whether they are truly *the* default option for legislative negotiations. Finally, the practices regarding the distinction between technical and political issues are examined in some detail. The main findings of this review in terms of existing knowledge and research gaps are outlined in the table below.

Table 3.2: What We Know and What We Still Need to Know

What We Know	What We Still Need to Know
Power Dynamics: There is no consensus on whether trilogues have empowered the Council, the European Parliament (EP), or the Commission.	Role of Relais Actors: More research is needed to determine whether relais actors can systematically bias outcomes in trilogues.
Trilogue Culture: Some standard operating procedures and norms exist within trilogues, including the use of four-column documents and distinctions between technical and political meetings.	Trilogue Culture: Additional research is necessary to explore the degree of institutionalization of trilogue norms and procedures.
Intra-Institutional Change: The EP has undergone significant internal changes to accommodate trilogues, while the Council and the Commission have seen fewer adjustments.	Perceptions and Internalization: It is unclear whether perceptions of trilogues and their norms are consistent across institutions, and whether trilogues are truly the default option for legislative negotiations.
Legitimacy Concerns: Trilogues are criticized for their opacity, affecting input legitimacy, while efficiency gains are debated in terms of output legitimacy.	Technical vs. Political Issues: More detailed analysis is needed on how participants distinguish between technical and political issues during trilogues.

This dissertation addresses several of the gaps identified above. Chapter 7 offers a new conceptualization of the different pressures the relais actors are under while trying to maximize their influence in trilogues. Chapter 8 offers a reappraisal of the notion that a culture of trilogues exists by comparing the impressions of negotiators from each of the three institutions. Chapter 9 focuses specifically on the distinction between technical and political issues, arguing that there is no clear distinction, and that categorizing something as either technical or political is in itself a political choice. Finally, the notion that trilogues have become the default negotiation method, governed by internalized norms, is probed throughout the dissertation.

Chapter 4.

Theoretical Toolbox

Abduction is the process of forming an explanatory hypothesis. It is the only logical operation which introduces any new ideas; for induction does nothing but determine a value, and deduction merely involves the necessary consequences of a pure hypothesis (Peirce, 1934: 171).

While perhaps provocative, the quote illustrates the role theory plays in this dissertation quite well. Abductive studies have a peculiar relationship to theory: the understanding of abduction as a ‘movement away from’ implies a conception of abductive research as ‘an inferential creative process of producing new hypotheses and theories based on surprising research evidence’ (Timmermans & Tavory, 2012: 170). This entails that the research process should be open enough to capture and handle phenomena and observations which were not expected from the outset. However, the very notion of surprising evidence implies the existence of some theoretical expectations – otherwise the researcher would not know what to find surprising.

Because trilogues are so secretive, data is scarce, and the literature on trilogue culture and practice is still limited. Therefore, this study does not aim to test existing hypotheses. At the same time, as the previous chapter has shown, trilogues do not constitute a green field devoid of previous research, especially taking into account the broader literature on EU legislation. Thus, it would be disingenuous to take a grounded theory approach to a field which has already been studied. Using existing theory plays an equally important role in anchoring the positionality of the researcher as he enters the field: ‘We may see through gendered and racialized eyes, but we also see through the theoretical lenses of the training we went through, the theories we read, the political allegiances we may have fostered’ (Timmermans & Tavory, 2012: 173). Put differently, the starting point of a research project is rarely, if ever, neutral, as ‘abduction thus depends on the researcher’s cultivated position’ (Collins & Stockton, 2018: 2).

This chapter first provides a brief discussion and tentative definition of the key concept of *informality* and then introduces three different theoretical lenses, which stem from rather different epistemological positions. The first lens draws on rational choice-based theory, using relevant insights from classic negotiation theory, principal-agent theory and two-level games. These theories are both traditionally founded on methodological individualism. This theoretical lens is applied because political negotiations are conducted with the explicit goal of reaching a preferred outcome, and because much of the

existing literature has been concerned with distributions of power, both between the co-legislators and within each EU institution. The second lens is that of sociological institutionalism, which is normally seen to be rooted within a constructivist paradigm, focused on the ‘transmission of cultural practices’ (Hall & Taylor, 1996: 946-947). This lens is applied to be able to account for institutional norms shaping perceptions of appropriate behaviour in negotiations. This is expected to help explain the evolution of norms in and institutionalization of trilogues as a distinct negotiation culture, but also why different institutional cultures within the Commission, the EP, and the Council may affect negotiators’ perception of and approach to trilogue negotiations. The third theoretical lens is that of diplomatic practice theory, which has everyday practices and their role in the diffusion of norms and culture as its analytical focus: ‘a practice approach connects such phenomena to lived and embodied experiences, from the European Commission official to the unemployed EU citizen’ (Adler-Nissen, 2016: 90).

While underpinned by very different epistemological foundations, these three lenses will be used eclectically, following a pragmatist paradigm (Kelly & Cordeiro, 2020; Morgan, 2014). This apparent lack of consideration for the methodological underpinnings of each lens stems not only from a commitment to methodological pragmatism, but also from the fact that each lens focuses on different considerations which may guide behaviour in and shape perceptions of trilogue negotiations. The rational choice-based lens focuses on the preference configuration of, and the powers accorded to each actor under the formal rules to explain both the choice of negotiating format and the range of possible outcomes. Sociological institutionalism focuses on the influence of institutions in shaping the range of acceptable behaviour for negotiators. Finally, diplomatic practice theory aims to explain how everyday interactions between negotiators are both informed by existing norms regarding mastery of the trilogue ‘script’ and serve to reproduce these very scripts, thereby further institutionalizing them. As such, practice theory differs from sociological institutionalism in that it focuses explicitly on behaviours themselves, rather than on the rules which guide (and constrain) behaviour.

Put simply, I have selected these theories because I believe that they offer compelling and relevant tools to study the phenomenon at hand, namely trilogues. Any selection also entails a deselection, and these three lenses were chosen after careful consideration of other potential perspectives, and after consulting with colleagues. However, it is important to note that they also reflect my background as a political scientist and my own theoretical inclinations. Thus, whether I like it or not, these theories shape the way I think, and by being transparent about the role they play in shaping all steps of the research, including analysis, I aim to enhance the trustworthiness of the

dissertation's findings and open them up for critiques and discussions coming from other (theoretical) backgrounds.

4.1 Formality and Informality

This study deals with trilogues, which are often described as informal negotiations (e.g. Laloux, 2020) because they are not mentioned in the EU treaties. However, as demonstrated in the previous chapters, they are also seen as an integral part of the EU legislative process, which raises questions about what is really meant by the terms *formal* and *informal* with regards to trilogues. To help make sense of these terms, this section introduces tools to describe what makes a negotiation – or any other communicative situation – formal rather than informal. First, two different conceptualizations of the distinction between formal and informal *institutions*, proposed by Farrell & Héritier (2003) and Helmke & Levitsky (2004), are introduced and compared. This is followed by a proposed framework for more fine-grained evaluation of the level of formality in a given situation, based on Kraut et al. (1990). This is expected to be useful when probing whether political trilogues are perceived as more formal than technical meetings or phone calls between relais actors.

Formal and Informal Institutions

Farrell & Héritier (2003: 581) distinguish between ‘organizational actors (sets of actors united in pursuit of a common goal) and institutions (sets of rules that structure social interaction)’. This distinction is important to keep in mind since the Commission, the EP, and the Council would thus be organizational actors but are often referred to as ‘the EU institutions’. Since this terminology is used commonly, both by scholars and the interviewees in this study, I will also use it in this dissertation, even though it does not strictly follow the theoretical definition of institutions proposed here. Regarding institutions, the authors ‘further distinguish between formal institutions, written rules enforced by a third party, and informal institutions, which are enforced by the actors themselves’ (ibid). Helmke & Levitsky (2004: 727) share a similar definition of informal institutions as ‘socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels’. The second definition adds the important nuance that informal institutions are not only enforced but also created and communicated outside formal channels.

According to the definitions above, trilogues constitute an informal institution in the sense that they are not foreseen in the treaties, there are no written rules governing them which can be enforced by a third party, and their outcomes must be formally adopted by the EP and the Council, respectively.


However, as examined in Chapter 2, there are several written documents regulating behaviour in trilogues, both within each institution and in the form of an interinstitutional agreement. While not binding rules enforceable by a third party, these still indicate that trilogues are not *only* governed by unwritten, socially shared rules. It is also worth noting that the ongoing work by the CJEU and the European Ombudsman to provide some level of oversight of the trilogue process (as described by Hillebrandt & Leino-Sandberg, 2021) indicates that the status of trilogues as a purely informal institution is contested, since they are argued to be ‘a key feature of the EU legislative process’ (European Ombudsman, 2016). These two factors cast some doubt about whether trilogues can truly be categorized as informal.

A Spectrum of Formality

Since trilogues are nearing the edge of what can be described as informal according to the above definition, it is useful to develop a more fine-grained measure of informality to be able to probe whether interviewees perceive different situations as formal, informal, or somewhere in between. To this end, this study employs a framework developed by Kraut et al. (1990) to study the use of informal communication within organizations. They argue both that ‘informal communication, generally mediated by physical proximity, is crucial for coordination to occur’, and that ‘it supports both production work and the social relations that underlie it’ (ibid). It is important to note that Kraut et al. study informal communication rather than institutions. However, as will be shown below, they employ a quite broad conception of communication, and I argue that it will prove fruitful to apply these concepts to communication happening within the *institution* of trilogues.

Previous research has dealt with formal and informal communication as a spectrum, with most communication falling somewhere in between completely formal and completely informal, the informal end of the spectrum being non-work-related conversations happening outside formal hierarchies and serving no strategic purpose, while the formal end of the spectrum is the opposite. (e.g. Koch & Denner, 2022; Kraut et al., 1990; Viererbl et al., 2022). However, these studies also acknowledge that informal communication may serve important work-related functions such as sharing information, coordinating work (Koch & Denner, 2022), and building relations and organizational identities (Bielenia-Grajewska, 2017). Thus, these indicators may help shed light on the ways in which different types of communication within the trilogue *institution* vary in degree of (perceived) formality. This may in turn help explain why trilogues are (not) perceived as informal by the negotiators. The indicators are shown in the figure below.

Figure 4.1: The Formality Dimensions of Communication



Formal	Informal
Scheduled in advance	Unscheduled
Arranged participants	Random participants
Participants in role	Participants out of role
Preset agenda	No preset agenda
One-way	Interactive
Impoverished content	Rich content
Formal language & speech	Informal language and speech

Note: Based on Kraut et al. (1990).

The figure above offers some guidelines for categorizing the formality of a given encounter. Each indicator can be seen as a sliding scale, where the communication encounter is most formal if it has arranged participants, they are in their professional roles, there is an agenda, the communication is one-way, the content is impoverished, and the language used is formal. Impoverished content is viewed in opposition to ‘rich’ content, which ‘can overcome different frames of reference or clarify ambiguous issues to change understanding in a timely manner’ (Daft & Lengel, 1984). ‘Formal language and speech register’, on the other hand, is not defined by the authors. This may reflect the fact that what constitutes formal language varies across contexts. The indicator will be kept here and probed empirically, aiming to provide an EU-specific definition of language formality.

This list of formality dimensions is, of course, not exhaustive, and other categories will likely also need adjustment to the specific context of trilogue negotiations. However, it serves as a good starting point for analysing the formality of different communication situations. Specifically, it leads to the theoretical expectation that *negotiators will view trilogues as less formal than EP plenaries and Council Meetings, but more formal than bilateral meetings in the context of negotiations*. Furthermore, it is worth noting that while some of the indicators are seemingly rather easy to ascertain (e.g., whether a meeting is planned or not), different negotiators may weigh the individual indicators differently when judging the formality of a meeting.

4.2 Trilogues as a Rational Choice Negotiation

The primary goal of any negotiator is (or should be) to reach a negotiated outcome which is as close to their own preferred outcome as possible. Thus, classic negotiation theory seems like a natural theoretical starting point for a study of trilogues as informal, bicameral, legislative *negotiations*. There are several

reasons for this. First, it can help provide answers to two fundamental questions. Do negotiators make an active decision to negotiate in trilogues rather than follow the formal procedure because they think it will be more effective and/or because they believe they can achieve better negotiation outcomes this way? And how are preferences aligned between relais actors and their institutions? Indeed, previous research has argued that ‘negotiations are ubiquitous in the European Union (EU) and essential to its functioning’ (Dür et al., 2010: 613), and their general characteristics have been described in the following way:

EU negotiations are multilateral, multi-issue, recurrent, sometimes informal, subject to a distant shadow of the future, and complicated by the fact that some of the institutions within which they occur are also negotiators in their own right (ibid: 615).

This section briefly introduces some core assumptions underlying rational choice theory – methodological individualism, utility maximization, and full (or bounded) information – and explains how these will be used in the analysis. Then, the above ‘special’ features of EU negotiations are elaborated, and general theoretical expectations are derived. Finally, this section introduces two rational choice-based perspectives, namely principal-agent theory and two-level games, to generate further theoretical expectations.

Core Assumptions and EU Negotiation Characteristics

The goal of this section is not to provide an exhaustive account of theories on rational choice and bargaining, as this has been done excellently elsewhere (for rational choice, see e.g. Scott (2000); Shepsle (2008); for bargaining see e.g. Raiffa (1982) and Lax & Sebenius (1986a, 1986b)). Rather, the goal is to pinpoint and describe those definitions and assumptions which are expected to be important in this study. For rational choice theory, it is a core ‘idea that all action is fundamentally “rational” in character and that people calculate the likely costs and benefits of any action before deciding what to do’ (Scott, 2000). The first fundamental assumption in rational choice theory is *methodological individualism*: that all parts of human behaviour are explained by the actions of the individuals who perform them. Second, these actors have *transitive preferences* and act strategically to maximize their utility given these preferences. Third, actors are expected to evaluate information about the distribution of preferences and probability of expected outcomes to arrive at the best decision.

This study departs from the assumption of full information and instead starts from the expectation that negotiators are boundedly rational and engage in satisficing behaviour when evaluating potential outcomes (Simon, 1990).

This means that they will seek the above types of information until they have sufficient knowledge to make a ‘good enough’ decision. In the context of trilogue negotiations, the degree of information available and the degree of satisficing behaviour may vary considerably across institutions, negotiators, and individual cases. However, the above considerations lead to the general expectation that *negotiators will seek out information about the positions of their counterparts if they believe that this knowledge will help them better reach their own goals.*

Apart from the general rational choice assumptions, how do the specifics of EU negotiations outlined above affect expectations about negotiation behaviour? EU negotiations are described as *multilateral*. This is also true of trilogues, which are multilateral in two senses: they are trilateral as three institutions are represented, and multilateral as each of these institutions represent multiple constituents: 27 commissioners, 27 member states, and eight different party groups. Therefore, it is expected to be prohibitively complicated to form a detailed view of the preferences of all actors. They are *multi-issue* as legislative proposals are often rather complex, containing many provisions and paragraphs. This means that issue linkages are possible both within and across proposals – an important feature to note when analysing any negotiation (Raiffa, 1982: 13).

Trilogues can also be described as *recurrent* (another important factor, according to Raiffa) and as taking place under a distant *shadow of the future*, with a few caveats. First, while trilogues as a phenomenon are recurrent since new legislative proposals are introduced all the time, participants vary considerably between files. This reduces the individual negotiator’s incentive to offer concessions on one proposal in the hope that their counterpart will return the favour later. Second, the shadow of the future is arguably variable for trilogues as the main negotiators are subject to different deadlines. Most notably, the Council rotates its presidency on a biannual basis, while the Commission and the Parliament change every five years following the EP elections. The expected effects of this are elaborated below and examined in Chapter 7. Finally, there is the question of institutions being negotiating actors in their own right. This thought is elaborated in the section on sociological institutionalism later in this chapter.

Principals and Agents in Brussels

Within the realm of rational choice theory, two specific perspectives will be introduced to help make sense of negotiators’ behaviour: principal-agent theory (Miller, 2005) and two-level games (Putnam, 1988). The principal-agent model is used to describe the problems that arise when a principal delegates tasks to an agent, for instance when the European Parliament delegates

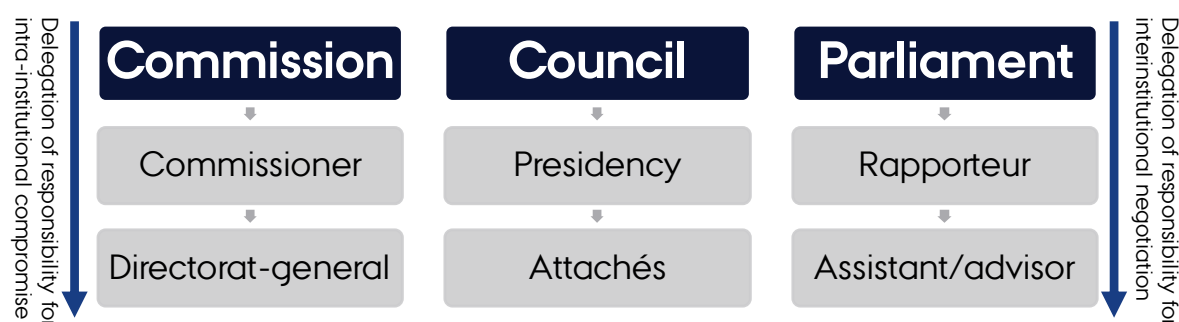
negotiation responsibilities to a rapporteur. The canonical PA model has six core assumptions (Miller, 2005: 205-206).

The first assumption is *agent impact*, meaning that the actions of the agent determine the payoff for the principal. The second assumption is *information asymmetry*, meaning that principals can observe the outcomes but not the actions of the agent. These are expected to be relevant in trilogues: relais actors negotiate a compromise on behalf of their institutions, which is then presented to them for formal approval. Here, the institutions may reject the compromise proposal, but that comes with the cost of prolonging the legislative process. In terms of information asymmetry, the relais actors in trilogues are rather isolated from their institutions. As described in Chapter 2, the EP's rapporteur is joined by *shadows* from the other political groups, while the Council Presidency and the Commission representative are usually 'freer'. These differences are elaborated in Chapter 7, and the strategies employed by the institutions to monitor their agents are explored throughout the analyses.

The previous two assumptions would be unproblematic were it not for the third: *asymmetry in preferences*. The canonical PA model assumes that the agent has different preferences than the principal. In a trilogue context, these could conceivably be differences in policy preferences and the agent having a stronger preference for compromising in order to finish the legislative process and reap reputational benefits. The last three assumptions are less relevant to the present study, and they are often relaxed to make the PA model more empirically flexible. They are that 1) the initiative lies with a *unified principal*, 2) the principal engages in *backwards induction based on common knowledge*, and 3) the principal can offer a take-it-or-leave-it offer to the agent, a situation of *ultimatum bargaining*. In trilogues, only the EP rapporteur is truly selected at the initiative of a principal, since the Presidency of the Council rotates and since the relevant Commission DG is selected based on the content of the file. Thus, *the EP is expected to expend considerable energy on rapporteur selection* (see e.g. Hurka & Kaeding, 2012; Kaeding, 2004, 2005), and *all three institutions are expected to take steps to monitor their agents during the negotiation process* (c.f. Brandsma, Dionigi, et al., 2021).

Applying a principal-agent analysis to trilogues, Delreux & Laloux (2018) argue that the relationship is actually a 'double principal-agent relationship'. Not only are the relais actors responsible for negotiating a compromise in trilogues; they are also tasked with 'facilitating institutional policy-making' (ibid: 303). Note that the delegation does not end with the relais actor, since a substantial portion of negotiations take place at the technical level and are conducted by employees in the three institutions without their political masters present. Thus, the delegation chains for the three institutions can, in a basic sense, be illustrated as follows:

Figure 4.2: Delegation Within the Three Institutions



Note: Based on Figure 1 in (Delreux & Laloux, 2018), but with the addition of the Commission as a negotiating actor and the technical level as another link in the delegation chain.

This conception of the PA relations in trilogues has two important implications. First, the agent will have the responsibility for achieving two goals which are to some extent contradictory – reaching an intra-institutional compromise reduces room for manoeuvre in interinstitutional negotiations. Second, this conception introduces the possibility of having control problems at multiple levels, both between the institution and the relais actor and between the relais actors and their employees. Related to this, it is unclear whether preference asymmetry can be expected between the political and technical levels. This will be probed in Chapter 9. Additionally, when applying the principal-agent framework to legislative negotiations, several special features are worth noting: ‘constituents rarely speak with a single clear voice. Negotiations on dozens of issues happen simultaneously’ (King & Zeckhauser, 1999: 203). Thus, the prospect of satisfying a unified principal or, conversely, being held accountable for any one legislative outcome may seem a bit hazy. Conversely, the authors argue that ‘politicians are the “human embodiments of a bargaining society,” and their careers depend on successful negotiations’ (ibid). Bearing these peculiarities in mind, the conception of trilogues as double delegation is very reminiscent of the logic of two-level games, which will be introduced in the following.

Trilogues as a Two-Level Game

Another apt way of conceptualizing trilogues is as a three-player variant of a two-level game (Putnam, 1988), originally developed to explain the interplay between domestic and international negotiations. Putnam (ibid: 436) presents it as follows:

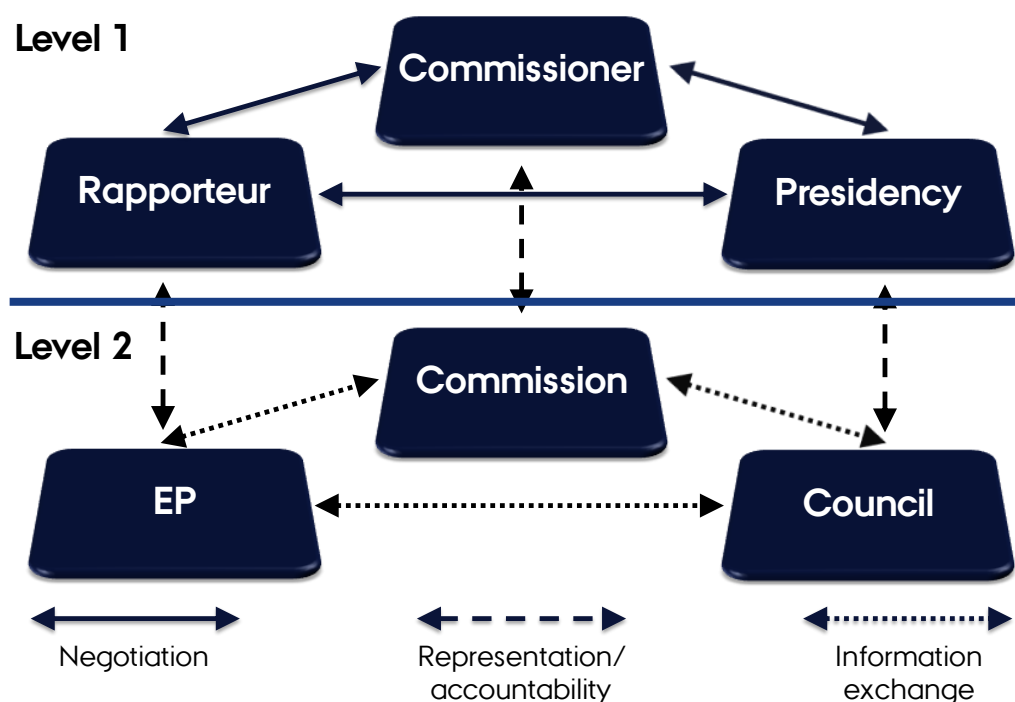
It is convenient analytically to decompose the process into two stages:

1. bargaining between the negotiators, leading to a tentative agreement; call that Level I.

2. separate discussions within each group of constituents about whether to ratify the agreement; call that Level II.

Though Putnam developed the theory with the domestic and international in mind, the setup of a trilogue process is strikingly similar: the relais actors negotiate a provisional agreement at Level I which is then discussed and (hopefully) adopted by the European Parliament and the Council at Level II. The basic setup is illustrated below:

Figure 4.3: Trilogues as a Two-Level Game



Note: The dashed line here represents the principal-agent relationships between the institutions and their relais actors.

However, Putnam adds that this is an oversimplification, as ‘expectational effects will be quite important’ (ibid). These expectational effects are twofold, he argues: first, ‘[t]here are likely to be prior consultations and bargaining at Level II to hammer out an initial position for the Level I negotiations’ (ibid). In trilogues this corresponds to the institutions’ mandating processes, which will be explored in Chapter 6, and the ongoing updates to these mandates, probed in Chapters 7 and 11. The second effect is that ‘expectations of rejection at Level II may abort negotiations at Level I’ (ibid). These two expectational effects lead to the expectation that *negotiators in trilogues will have an interest in making concessions to reach a compromise and to keep their respective institutions informed of negotiation progress to minimize the risk of ratification failure.*

Putnam defines a win-set as ‘the set of all possible Level I agreements that would ‘win’ – that is, gain the necessary majority among the constituents’ (ibid: 437). The size of these win-sets is important for two reasons: ‘First, larger win-sets make Level I agreements more likely, *ceteris paribus*’ (ibid). This is expected to be the case because larger win-sets will tend to overlap more than smaller win-sets. Second, ‘the relative size of the respective Level II win-sets will affect the distribution of the joint gains from the international bargain’ (ibid: 440). The smaller the win-set, the easier it will be for a negotiator to convince others that their hands are tied (Haag, 2022), and thus force them to grant concessions and end up with a compromise closer to their preferred outcome. However, having a smaller win-set also increases the risk of ratification failure.

This argument is similar to the negotiator’s dilemma (Lax & Sebenius, 1986b) which posits that negotiators must choose between a cooperative and a competitive negotiation strategy. In choosing a cooperative strategy and revealing their true preferences, the negotiator attempts to create joint gains but risks exploitation by their counterparts. In pursuing a competitive strategy, the negotiators strategically present their preferences, aiming to exploit their counterpart but risking a suboptimal outcome or even negotiation failure. Since negotiators are assumed to be interested in reaching an agreement, the above perspectives lead to the expectation that *negotiators in trilogues will simultaneously try to gain as much flexibility as possible in their mandate and to convince their counterparts that their hands are tied.*

Summary

At the end of this section, it is important to reiterate that the goal of introducing this perspective is not to offer a single, rational explanation for individual behaviour in trilogues. Neither is it the goal to introduce this perspective as a strawman to be shot down with reference to the more constructivist perspectives introduced later in this chapter. Rather, the goal is to acknowledge that the people negotiating on behalf of their institutions act as individuals, that they have agency independent of their institutions, and that they try to act in a way that maximizes their utility. Furthermore, as most negotiators I interviewed are university graduates with social science degrees, they are themselves aware of the above theories, some even making meta-analytical comments about them during interviews. Thus, having this particular theoretical underpinning in the analysis seems appropriate. Four theoretical expectations have been put forward. These are:

1. *Negotiators will seek out information about the positions of their counterparts if they believe that this knowledge will help them better reach their own goals.*
2. *The EP is expected to expend considerable energy on rapporteur selection, and all three institutions are expected to take steps to monitor their agents during the negotiation process.*
3. *Negotiators in trilogues will have an interest in making concessions to reach a compromise while keeping their respective institutions informed of negotiation progress to minimize the risk of ratification failure.*
4. *Negotiators in trilogues will simultaneously try to gain as much flexibility as possible in their mandate and to convince their counterparts that their hands are tied.*

4.3 Sociological Institutionalism: Trilogue Norms and Rules

The rational choice perspective outlined above emphasizes gains in efficiency and expectations of better negotiation outcomes as the main reasons for negotiating in trilogues rather than following the formal procedure. This perspective adds to these insights by generating expectations about how repeated exchanges in trilogues have caused them to become a standard operating procedure, an informal institution governed by its own norms and unwritten rules. These are potentially followed without weighing their merits against the formal procedure. Furthermore, theoretical expectations are developed about the interplay between institutional environments within each institution and the culture(s) which govern trilogue negotiations. How can this be compatible with the above? Previous studies provide at least two ways: first, following norms may be rational in the long run, even if not in the short run, given that trilogues are repeated games to some extent (e.g. Warntjen, 2010). Second, '[t]he distinction between homo economicus and homo sociologicus is not, as some constructivism seems to suggest, that the former is strategic and the latter is normative; rather, it is that the strategies of homo sociologicus are always socially embedded' (Jenson & Mérand, 2010). More critically, Lewis (2003) finds traces of both rational considerations and norm-guided behaviour in Coreper, concluding that 'the institutional environmental effects of everyday EU decision making fit neither the constructivist deep socialization view nor the skin-deep, instrumental view associated with hardcore rationalism' (ibid: 122). Put plainly, some authors argue that both types of considerations may coexist. Alternatively, if one allows norms to play a role in the negotiators' strategic calculations, the cost of breaching a norm may outweigh the

potential benefits of doing so. This section first introduces the concept of a *logic of appropriateness* and then offers a theorization of the socialization taking place within each of the three EU institutions, offering expectations about how this may affect perceptions of appropriate behaviour in trilogue negotiations.

Logic of Appropriateness

A core tenet of sociological institutionalism is that institutions not only reflect actors' considerations about *efficiency* but also those of *legitimacy*. The EU is often described as a highly institutionalized setting (e.g. Stone Sweet et al., 2001), and recent studies have examined the *institutionalization* of trilogues. Brandsma, Dionigi, et al. (2021) contend that trilogues, rather than being formed by coercive or normative isomorphism (DiMaggio & Powell, 1983) in the image of the Council, have developed their own norms, which in turn affect negotiation dynamics in the Council. To provide a solid starting point for understanding and generating expectations about the role of norms in negotiations, this section introduces the *logic of appropriateness* as laid out by March & Olsen (1984, 1989, 1998, 2011). They contend that definitions vary slightly across scholarly traditions, but that 'the core intuition is that humans maintain a repertoire of roles and identities, each providing rules of appropriate behaviour in situations for which they are relevant' (March & Olsen, 2011: 479). This is important since in most situations, if an appropriate rule is available, actors 'take the rule as a "fact". They feel no need to "go behind it" and explain or justify action and discuss its likely consequences' (ibid: 482). Moreover, these rules are argued to be important because these 'cognitive scripts, categories and models [...] are indispensable for action, not least because without them the world and the behaviour of others cannot be interpreted' (Hall & Taylor, 1996: 948).

Another important concept is that of institutionalization, which is described by March and Olsen in the following way:

Institutionalization refers to the emergence of institutions and individual behaviours within them. The process involves the development of practices and rules in the context of using them and has earned a variety of labels, including structuration and routinization, which refer to the development of codes of meaning, ways of reasoning, and accounts in the context of acting on them (March & Olsen, 1998: 948).

This definition implies that new institutions may emerge *bottom-up* when practices and rules are repeated over time in performing the same tasks or addressing the same types of problems. It further implies that institutions may contain different practices and rules which are at different stages of institu-

tionalization, i.e. some rules may be ‘taken for granted’ while others are contested. In light of the above and given the fact that trilogues have been a key feature in the EU legislative process for many years now, we may expect that *negotiators take trilogues for granted as the standard procedure for reaching a legislative compromise and do not explicitly consider other options, e.g. following the formal procedure*. Furthermore, we may expect that *trilogues have come to be governed by a body of rules, norms, and standard operating procedures, some recognized by all participants and others contested*.

While some rules and norms are expected to be shared, the question remains of how to clarify the expectation about contested norms. March & Olsen (1989: 22) contend that individuals simultaneously hold multiple roles and identities, which are activated at different times. Therefore, an important behavioural mechanism of sociological institutionalism is the process of interpretation by the individual actor. Depending on how the actor interprets a particular situation, some rules or norms will be activated rather than others. Thus, for this study it will be important to know which rules and norms are prevalent within each of the three EU institutions to form expectations about how these different repertoires might shape different expectations about appropriate behaviour in trilogues. These are elaborated in the following.

Socialization and Role Perceptions in the EU Institutions

There has been much debate in EU scholarship about the degree and nature of socialization of both employees in the EU institutions and national diplomats posted (semi-)permanently in Brussels. This section introduces the concepts of role perceptions and identity as used in EU scholarship. Then, studies dealing with role perceptions, norms, and institutional culture in each of the three institutions are introduced, with the aim of developing theoretical expectations about differences in how negotiators representing the three institutions perceive their own role, influencing how they approach trilogue negotiations. Egeberg (1999: 458) argues that ‘a single individual may have several roles and identities’, which may be evoked in different situations. Identities are taken to mean that ‘the values and goals of a certain group have become *internalized* in that particular person’ (ibid, italics in original), while role perception denotes a more superficial adherence to a given set of values and goals. Some have termed changes in role perception ‘weak socialization’ while changes in identity are termed ‘strong socialization’ (e.g. Beyers, 2005).

Trondal (2001) distinguishes between cognitive and integrative mechanisms of institutional socialization. ‘Cognitive theory perceives “taken-for-grantedness” as resulting from selective exposure towards information, thus unconsciously biasing the search processes conducted by each actor’ (ibid: 6). These mechanisms form the weakest version of the argument, but also the one

that is most plausible to demonstrate empirically. Across the three institutions, negotiators will likely be exposed to different types of information, meaning that their ‘taken-for-granted’ starting points are different going into trilogues. However, this version of the argument also entails that changes in institutional setup and the subsequent change in information flows can quite easily change a person’s role perception. Thus, repeated exposure to trilogues and the procedures, roles, and flows of information present there may be enough to form a separate ‘interinstitutional negotiator’ role perception. On the other hand, integrative mechanisms ascribe more stability to role perceptions and identities. Once formed, they are ‘almost impossible to eradicate’, though ‘intensive and protracted exposure to certain institutions may arguably change the “inner self” of the actor’ (ibid). How (un)malleable these institutional role perceptions are, ultimately remains an empirical question.

Further research by Egeberg et al. (2003) lends some credence to the idea that exposure to different institutional environments invokes different role perceptions. In a study of national officials participating in different EU-level committees, they find that participating in Council committees invokes intergovernmental or geographical role perceptions while attending committees in the Commission more typically evokes functional or supranational role perceptions, i.e. viewing yourself as an expert working for Europe rather than as a national representative. Echoing the argument about multiple embeddedness and weak socialization potential, Beyers (2005: 934) argues that ‘bold claims regarding the transformative effects of European institutions on individual state agents should be viewed sceptically’. With this scepticism in mind, the following sections outline the proposed socialization mechanisms suggested for the three legislative institutions. Generally, the Commission is portrayed as the most supranational institution while the Council is viewed as the most intergovernmental (e.g. Egeberg, 1999). The picture regarding the EP is less clear. On one hand, MEPs are members of European party families and of a multinational parliament, exposing them to many different nationalities and a common European institutional framework, which speaks for supranational socialization. On the other hand, they remain members of their national political party and are elected directly at the national level, which speaks for an intergovernmentalist perspective.

The Council System

Most studies of socialization in the Council of Ministers have focused either on the working party level (attachés) or on Coreper (ambassadors). Juncos & Pomorska (2011: 1110) find that ‘socialization has led to the emergence of an informal code of conduct and a more co-operative style of negotiations’ in the Council’s foreign policy working parties. They find that diplomats’ desire to

follow the rules of the game, thus maintaining credibility in future negotiations, introduces an incentive to deviate from their original mandates (ibid). They argue, however, that this does not indicate a loyalty shift per se. This aligns with findings by Egeberg (1999: 470) that '[b]eing embedded in EU level structures [...] officials tend to develop a sense of allegiance to the supranational level', but that this allegiance does not crowd out national allegiance (see also Beyers & Trondal, 2004). This limited socialization is also found by Beyers (2005: 932), who argues that officials 'adopt role conceptions – norms, rules, expectations, and prescriptions of appropriate behaviour – enabling them to prioritize and respond to particular policy problems and interests'.

These types of norms are also identified by Häge (2013: 51) in his studies of the working parties on agriculture, the environment, and economic and financial affairs. He terms these performance norms and contrasts them with more abstract norms about the value of European integration. Kaniok (2016), based on a study of formal communication at meetings, does not find socialization to take place at the working party level, challenging the conclusions of the other studies. While an interesting dissenting finding, it is worth noting that Kaniok has a rather restrictive definition of socialization, arguing that position-taking during a meeting indicates a lack of socialization into cooperative norms. Furthermore, he only studies *formal* oral communication during working party meetings, which are often described by participants as 'theatre' (e.g. Juncos & Pomorska, 2011: 1105).

On the ambassadorial level, findings indicate that socialization into procedural norms plays a role in shaping negotiations. Lewis (2003, 2005) finds that neither rationalist nor constructivist conceptions of Coreper can adequately account for the observed negotiation behaviour. He argues that particularly the norms of 'persuasion through discourse', 'fairness', plotting to 'change instructions', and 'self-restraint' are prevalent in Council negotiations (Lewis, 2003: 120). He further argues that in Coreper, rather than seeing a sharp distinction between primary (national) and secondary (European) affiliations, there is a 'cognitive blurring of the sharp definitional boundaries between the national and the European' (Lewis, 2005: 967). Thus, Lewis points both to specific norms and calls for integrating rationalist and constructivist conceptions of Council negotiations as they cannot meaningfully be separated in a 'dense normative environment' (Lewis, 2003: 108).

In a similar vein, Michalski & Danielson (2020) study norm adherence in the Council's Political and Security Committee (PSC). They distinguish between procedural norms as 'written and unwritten rules – a code of conduct – that members of the committees are expected to learn as novices and obey throughout their service in the committee' (ibid: 333) and constitutive norms, the 'founding principles of the EU' (ibid). They find no socialization regarding

constitutive norms, but that some socialization into procedural norms – ‘group rules such as credibility, trust and being consistent’ (ibid: 341) – takes place and is perceived as useful as it helps avoid stalemates on contentious and sensitive issues. While studies of socialization at the ministerial level are scarce, Puetter (2014b) has convincingly demonstrated that different working methods are developing in different Council configurations, which might indicate that there is a degree of variation across policy areas both within and across institutions. Overall, most studies find that some degree of socialization takes place within the Council system, at various levels – but that it has its limits. Specifically, there is little evidence of ‘strong socialization’, where supranational norms crowd out intergovernmental perceptions, even within Coreper, which is described as ‘a key laboratory to test whether and how national officials become socialized into a Brussels-based collective culture’ (Lewis, 2005: 937).

The Commission

The members of the European Commission are tasked to ‘promote the general interest of the Union’ (TEU article 17) and to remain independent, in that they may ‘neither seek nor take instructions from any Government or other institution, body, office or entity’ (ibid). At the administrative level, the Commission is composed of around 32,000 staff employed as both temporary and permanent civil servants (European Commission, 2023). Since the Commission is explicitly tasked with promoting the Union’s interests, it is viewed by most as the more supranationally oriented of the three institutions, with some scholars even naming it the engine of European integration (e.g. Hooghe, 1999; Pollack, 2003). This also seems to be a prevalent view in previous studies of socialization in the Commission. In a string of articles, Hooghe (1999, 2005, 2012) argues that the Commission has only a limited socializing effect compared to other factors such as previous employment and nationality. In the 2012 article, she develops three distinct role conceptions held by Commission officials: supranationalists, institutional pragmatists, and state centrists (and a residual category, fence sitters, who do not fit any category neatly). In a survey among commission officials, she finds that just over a third (36.6%) conceive of themselves as supranationalists, just 13.5% are state-centrists, while the remaining half are either institutional pragmatists (28.9%) or fence-sitters (21%). The survey also uncovers considerable variation in the prevalence of these conceptions between officials from different member states, with UK officials being the most state-centrist and Belgian ones being the most supranationalist (Hooghe, 2012: 98).

Studying supranational orientations on ‘controversial issues’, Ellinas & Suleiman (2011) find that top Commission officials hold remarkably similar

pro-integration views across nationality and organizational background, leading the authors to predict that the Commission will continue to fulfil its integrative role. While these findings show clearly that the top Commission officials are mostly supranationally oriented, they do not unpack whether this orientation stems from self-selection into the Commission or socialization once they are employed. Suvarierol et al. (2013), however, focus explicitly on the mechanisms of socialization in the Commission and the European agencies. They argue that trends towards more flexible and temporary career arrangements have decreased the potential for the development of supranational attitudes in the Commission, both via ‘pre-socialization’ and because there are fewer lifelong Commission ‘eurocrats’. This notion is supported by Kassim (2013a), who finds that a high proportion of high-ranking Commission officials are recruited from outside the organization. Interestingly, he adds that about half of the Commission staff have switched jobs between different Directorats-General. In a different study, Kassim (2013b) finds that informal networks are important to the work of Commission officials, and that these networks are most often based on personal ties and/or shared nationality between officials.

Finally, as introduced in Chapter 3, Panning (2021) has studied the intra-institutional coordination processes of the Commission, particularly the Groupe des Relations Interinstitutionnelles (GRI). She finds that these inter-DG fora are important in securing cohesion, and that the fact that they have fixed membership, facilitates ‘that a mutual basis of trust is established’ (ibid: 45). To summarize, existing studies have identified some degree of supranational attitudes in Commission officials, but it is unclear whether these exist mainly because of socialization or self-selection. For the present study, however, the mechanism leading to supranational attitudes is less important; it matters more that they are present and can be expected to shape the role perception of Commission officials in trilogues.

The European Parliament

There has been continuous scholarly interest in the potential of international socialization to affect views on European integration among its elected parliamentarians. An early example, Kerr (1973), finds that exposure to international decisions in the EEC brings about ‘cognitive, but not affective, changes’ in MEPs’ evaluation of European matters – meaning that they develop more nuanced, but not more pro-integration views. Studying the difference in attitudes towards Europe between national and European parliamentarians, Franklin & Scarrow (1999: 58) find only minor differences, arguing that the EU thus exercises a ‘rapid, though gentle, socializing effect on new members’. Arguing in the same vein, Scully (2005) finds that socialization effects are

limited, that MEPs remain first and foremost national politicians, and that constructivist EU studies generally overstate the constitutive role of institutions and ignore the agency of political actors. Coming from a principal-agent perspective, Hix (2002b) demonstrates that when preferences diverge between an MEP's national party and their European party group, they tend to vote with the former. This indicates that, at minimum, MEPs are not euro-socialized to a degree where they cease to function as national party representatives.

More recently, Cheysson & Fraccaroli (2019) conducted a principal component analysis demonstrating that the pro- versus anti-EU dimension has come to explain a higher proportion of votes than the left-right political dimension. While not specifically focusing on socialization, and though these factors only explain a bit less than half the variation, it is worth noting that salient cleavages can vary over time. Beauvallet & Michon (2010: 161) have found that the EP does constitute a socialization environment, as members 'develop their knowledge and skills there, their beliefs, legitimate ways of operating'. Finally, Egeberg et al. (2014) explore the everyday interactions between the European Parliament and the Commission. They argue that 'the EP features a blend of complementary behavioural patterns – a sectoral, an ideological (party-political) and a supranational pattern', and that these patterns are mirrored in the Commission (the ideological only explicitly so at the college level). They find that this overlap in behavioural and organizational patterns facilitates everyday interactions between the institutions. Taken together, a soft socialization argument can be made; MEPs learn the specific 'ropes' of European parliamentary work, but it does not fundamentally alter their self-image as nationally elected politicians working in a field of political negotiations. In handling their role in negotiations, MEPs balance different roles, among them the sectoral, ideological, supranational, *and* national role perceptions.

Trilogues and Socialization: Clash of Cultures?

The previous sections detailing the limited socialization potential within the three EU institutions could lead to the expectation that the same would hold for trilogues. If each negotiator holds several role perceptions and can evoke different ones according to the situation she faces, it is plausible both that trilogues evoke similar role perceptions for all negotiators and that they evoke *different* role perceptions. The following section reintroduces the main articles on trilogue culture and uses them to identify norms in trilogue negotiations, followed by theoretical expectations about the conditions under which negotiators draw on role perceptions from their own institutions and from trilogues, respectively.

Roederer-Rynning & Greenwood (2015) argue that trilogues have become institutionalized and that there is an inherent tension between the Council's traditional diplomatic and opaque negotiation style on the one hand and the EP's function as a 'normal' and transparent parliament on the other. They find that '[d]ifferent layers of interinstitutional interactions reflect continuing tensions between democratic and diplomatic conceptions of institutional design that have developed within and across the Council and Parliament' (ibid: 1161). In a later article, they call the negotiation culture in trilogues 'politicized diplomacy', meaning 'a hybrid and unstable fusion between an intergovernmental paradigm [...] and a parliamentary paradigm' (Roederer-Rynning & Greenwood, 2021: 501). Here, they further argue that the main commonality between the EP and Council conception of what trilogues should be is the 'space to think', meaning that a certain degree of opacity is required to be able to reach compromises. Similarly, Hoppe (2020) finds that there is potential for weak socialization in trilogues, and that social interactions between negotiators affect choice of both negotiation venue and mode. A final article in this strand is by Brandsma, Dionigi, et al. (2021), who start from the notion that trilogues are different from Council negotiations, finding that they have changed the EU negotiation landscape to such a degree that intra-institutional negotiations in the Council are now different as a result of the proliferation of trilogues – the diplomatic culture has been disrupted.

While illuminating, these studies leave open two questions that I will explore: first, the role of the Commission in shaping these negotiations is not explored, although other studies have shown that a rather elaborate practice of trilogue preparation has developed in the Commission (e.g. Panning, 2021). To address this, I include the perspectives of all three institutions to empirically assess whether there are differences in how they perceive their own role and that of the other institutions, or if there is indeed *a culture* (singular) of trilogues. Second, these studies specifically focus mainly on political trilogue meetings, dedicating less focus to how the application of different standards of appropriate behaviour by different negotiators may also shape interactions at the technical level and in informal meetings.

The existence of different bodies of norms and (weak) socialization effects in each of the three institutions *and* in trilogues leads to the following two theoretical expectations: first, *when evaluating behaviour in trilogues, negotiators draw on experiences from negotiations within their own institutions. Thus, negotiators from different institutions and job positions will have different perceptions of what is appropriate behaviour in trilogues.* Second, *exposure to trilogues is expected to be more intensive but less prolonged than exposure to the actors' own institutions. Thus, shared 'trilogue norms' are*

expected to become more salient over the course of the legislative work on a policy file.

Summary

This section has introduced a sociological institutionalist view on trilogues. This entails viewing trilogues as a collection of norms and rules which negotiators adhere to not because of any calculation regarding the expected outcomes of doing so, but because they view it as the *appropriate* thing to do. This perspective leaves open the possibility that institutions develop organically and over time, and that some norms may be shared by all participants while others are contested. Three theoretical expectations were formulated in this section:

1. *Negotiators take trilogues for granted as the procedure for reaching a legislative compromise and do not explicitly consider other options, e.g. following the formal procedure.*
2. *Trilogues have come to be governed by a body of rules, norms, and standard operating procedures, some recognized by all participants and others contested.*
3. *When evaluating behaviour in trilogues, negotiators draw on experiences from negotiations within their own institutions. Thus, negotiators from different institutions and job positions will have different perceptions of what is appropriate behaviour in trilogues.*
4. *Exposure to trilogues is expected to be more intensive but less prolonged than exposure to the actors' own institutions. Thus, shared 'trilogue norms' are expected to become more salient over the course of the legislative work on a policy file.*

4.4 Trilogues as Diplomatic Practice

[N]ew generations of EU researchers are fascinated by the prospect of leaving the armchair and exploring the EU from the point of view of the people actually producing it' (Adler-Nissen, 2016: 87-88).

While the above quote is provocative, and perhaps unfair to those who have already left the armchair to conduct thorough qualitative work on aspects of EU politics other than diplomatic practice, it does reflect my primary goal when starting this project: to understand trilogues from the point of view of the negotiators. I expect that viewing trilogues through a diplomatic practice lens will prove fruitful as previous authors have argued for both negotiation and communication, two central concepts in this dissertation, as the 'the basic activity of diplomacy' (Pouliot & Cornut, 2015: 299). By introducing this

theoretical perspective, I explicitly focus on everyday interactions and their role in ‘producing’ trilogues.

This will help answer questions such as: how do negotiations happen in practice? What role do everyday interactions play in constructing, displaying, and institutionalizing trilogues as a diplomatic practice? This proceeds in three parts. First, it presents a definition of a practice and argues why these are a useful unit of analysis. Second, theoretical links between practices and institutions via institutionalization are formulated. Third, existing studies of EU politics using a practice lens are used to derive theoretical expectations about which practices might exist in trilogue negotiations, and their role in the negotiation process.

Practice and Interpretation

Practice theory falls firmly on the interpretive side of political science, meaning that it ‘focuses on the meanings that shape actions and institutions, and the ways in which they do so’ (Bevir & Rhodes, 2015: 3). This foregrounding of meanings is central to understanding what sets interpretivist and positivist epistemologies apart (the epistemological stance of this dissertation is elaborated in Chapter 5). It also means, however, that interpretive studies necessarily start at the micro level, with the individual’s interpretation of a given situation. This focus on behaviours is an important feature which sets it apart from the sociological institutionalist perspective introduced above. Practices emerge when you leave the micro level and start focusing on interactions between individuals. Bevir and Rhodes define practice as ‘a set of actions, perhaps a set of actions that exhibit a pattern, even a pattern that remains relatively stable across time’ (ibid: 15). This definition is rather minimal, even taken at its most binding meaning as a relatively stable pattern of actions. Recall the above definition of an informal institution as ‘socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels’ (Helmke & Levitsky, 2004: 727). This definition implies more constraints on the actors, whereas the agency of actors as constitutive of practices (and institutions) is central to practice theory in Bevir and Rhodes’ conception¹¹. Thus, it is relevant to ask how practices and institutions interact. Pouliot offers the following explanation, specifically focusing on multilateral practices:

¹¹ Bevir and Rhodes take a very combative stance towards positivism and institutionalism. This work takes a pragmatist interpretivist approach (Ansell, 2015), which will be elaborated in Chapter 5.

Once enacted, multilateral practices create changing baselines that structure debate and strategy in the unfolding of history. Rather than starting from scratch at every step of the way, then, practitioners follow established ways of doing things. Of course, this practical baseline does not preclude deviation, improvisation and calculation, although it does define their scope. Over time, ways of doing things entrench themselves in various social processes, including organization (Pouliot, 2016: 29).

In this conception, practices and institutions are mutually constitutive. Existing institutions guide behaviour in new contexts while emergent practices continuously shape interactions, potentially becoming a new informal institution. Three additional elements are important to note. First, the starting point is practices, which is in line with the practice-theoretical recommendation for empirical research (Pouliot & Cornut, 2015). Second, practices are seen as defining the scope of behaviour, but within this *practice-defined scope*, there is still room for calculation (consequentialist) behaviour and for some degrees of deviation, meaning that practices may be subject to ongoing contestation. Third, the merit of including practice theory in addition to sociological institutionalism lays in the fact that while the latter focuses primarily on norms and perceptions and their role in shaping behaviour, the call to ‘start with practices’ means that practice theoretical accounts focus specifically on behavioural aspects, in this case of trilogue negotiations.

The next section forms expectations about specific practices which may be found in trilogue negotiations, though this is done with caution for two reasons. First, existing studies of practices in an EU context are based on either slightly different types of negotiations or on negotiations within specific policy fields. There may be important differences across policy areas, even within the umbrella of trilogues. Second, forming overly rigid expectations about practices runs the risk of ‘only seeing what you are looking for’ (Eggeling, 2021).

Trilogue Practices

While automatically decoded by those who master them, specific practices can seem illogical to the uninitiated, often being described as “underhand,” “silent,” or “gestural” (Pouliot, 2016: 6). We have very limited knowledge of practices specific to trilogues, but some efforts have been made by scholars to uncover and describe different practices and their meaning in EU diplomacy. Kuus (2015), in a study of EU external relations, finds that mastery of languages as well as the social dress codes traditionally affiliated with Western elite universities are important sources of symbolic power: ‘every time you go into a [high-level] meeting, you can tell the country [of the participants] by the clothing’ (interview quote in *ibid*: 376). The effect of an elite education is not only deemed important in terms of concrete skills, but by a subtle sense (in

self and others) that that person *belongs* and is at ease in an elite setting. Kuus terms this *presence* (ibid: 377). Though derived from another type of EU-level negotiations, these dynamics could plausibly apply in trilogues as well. Thus, attention will be devoted to explicit evaluations of other negotiators' background and language competences when engaging with the empirical material.

Another important practice is identified by Versloot (2022: 515), who argues for viewing 'practices of information-sharing as likely enactments of trust – as opportunities to analyse the vitality of trusting relations'. Sharing sensitive information can serve the dual purpose of demonstrating that you trust the party to whom you are divulging information and simultaneously 'test' whether the recipient is trustworthy. Versloot finds that, according to her interviewees, 'their "real" work is informal' (ibid: 519), but also that it quickly 'becomes clear that informal work is characterized by notable differences in formality' (ibid). Sometimes the meetings are in larger groups and explicitly focused on discussing a draft or preparing a compromise for the next meeting, while at other times coffee meetings can be bi- or trilateral and centred more on exchanging news and/or gossip (ibid). While these observations are empirically based on diplomats in the Council specifically, it is expected that similar practices will be observed in trilogue negotiations.

The only study, to my knowledge, which deals with practices in trilogues specifically is by Roederer-Rynning & Greenwood (2021). They report findings similar to Versloot, identifying an 'open-door policy and information exchange' (ibid: 499), which comes to expression in different 'patterns of disclosure' (ibid), four of which can be described as negotiation practices. The first three are similar, though with different goals: *expertise sharing* involves providing information to others about the technical aspects of the legislation, *intelligence gathering* aims at procuring information about the political landscape, including the positions of other actors and potential emerging coalitions, while *inter- and intra-institutional lobbying* aims at building coalitions with others, whether within one's own institution, in the other institutions, or with external stakeholders. The fourth practice identified is *politicization*, which they define as leaking trilogue content to the broader public, either directly to the media or indirectly via NGOs (ibid: 499-500).

In addition to these disclosure patterns, they identify a shared, though not uncontested, preference for closed-door negotiations that offer a *space to think*. While this is not a practice per se, it is relevant to discuss here as it may provide some insights into the practices used to *create* this space to think. The authors find that while arriving at the same conclusion, negotiators from the EP and the Council offer different explanations for the necessity of this practice. EP negotiators argue that increasing transparency also increases the

scope for lobbying, and that releasing process documents will only show a snapshot of the negotiation process which may seem unbalanced and thus unduly influence further compromise-building steps in a complex negotiation. The Council, on the other hand, argues primarily that transparency increases grandstanding by negotiators and skews influence in favour of powerful stakeholders (ibid). The table below summarizes the practices identified by previous studies:

Table 4.1: Expected Trilogue Practices

Practice and Source	Purpose
Mastery of diplomatic ‘style’ (Kuus, 2015)	Display that you ‘belong’ in an ‘elite environment’, and by extension in trilogue negotiations
Language competences (ibid)	Concrete: mastery of English an advantage when drafting Diffuse: build ethos in a similar sense to the above
Information sharing (Versloot, 2022)	Enact trust and analyse the vitality of a trusting relation
Expertise sharing (Roederer-Rynning & Greenwood, 2021)	Convince others of the <i>factual</i> merits of your position
Intelligence gathering (ibid)	Discover the positions of others to better be able to navigate negotiations and gain influence
Inter- and intra-institutional lobbying (ibid)	Convince others of the <i>political</i> merits of your position, to build coalitions
Politicization (ibid)	Leverage public opinion to force others towards your position

While this is, of course, not an exhaustive list of practices relating to trilogues, the above offers a starting point for what I should pay attention to during fieldwork and in the subsequent analysis of the empirical material. Based on the entire section on diplomatic practice theory, the following three general theoretical expectations are presented:

1. *A body of everyday practices exists in trilogue negotiations, and negotiators follow these scripts to display mastery of the process.*
2. *A practice exists of informally sharing knowledge of one’s own and others’ positions, working as a mutual trust-building exercise between negotiators.*

3. *Failing to demonstrate mastery of negotiation practices may result in a negotiator being sidelined when negotiations are about to be finalized.*

4.5 Summary

This chapter has introduced the dissertations theoretical toolbox with. First, a conceptualization of (in)formality was presented, arguing that we need to go beyond formal rules to gauge the formality of institutions and communication situations. Subsequently, three different theoretical lenses were presented, which will be employed throughout the empirical chapters to make sense of negotiators' behaviour in and understandings of trilogues. The first lens is based on rational-choice theory and conceives of trilogues as a system which both contains principal-agent relations, and which may be characterized as a two-level game. The second lens is based on sociological institutionalism and inquired into the role of norms in trilogue institutions, specifically theorizing that differences in the role perceptions of negotiators from the three institutions shape their behaviour in and evaluations of trilogue negotiations. The third lens, diplomatic practice theory, started from the micro level of everyday interactions to generate expectations about the practices which might be expected to govern trilogues and how these could in turn help constitute trilogues as an institution.

The goal of this dissertation is not to provide a be-all-end-all explanation of what drives outcomes in trilogues, but rather to unpack *how* they are conducted: which considerations negotiators take when preparing for meetings, which strategies they employ during meetings, and which standards they use in evaluating their counterparts' actions and performance. It is possible that negotiators draw on several considerations both simultaneously and at different points in the legislative process, and that these may be explained by any or all of the three perspectives included here, or indeed by others not included in this theoretical framework. The closing line of this chapter points back to Tavory and Timmermans but also forward in the dissertation by reiterating that 'abductive analysis constitutes a qualitative data analysis approach aimed at theory construction' (Timmermans & Tavory, 2012: 169). To this end, the empirical analysis will contain an ongoing dialogue between the theoretical expectations out-lined above and the data, which will be discussed in the concluding chapters of the dissertation.

Chapter 5. Methodology

In this chapter, I present the dissertation's methodological framework and research design, as well as a discussion of the various methodological considerations which have guided the process. This is done in six parts. First, I introduce the methodological underpinnings, and the logic of inquiry used in this dissertation. Second, the quality criteria applied to this study are presented. Third, the research design and thoughts about case selection are outlined. Fourth, I present the different types of data generation processes as well as considerations regarding positionality and ethically conducting research on ongoing political negotiations. Fifth, I describe the data processing procedures and the concrete steps taken to ensure trustworthiness and robustness of the analyses. The final section summarizes the chapter.

5.1 Methodology and Logic of Inquiry

The central goal of this dissertation is to further our knowledge about how trilogues are conducted in practice, what role informality plays in these negotiation processes, and how negotiators perceive their own roles as negotiators. To this end, we must know at least two things. First, we must know which actors interact over the course of an EU legislative process, *how* they do it, and *why* they do it. This applies both horizontally between institutions at the same hierarchical level, and vertically between levels within the same institution. Second, to understand why the different negotiators conduct negotiations in the ways that they do, we must know how they understand their own role and that of others.

As noted in Chapter 1, these two aims are qualitatively different in that one seeks to answer a descriptive question of what negotiators *do*, while the other is interpretive as it aims at understanding how they *perceive* their own roles in negotiations. The former can be argued to constitute a study of an objective reality. For instance, a trilogue meeting either takes place or it does not, and if an outcome document is produced, it will have specific wording. These questions, however, are always followed by the second set of social-constructivist ones: what did the participants make of the meetings and their own role in them, and do they have the same impression of what the words in the outcome document mean? To answer these types of questions, it is necessary to foreground their interpretations as important units of analysis. Thus, the overall epistemological stance of this dissertation is interpretivist (Yanow & Schwartz-Shea, 2015) in the sense that it acknowledges the existence of a

shared ‘objective reality’ while maintaining that the *perception* of this reality is socially constructed, with important implications for how negotiators make sense of and navigate their jobs. Furthermore, the focus on socially shared norms and practices entails a focus on *intersubjective* understandings of these. Epistemological considerations aside, both types of questions are answered using the same empirical material: I employ a two-pronged strategy, combining semi-structured interviews with participants in trilogues from the three EU institutions at both the technical and political levels with ethnographic fieldwork in the European Parliament in both Strasbourg and Brussels.

This thesis employs an abductive logic of inquiry, as noted in Chapter 4. While both inductive (the specific to the abstract) and deductive (the abstract to the specific) approaches ideal-typically follow a linear research process, abduction takes place in an iterative back-and-forth between theory and empirics (e.g. Dubois & Gadde, 2002; Tavory & Timmermans, 2014). This choice was made to strike a balance between two facts. On the one hand, a large literature on (international) negotiations, socialization, and diplomacy exists and should be reflected in the empirical work. On the other hand, we have limited knowledge of how trilogues are carried out in practice and how negotiators perceive their own roles in this system. The practical steps of working abductively are detailed in the section on research design in this chapter. The abductive logic will also be present in the following chapters, as the analyses themselves are also iterations in this process in which the final theoretical contributions will be developed.

5.2 Research Quality Criteria

This section outlines the quality criteria to which this dissertation aims to adhere. While the dissertation is an interpretivist piece, it also examines how trilogues are conducted, and which types of informal meetings take place over the course of a trilogue process. It is not to be viewed as a separation of objective reality from social processes, but rather an integration of the two with an objective reality. For this reason, I have chosen to rely mainly on Maxwell’s (1992; 2012) critical realist research criteria, as he argues that validity ‘pertains to the accounts or conclusions reached by using a particular method in a particular context for a particular purpose, not to the method itself’ (Maxwell, 2012: 130). Thus, the same set of criteria can be applied to the analyses of both the descriptive and the interpretivist parts of the research.

Maxwell defines three types of validity which are particularly relevant for this study: *descriptive*, *interpretive*, and *theoretical* validity. Descriptive validity concerns the factual accuracy of the account; i.e. that researchers ‘are not making up or distorting the things they saw and heard’ (Maxwell, 1992:

285). This concept is further distinguished into two parts: primary and secondary descriptive validity. Primary descriptive validity concerns ‘what the researcher reports on having seen or heard (or touched, smelled, and so on)’ (ibid: 135), while secondary descriptive validity pertains to ‘accounts of things that could in principle be observed, but which were in fact inferred from other data’ (ibid). For instance, I could be present at a meeting and observe that it lasted until two in the morning, or I could infer this from an interview response. In the former case, descriptive validity concerns my reporting it accurately, while in the latter it *also* concerns whether the interviewee in question reports it accurately. Both types of descriptive validity thus refer to ‘physical and behavioural events which are in principle observable’ (ibid), regardless of the subject’s position or interpretations.

The second type of validity, interpretive validity, concerns what ‘objects, events, and behaviours *mean* to the people engaged in and with them’ (ibid: 137). A central difference between descriptive and interpretive validity is that the latter is not observable, even in principle, as it deals with participants’ interpretations of phenomena, actions, relations, etc. As interpretation is based primarily on accounts, Maxwell argues that ‘it is essential not to treat these latter accounts as incorrigible’ (ibid: 139), as participants may misremember or intentionally misrepresent their own role. The steps taken to ensure interpretive validity are discussed in the section on my positionality as well as those on data generation and processing.

The third type of validity is theoretical validity, which is described as ‘an account’s validity as a *theory* of some phenomenon’ (ibid: 140). Maxwell suggests that theories consist of two components, each with its own form of theoretical validity. The first component involves categories or concepts, where theoretical validity pertains to how these categories or concepts are applied to empirical phenomena. The second component concerns the proposed relationship between these concepts, with theoretical validity in this context relating to the asserted connection between the categories or concepts (ibid). For instance, were I to claim that negotiators postponing a point for further discussion was an example of ‘depoliticization’, I would be applying a theoretical concept to a practice which has been described in the data and interpreted by the research participants. Were I instead to connect this theoretical concept to other parts of the negotiation process, for instance to the principal-agent relationship between political-level negotiators and their employees, I would be postulating a relation between theoretical concepts.

Apart from the different types of validity, Maxwell also considers two different types of generalizability, namely *internal* and *external* (ibid: 143). Internal generalizability refers to the transferability of results *within* the studied context, while external generalizability refers to the potential for ‘generalizing

to other settings, groups, or institutions' (ibid). The goal of this study is first and foremost internal generalization to trilogue negotiations as such. Since I could not interview every negotiator or participate in trilogues on every policy area, this study (like any empirical study) will reflect what Clifford (1986) calls a 'partial truth'. Thus, it is important to be aware of and discuss which findings are expected to generalize across trilogue negotiations, and which findings are particular to the participants interviewed and meetings observed. Though external generalizability is not an explicit goal, there will be a discussion of which other contexts these findings may travel to in Chapter 14.

In addition to accurate descriptions of interviewee statements and observations, further steps will be taken to ensure the *credibility* of the findings (Schwartz-Shea, 2014). First, the following section details the research design to enhance the *transparency* of the process. Second, the section on positionality aims to demonstrate *reflexivity* about my own position vis-à-vis the field and its participants (ibid: 132). Third, the analyses will employ *thick descriptions* (ibid: 132, Geertz, 1973), including enough details to capture relevant nuances and meanings which emerge in the data, thereby enhancing interpretive and descriptive validity. Finally, I wish to note that the above quality criteria cannot be a 'checklist' which can be completed in the design phase. Rather, the purpose is to use the quality criteria as guidelines for the work with data collection, processing, *and* analysis as it is presented both in this chapter and throughout the empirical analyses.

5.3 Research Design

This section covers the research design of the study. It begins with reflections about what working within an abductive logic of enquiry entails, methods-wise, and how the PhD project came to revolve around trilogues. This is followed by further details about the case selection of trilogues and the idea of ongoing 'casing' of trilogues (Soss, 2018). Then comes an overview of the different data sources and data generation processes. Throughout the section, I will explain how each choice is expected to help answer the research question. Overall, the research design's primary goal is to examine trilogues as a phenomenon, with semi-structured interviews and participant observation as the main data generation processes.

Abduction in the Research Design

As argued in the previous chapter, one strength of working abductively is that it entails transparency about the researcher's theoretical preconceptions, or 'cultivated position' (Collins & Stockton, 2018). However, a cultivated position depends not only on *theoretical* preconceptions, but also the experiences of

the researcher more generally. At a fundamental level, the abductive movements for this research project started before I even became a PhD student. The first step was taken in 2019 when I was an intern at the Danish Permanent Representation to the EU:

Box 5.1: ‘Everything Happens Informally’

I was sitting at my desk, preparing for a Council Working Party meeting, as my supervisor, an experienced attaché, came over and handed me a print-out of the organisational chart of the Commission’s Directorate-General for Development Cooperation. He told me to learn all the names of the high-ranking officials and those who were relevant for the files we were working on. He then added that ‘in Brussels, it matters who you know. And everything happens informally’. At a later occasion, he proudly showed me a binder he kept next to his desk, which was full of the business cards of people he had worked with over the years. His adherence to this principle of informality was confirmed as I noticed that he would spend a substantial part of his workday on the phone with colleagues in Copenhagen, at coffee with other attachés, or exchanging remarks at the margins of meetings.

Similar informal practices were reported by interviewees in my master’s thesis (Egendal, 2021), and this spurred my interest in a deeper understanding of the role of (in)formality in EU negotiations. This prompted me to think about how to isolate the effect of informal communication in EU negotiations, and I began my PhD with an attempt to leverage the closures imposed during the Covid-19 lockdowns to this end. Realizing that this endeavour was faced with severe data limitations and that there was a lack of clarity about the concept of informality in EU negotiations, I opted for the qualitative, interpretivist approach which is presented in this thesis. These realizations also caused me to gravitate towards focusing on trilogues as a phenomenon, both because they are so widely used in the EU legislative process and because they form a promising case for studying different perceptions of (in)formality and its role in EU legislative politics.

The next abductive movement was to write a draft theoretical framework which was presented at several workshops, and which subsequently served as the basis for the interview topic guide (Appendix B). This topic guide was brought to Brussels in July 2023 for a first round of interviews, which led to only minor revisions of the topic guide. This was followed by the main period of data generation, which took place from September 2023 to February 2024. More details on this are presented in the following, but in the context of abduction, it is important to note that the fieldwork coincided with a research stay at UCLouvain (approximately 30km from Brussels), which enabled me to repeatedly move between the ‘field’ and the ‘desk’ as well as between the

empirical and the theoretical spheres. This approach allowed me to leverage an ongoing interaction between data and theory, deepening my understanding of the trilogue process and sharpening my potential contributions. The abductive steps taken in data processing and writing up the thesis, while equally important, are described later in this chapter.

Trilogues as a Case, or Casing Trilogues

One of the first questions facing any (political) scientist working on a case is what it is *a case of*. Preferably, the researcher will have set out some criteria in advance and thus be able to argue that the selected case lives up to these criteria and can teach us valuable lessons about the theoretical phenomenon of interest. In one sense, this is what happened in this project. Initially, I was interested in studying the role of informal communication in EU legislative negotiations, and I found trilogues to be a relevant case because they are just that – informal negotiations between the EU institutions ahead of formal approval. As such, the primary aim is to produce a thorough analysis of trilogues as a phenomenon. A rather common way to conceptualize trilogues is as a case of bicameral negotiations (e.g. Costello & Thomson, 2011; Rasmussen, 2011; Roederer-Rynning, 2019). This casing has the apparent advantage of increasing the scope of the study to other bicameral legislatures, thus opening for studies leveraging comparison. This will be discussed in Chapter 14.

Inspired by Soss’ ‘nominal view’ of case studies, this dissertation includes the perspective that “‘casing” is an ongoing research activity’ (Soss, 2018: 23). In line with an abductive logic of enquiry, this entails continuously asking the question ‘What can be learned by treating this phenomenon as a case of X?’ (ibid). In practice, this means that different ways of casing trilogues will be introduced and discussed over the course of the analyses, either as an analytic tool by the researcher, or because they are introduced directly by research participants. For instance, if an interviewee introduces the notion that trilogue meetings are to be viewed more as a performance than as substantial negotiations, it would be relevant to ask both why they believe that and what we could learn by treating trilogues as such.

Overview of Data Sources

The primary data sources for this thesis are transcribed interviews and field notes based on participant observation. In total, 62 interviews with politicians, officials, and diplomats who have all participated in trilogues on a number of different files were conducted between July 2023 and April 2024. In the same period, extensive ethnographic fieldwork was carried out, primarily within the European Parliament in Brussels and Strasbourg, including observation of three different trilogue meetings and various internal meetings in the EP

preparing for trilogues. In addition to these two data sources, the analyses sometimes include pictures taken during fieldwork as well as references to websites, news articles, and social media posts by various participants and commentators regarding trilogues. This material was mostly collected simultaneously with the primary data generation, and its principal use will be to illustrate points already made with reference to the primary data material. The table below summarizes the data sources and their role(s) in the analyses:

Table 5.1: Overview of Data Sources

Data generation process	Data output	Role in analysis
Interviews	Interview transcripts and/or interview reports	Knowledge of different steps in the trilogue process as well as interviewees' reflections on own roles and practices herein.
Ethnographic fieldwork	Field notes	Direct observation of different trilogue practices as well as informal chats with different participants.
Supplementary material	Policy documents, pictures, news articles, social media.	Illustrate points related to insights from the primary data sources.

As the analyses in this dissertation are structured according to an idealized chronological trilogue process, the different data sources will be used complementarily throughout. Whenever possible, two or more sources will be used to corroborate points regarding the conduct of meetings, enhancing validity via methodological triangulation (Campbell et al., 2018). When dealing with questions of interviewees' own interpretations, these will not be assessed as truth claims, but rather compared with and discussed in relation to other interpretations present in the data.

5.4 Data Generation

This section describes the data generation processes carried out for this dissertation. I use the term *data generation process* rather than *data collection* to emphasize that the data for this dissertation was not collected, but rather socially constructed in the interaction between the participants and me as a researcher in both interviews and in the different meetings I observed. Kvale & Brinkmann (2018: 77-78) describe this view as the interviewer being either a miner digging for knowledge that lies in the ground waiting to be uncovered or a traveller who goes into the world and constructs knowledge along with

the people they meet along the way. As mentioned earlier, this dissertation does a bit of both, uncovering both concrete trilogue practices and participants' interpretation of these. To ensure transparency about these 'travels', the following lays out in detail the steps taken with regard to both selection and contact of potential interviewees, conduct of interviews, and selection of potential research sites and the steps taken to establish and keep access.

Interviewees – Contact and Conduct

In this study, I chose to study trilogues as a phenomenon rather than as a case of something or via case studies of one or more specific legislative processes. Thus, the guiding principle for selection of interviewees was not to identify key actors on specific files but rather to identify key actors *across* policy areas who work with trilogues from as many different perspectives as possible. This section details the steps taken to identify potential interviewees and establish contact, and how the interviews were conducted once contact had been established.

Contact

The first step was to draw up lists of potentially relevant actors within each institution at the political level. For the European Parliament, every MEP is potentially relevant since over the course of an electoral cycle most MEPs will have had the opportunity to be either rapporteur or shadow rapporteur (or both) on one or more files. I started by contacting the offices of each Danish MEP, hoping that our shared national background would increase my likelihood of success, and that these initial contacts would enable me to snowball (Parker et al., 2019) into interviews with MEPs and employees of other nationalities. Subsequently, I contacted the offices of the chairs in the most legislation-heavy committees¹² and the offices of MEPs who had recently posted about trilogue negotiations on either Twitter or LinkedIn. Finally, I contacted the secretariats of each of the above-mentioned committees to include the perspective of non-politically affiliated EP staff. This process yielded four interviews with MEPs and an additional 24 interviews with different types of staff in the EP.

For the Council, I chose to focus on the past six presidencies. In reverse chronological order, these were Spain, Sweden, Czechia, France, Slovenia, and Portugal. This number was reached to balance two concerns. On one hand, including more countries increases the pool of potential participants,

¹² According to figures published by the European Parliament, the Committees ENVI, ECON, LIBE, and TRAN had the highest number of legislative proposals (European Parliament, 2024a).

increases variation in the sample, and increases the credibility of anonymization of the participants. On the other hand, given that diplomats tend to move around, restricting the time period to the last three years increases the likelihood that the relevant employees would still be in Brussels and would still have their Presidency experiences somewhat fresh in memory. Initial contact was made to their main e-mail addresses, requesting an interview with either the Permanent Representative or their deputy. Direct contacts were subsequently made directly to their interinstitutional affairs unit and to attachés working in policy areas I had been able to identify as having had trilogue negotiations during their presidency. As the interviewee selection specifically focuses on recent presidencies, it is worth noting that the perspective of non-presidency member states trying to influence the Presidency and hold them accountable is present to a smaller degree, though some interviewees did reflect on that. Finally, I contacted different policy-specific and coordinating units in the Secretariat-General of the Council. This yielded a total of 17 interviews, two with ambassadors and the remaining with attachés and officials.

For the Commission, the first step was to contact the cabinets of all commissioners which I had been able to confirm had participated in trilogues. Unfortunately, no Commissioners responded positively to my request (figure 5.1 shows an example response), but many cabinets were helpful, either agreeing to an interview with a member of cabinet or putting me in touch with relevant officials from the responsible Directorats-General. In addition to this, I made a great effort to identify lower-ranking officials to contact directly because I had a suspicion that there might be some institutional politics involved in recruitment for these interviews, especially when the request came from the cabinet. This was apparent when one interviewee denied an interview request, citing that she had ‘heard that I had already spoken to [name] in her unit’,¹³ and when another agreed to be interviewed only if it was ‘anonymous, off the record, and without quotes’ (interview 48).¹⁴ These efforts yielded 16 interviewees: three from the Commission’s Secretariat-General, seven members of cabinet, and six officials from different Directorats-General.

¹³ E-mail from Commission official.

¹⁴ Once we sat down for the interview, he agreed that I could in fact quote as long as it was anonymous and not recorded.

Figure 5.1: Rejection E-mail from the Commission

Dear Mr Burchardt Egendal,

Many thanks for your email.

We regret that, due to an extremely busy institutional agenda and in spite of our best efforts, Commissioner Sinkevičius will not be able to accept your interview request in the coming months.

Therefore, Commissioner Sinkevičius has asked me to apologize and to wish you all the best for your research on his behalf.

Please be informed that I shared your message with DG Environment who will follow-up with you directly.

Thank you for your understanding and wishing you all the best.

Kind regards,

A black rectangular box redacting the signature of the Commissioner.

Cabinet of Commissioner Virginijus SINKEVIČIUS

All interviewees received the same introductory e-mail with slight variations suited to their position and to the specific cases they had been working on. The e-mail along with the one-page project description which each interviewee received can be found in Appendices C and D, respectively. As I quite often did not initially receive responses to my e-mails, I generally sent a follow-up e-mail after two weeks and another one after a month. If I still had not heard anything, I would call the relevant office a few times, and if that was also unsuccessful, I would move on. Occasionally, I would receive replies after several months, sometimes indicating willingness to participate ‘if it was still relevant’. Thus, the last interviews took place in April 2024, two months after I had left Brussels. Finally, it is worth noting that these were the steps taken to *systematically* approach potential interviewees identified in advance as relevant. In addition to this, several interviewees were recruited in more serendipitous ways. One example of this is recorded in the following field note excerpt:

Field Note Excerpt 5.1: The Greek Women in the ‘Tractor Bar’

I have just finished an interview inside the European Parliament, and I need to find a place to write up my interview report. I opt for the so-called ‘Tractor Bar’ on the third floor of one of the EP’s buildings close to the exit, from which you have a nice view of people walking in and out of the building. As it is around lunchtime, it is extremely busy, and there is loud chatter throughout the bar. I order a cappuccino and look for a place to sit down, but all the tables are occupied. I ask a young man sitting with a tablet in one hand and eating a salad with the other if I may join him at his small round table. He nods and points with his fork, so I sit down and open my laptop. After a few minutes, he leaves. A few more minutes pass, and a woman asks if she may join me. I nod and say of course, so she sits down. Shortly after, another woman arrives, stops in front of our table and looks puzzled to see me at the table. She asks if she may join us, and we both say yes. This procedure repeats until I am surrounded by women (Greek, I later learn) who work in the Parliament and are taking a coffee break to discuss work-related matters and gossip. I realize that I will not get much writing done, so I shut my laptop and prepare to leave. One of the women asks me what I was doing, so I tell them about my project. They sound interested, so before I leave, I get two of their e-mail addresses and one eventually agrees to stand for an interview.

Other ways of recruiting included snowballing, informal chats during field-work which led to formal interviews, and meeting potential interviewees via the personal and professional networks built up during my six-month field-work/research stay in Brussels. The following two tables demonstrate the distribution of interviewees according to nationality and job function, respectively. A full, anonymized list of interviews can be found in Appendix E. The total number of interviews and interviewees do not correspond, for two reasons. First, some interviews had two participants, either a superior and a subordinate or two colleagues at the same level. Second, a few interviews were repeat interviews, which happened in cases where interviewees agreed to provide fresh insights from developments in ongoing trilogue negotiations.

Table 5.2 Interviewees by Nationality and Institution

	European Commission	Council of the EU	European Parliament	Totals
Austria		1		1
Belgium				0
Bulgaria		2	1	3
Croatia				0
Cyprus				0
Czechia		1		1
Denmark	4	1	15	20
Estonia				0
Finland	1			1
France	2	1	1	4
Germany	4	1	4	9
Greece			1	1
Hungary				0
Ireland			1	1
Italy	1	1		2
Latvia				0
Lithuania			1	1
Luxembourg	1			1
Malta	1			1
Netherlands				0
Poland				0
Portugal		1		1
Romania			1	1
Slovakia				0
Slovenia		3		3
Spain	2	3	2	7
Sweden		4	1	5
Totals	16	19	28	63

Note: While neither a certain number of interviews nor coverage of all nationalities was a goal in itself, having interviewees from 18 of the 27 member states dampens my worries that I was too narrow in my outreach.

Table 5.3 Interviewees by Institution and Job Title

European Parliament	28
MEP	4
Accredited Parliamentary Assistant	12
Political Group Adviser	9
Committee Secretariat	2
Lawyer Linguist	1
European Commission	16
Commissioner	0
Member of Cabinet	7
Official in Directorat-General	6
Official in Commission Secretariat-General	3
Council of the European Union	19
Attaché	9
Ambassador	2
General Secretariat	8
Total	63

Note: Unfortunately, no commissioners responded positively to my interview requests.

The data is obviously a little skewed, with regard to the number of interviewees both from the EP and from Denmark. The former is to some extent explained by the fact that there are usually more participants from the EP than the other two institutions in trilogues, and thus the pool of interviewees is larger. It may also be explained by the fact that most of my fieldwork took place inside the EP and thus offered more opportunities to informally recruit potential interviewees. With regard to the number of Danish interviewees, this is most likely explained by a potential tendency on the side of both researcher and respondents to, respectively, seek out and respond positively to interviews in their native language. Furthermore, I had more opportunities to informally recruit Danish respondents through my social circle while I lived in Brussels for fieldwork.

Interview Conduct

I left it up to interviewees to specify a location for the interviews, allowing them to choose the setting that would be most convenient and comfortable for them. Interviewees chose a range of different locations, including their own offices, meeting rooms, common areas within their institutions, and one of the

myriad coffee shops around the European district. The café below was host to several of my interviews:

Figure 5.2: Karsmakers Coffee House



Note: This coffee house, situated directly across from the EP in Brussels, is a common location for meetings with journalists, lobbyists, and apparently also researchers. The bagels are also good.

Though some interviews were carried out in public places, and some interviewees even greeted people they knew over the course of the interviews, it was not my impression that this made them significantly more cautious about sharing details of their work. Once we sat down for the interview, the first step was to brief the interviewee about the purpose of the interview and secure informed consent. Interviewees were offered anonymity¹⁵ at the level of institution and overall job description (e.g. mentioning that they are a group adviser, but not in which political group; see categories above). I then asked permission to record the interview, which was granted for 49 of the 62 interviews. In the cases where the interview was not recorded, I took comprehensive notes, focusing on capturing both the overall meaning of their responses as well as relevant direct quotes. Moreover, I set aside at least a few hours directly after the interview to write down a full interview report.

I used the same topic guide for all interviews (Appendix B), but with small differences in the formulation of questions to reflect the job description of the interviewee in question. However, being semi-structured, the interviews developed in many different ways. This was a deliberate choice, as probes,

¹⁵ Details on anonymization are found in the section on data processing in this chapter.

references to ongoing legislation, and follow-up questions helped make the conversations more concrete, improving interpretive validity. In my invitation e-mails, I asked for an interview of 30–45 minutes. In practice, most interviews were a bit longer, averaging just over 53 minutes, the shortest being 24 minutes and the longest close to an hour and 45 minutes. This yielded a total of 55 hours of interview material.

Fieldwork

The second primary data source was ethnographic fieldwork in Brussels and Strasbourg, including participation in both trilogues and various preparatory meetings, as well as some ‘hanging out’ (Nair, 2021) in the professional and social environments occupied by primarily EP professionals. This section introduces the steps taken to identify relevant field sites, gain access to them, and *keep* that access. I then summarize the different types of meetings and interactions I observed before reflecting on my own positionality in the field and ethical considerations about doing ethnographic research on confidential political negotiations.

Site Identification and Access

When I decided to write an ethnographic thesis on trilogues, I formulated the goal of participating in at least one trilogue meeting. However, bearing in mind my former supervisor’s adage that ‘everything important happens backstage’, I also started wondering about how I could get access to the backstage. The first step taken was to write to an MEP, explain my project, and ask if I might visit their office for a plenary session. Luckily, the MEP in question agreed, and we settled on the Strasbourg session in September, which was perfect for me as my research stay was scheduled to start the following week. During this week, I observed several preparatory meetings within the EP, and spoke to many people, including assistants, advisers, secretariat officials, and journalists.

After this first hectic week, I moved into my apartment in Brussels, started my research stay, and began reaching out to potential interviewees. During the debriefing for one of the first interviews with an MEP, I mentioned my ambition to observe a trilogue meeting and follow the preparatory work. She suggested that I check out the EP’s study visit program, which allows any MEP or Committee Secretariat to host a visitor for a period of up to six weeks (European Parliament, 2025b). Through this program, I was able to conduct fieldwork within the European Parliament in January and February of 2024, the very last weeks of my stay in Brussels, and coincidentally also the end of the EP electoral cycle – the last Plenary before the elections was held on April 22-25, and the informal deadline for trilogues was mid-February.

With regard to the two extended periods of fieldwork, it is useful to distinguish between primary and secondary access. Cunliffe & Alcadipani (2016) define primary access as ‘obtaining permission to get into the organization to undertake research’ (ibid: 537), while secondary access is defined as ‘building relationships to gain access to people and information within the organization’ (ibid). The steps above mainly describe how I gained primary access. Secondary access can be trickier, as ‘once inside the organization we may find multiple hallways with multiple doors that open and close at any time and are monitored by various gatekeepers’ (ibid). A few examples of secondary access are introduced here, while more general considerations are discussed in the section on positionality.

In both Strasbourg and Brussels, I was officially hosted by an MEP, which made many things easier. In Strasbourg, the MEP was rather open to bringing me along to meetings and would often make remarks like ‘You can come along to this meeting, but I don’t know if it will be that interesting for you’ and would generally leave me to discuss with his employees which meetings I could observe. On one occasion, I asked a group adviser whether I might accompany him to a shadow meeting held late one afternoon, and he said it would probably not be a good idea and that he would in any case have to ask the committee secretariat for permission. Later, he texted me that the secretariat had said no, and I started looking for another opportunity to observe a meeting. Then, 20 minutes before the meeting was scheduled to start, I get a text from another adviser telling me that I could go after all. Without being able to specify what caused this change of attitude, the situation illustrates that even when primary access has been granted, things happen inside an organization beyond the researcher’s control which can shape their opportunities.

During the Brussels fieldwork, I had a similar conversation with an MEP assistant who was quite busy with technical work on a legislative file in trilogues. I asked whether I could come with him to one of the interinstitutional technical meetings I knew he had scheduled for next week. He declined, citing that he did not know how the other institutions would react, and that it would be different if it were an internal EP meeting. He did, however, agree to debrief me in an interview shortly after the technical meeting in question.

Extent of Fieldwork

This section details the various meetings I observed over the course of my fieldwork in Strasbourg and Brussels. During my one-week stay in Strasbourg as visitor to an MEP, I attended several types of meetings: two group meetings, one of which included allocation of rapporteurships, two political-level shadow meetings, and a bilateral debrief meeting between the MEP and a group adviser. This amounts to a total of approximately eight hours of meeting

observation. Over the course of the autumn, I had the opportunity to observe two different meetings: a technical-level shadow meeting, to which I was invited by an interviewee, and a trilogue meeting, which took place in Brussels and to which I was invited by another interviewee who had received permission from her boss (an MEP) to bring me along. These two meetings lasted three and two hours, respectively. Finally, during my six-week study visit, I observed two open-ended trilogue meetings lasting six and four hours each, as well as a shadow meeting at the technical level lasting roughly three hours.

In total, this amounts to roughly 26 hours of meeting observations. In addition to attending these meetings directly relevant to trilogues, I participated in various other internal meetings, had many informal conversations, and attended a range of events, such a champagne reception hosted by the Danish Permanent Representation during the Strasbourg plenary. As these activities were only tangentially (at best) related to trilogues, they will not be reported at length here but were still important in building relations with participants and improving my general knowledge of daily routines in the EP and life in the ‘EU bubble’ more generally. The different types of observation are reported in the table below.

Table 5.4: Types and Extent of Fieldwork

Participant observation, European Parliament Strasbourg	One-week visit in the European Parliament during the Strasbourg Plenary 11-14 September 2023. Shared an office space with the delegation of an MEP and observed two shadow meetings, two group meetings, and various informal activities carried out by the MEP.
Participant observation, European Parliament Brussels	Six-week study visit in the office of an MEP, January-February 2024.
Trilogue meetings	Observed three trilogue meetings. One which did not result in an agreement and two which were open-ended and resulted in a provisional agreement.
Shadow meetings	Participated in two shadow meetings at the political level and two shadow meetings at the technical level, on different files.
Various internal EP meetings during fieldwork	This includes participation in group meetings, informal meetings between delegations within a political group, breakfasts, lunches, etc. Will only be referenced sporadically if relevant to discussion of trilogues.

Note: To respect the anonymity of the participants and the gatekeepers who provided me access, I do not provide the specific dates or details about the content of the meetings I observed.

Overall, my participation in most of these meetings would constitute what Spradley (1980) calls ‘passive participation’, as I was never an active participant in meetings (e.g. by taking the floor) but would occasionally exchange a whispered comment with the person I was accompanying or be introduced to somebody in the margin of the meeting.

Figure 5.3: Fieldwork pictures



Picture 1: Field notes and coffee in the ‘Flower Bar’, EP Strasbourg. Picture 2: Field note writing in my Strasbourg hotel room, which did not have a desk. Picture 3: A meeting room in Berlaymont. Picture 4: Trilogue meeting – a deal has just been reached.

Positionality and Ethical Considerations

In an ethnographic study, the observer is never neutral, but simultaneously influences and is influenced by the environment under study (Schwartz-Shea & Yanow, 2011; Ybema et al., 2009). Therefore, it is important as an

ethnographer to be aware of and transparent about how this is handled at all stages of the research process. This section contains some reflections on my positionality as a researcher, how it affected my approach to and interaction with the field, and the ethical dilemmas of doing research on sensitive political negotiations.

My Background

At the time this field work began, I was 29 years old and held a master's degree in political science, and I had previously spent six months in an internship at the Danish Permanent Representation to the EU. In short, my age, educational background, and previous EU experience was pretty similar to that of many assistants working in the EP, and this made blending in fairly easy, as illustrated by the field note excerpt below.

Field Note Excerpt 5.2: 'If you were Commission, you could sit with us'

I enter the circular meeting room about five minutes before the trilogue meeting is scheduled to start. The room is big, with seating for approximately 100 people arranged in three concentric, circular desks. There are only a few other people in the room. Four of them sit together on the first row of seats to the left of the door while the rest are spread out across the room. I sit down two rows behind the small group and set up my laptop. After a few moments, one of them, a middle-aged woman with curly hair, turns around and asks me 'Are you from the Commission?'. I tell her that I am with the EP delegation, and she shrugs, saying 'Ah. If you were Commission, you could sit with us.' But I am not, so I remain in place.

Having a similar background to the participants as well as some degree of both theoretical and practical knowledge about EU affairs was not only useful in terms of blending in. It also helped establish my credentials as somebody worth taking seriously, which is useful both in terms of secondary access (Cunliffe & Alcadipani, 2016) and in terms of demonstrating my worthiness as a conversation partner in interviews, which is particularly important when dealing with expert and elite interviews (Møller & Harrits, 2021; for an example, see Dahler-Larsen, 2014). My nationality, on the other hand, did not seem to play a significant role once I was inside the European Parliament, which is not surprising given that it is a very international and diverse workplace. This ability to blend in was also evident on other occasions, such as when I was mistaken for somebody else twice on the same trip to the Berlaymont for an interview.

Embeddedness versus Neutrality

When I was visiting the EP in Strasbourg, I was ‘just’ a normal visitor, signified by a red and green clip-on badge. This also meant that I could not enter the buildings unaccompanied. During my study visit in Brussels, I had a blue badge which was at first glance identical to those worn by MEPs and employees, differentiated only by different lettering at the bottom (mine said VE for External Visitor, assistants had APA for Accredited Parliamentary Assistant, and MEPs’ badges naturally said MEP). Having the blue badge clearly signified that I was embedded within the institution, and it also allowed me to exit and enter the buildings on my own. However, while overall very positive in terms of blending in, it also signalled that I was to some extent affiliated with the European Parliament, which might call into question my neutrality as an interviewer. Rather than bringing it up at the beginning of each interview not conducted inside the European Parliament, I opted not to wear the badge when I was walking to and from interviews in other parts of Brussels. If it came up naturally during the interview, I would tell interviewees about my research including the study visit, but I did not raise the topic on my own. Finally, it is worth noting that almost all my access was provided by the same political group. However, I believe that potential bias introduced by this is largely mitigated by the fact that representatives from all groups are mostly present in interinstitutional meetings, and by the fact that I interviewed participants from five of the seven political groups in the EP.

Ethical Considerations

While ethical considerations are, naturally, important in any research, they play a particular role in ethnographic work as the researcher is by definition in direct contact with the research field and thus faced with ethical questions and dilemmas throughout the research process (Fujii, 2012). Fujii calls on all political science researchers to go beyond procedural ethics ‘lest we create a discipline that is “nonethical”, or worse, unethical’ (ibid: 717). She identifies three types of dilemmas researchers must handle, namely those of *power*, *proximity*, and *publication*.

Dilemmas of power usually evoke pictures of the researcher being at a power advantage vis-à-vis the participants under study. In my research, this was not the case. Mostly, I perceived that my position of power was relatively equal to the junior employees in each institution (e.g. assistants in the EP and attachés at Permanent Representations), while I was clearly subordinate to senior officials and politicians (e.g. ambassadors, MEPs, and heads of Commission cabinets). While for the most part my presence in the EP was uncontroversial, there were a few instances of mild confusion about where to situate me in the ‘informal hierarchy’. Was I someone external to the institution, just

observing? Someone approximately at the level of an MEP assistant, but somehow below that of a group adviser? Or someone explicitly here on the mandate of an MEP? These confusions were usually dispelled when I told people that I was there to study trilogues, as most people had opinions and/or anecdotes to share. Being in the EP on the mandate of an MEP was a good start, but beyond providing primary access, the MEP was not very involved in my day-to-day work, so it was unclear how much I could lean on that mandate in my interactions with others.

This relates to dilemmas of proximity, which concerns the effect which the researcher's very presence may have for the participants. In my case, this mostly involved deliberations about how it might reflect on participants if they brought me along to different closed-door meetings. To account for this, I always made an oral agreement with the person I was following to a meeting beforehand. I enquired about the need for a written agreement to formalize my fieldwork and presence, but both the MEP and the assistant tasked with being my main contact said that it would not be necessary. For the most part, my presence raised no eyebrows, or even attention. However, because I only got permission from one participant in each meeting, I avoid disclosing details about the specificities of the individual meetings and individual participants.

This, in turn, relates to dilemmas of publication, which entail the sometimes-opposing concerns of, on one hand, including as much detail about the participants and situations as possible to maximize the credibility of the analyses, and, on the other hand, anonymizing participants to avoid potential negative consequences of their participation in the research project. To this end, anonymization of participants recorded in field notes will follow the same protocol as for interviewees, which is detailed below. Sometimes, due to the large number of participants in meetings, I did not even know the job title, much less the identity, of all participants. When references are made to such cases, I make educated guesses about their position based on either what they said during the meeting or their position relative to the political-level negotiator. Such estimations are always declared in the text of the analysis.

Other Data Sources: Documents, Social Media Posts, and Photos

In addition to the interviews and the field observations, various 'secondary data' will be used in the analyses. These materials include policy documents, social media posts by trilogue participants and commentators, references to news articles, and photos taken by the author. While these data sources play only a minor role in the analyses, this section briefly describes how they were collected and how they will be used.

I often accessed different policy documents, such as four-column tables, non-papers, participant lists, and various process documents in preparation

for interviews or participant observation. Social media posts were collected during my fieldwork as I kept an ongoing monitoring of the ‘Brussels bubble’ on Twitter and LinkedIn interspersed with sporadic searches on both platforms to dig out ‘informal’ material about various legislative files currently being negotiated in trilogues. Simultaneously, I followed the press releases by the Spanish and Belgian EU presidencies and the different news stories regarding trilogues published by EU news stations. Finally, I took some pictures of different situations over the course of my fieldwork. These additional data sources will be used throughout the analyses. However, as they were not collected systematically, they will only be used to illustrate points already developed with reference to interview transcripts or field notes.

5.5 Data Processing and Analysis

There is no particular moment when data analysis begins (Stake, 1995: 71).

While the above is a bold statement, I believe it to be true. Several places in this chapter have already hinted at actions and decisions made before and during fieldwork which are *analytical* in nature: casing, interviewee selection, probing during interviews, fieldwork site selection, and a conscious focus on transparency and thick descriptions. These parts of the analysis are equally important as those which take place after the researcher has left the field. This section details my attempts to capture these in the move from *fieldwork* to *desk work* and *text work* (Yanow, 2000). This is done by introducing the steps taken to process the data once generated: transcription of interviews, writing out field notes from jottings, and detailing the abductive coding process. This is followed by a short introduction to the structure of the analytical chapters and some considerations about ensuring robustness of the analyses.

Generating Text: Transcription and Field Notes

Whether it is transcribing a recorded interview, taking notes during one, or writing jottings which are subsequently fleshed out into field notes, the act of recording oral and visual impressions in text is an analytical step. Kvale & Brinkmann (2018: 236) call it a translation from spoken to written language. This section outlines how that ‘translation’ process was handled.

Most interviews were recorded and subsequently transcribed. For this process, I had the invaluable help of two student assistants, Vivyan and Clara. They were provided with draft transcriptions generated using an AI tool on a locally hosted supercomputer.¹⁶ Based on these drafts, they would listen to the recorded interviews and proofread the transcripts according to the tran-

¹⁶ For more information, see <https://deic.dk/>

scription guide in Appendix F. We had a monthly meeting where they would ask clarifying questions, comment on the quality of the recordings and the draft transcripts and inform me if they had noticed interesting features or patterns in the material they had been working with. I also transcribed a portion of the interviews, and the final transcriptions seem uniform across transcribers. As mentioned above, the interviews not recorded were always written into interview reports directly after the interview ended, and these reports are analysed as-is. The final output is approximately 1100 pages of transcriptions and interview reports.

As with transcribing interviews, ‘even the act of writing fieldnotes is itself already interpretive. There is no moment prior to the inscription which is non-interpretive and which can then later be subject to interpretation or analysis’ (Pachirat, 2017: 113). My field note practices generally followed the recommendations by Pachirat (*ibid*: 124) to have separate fields for observations, reflections, and preliminary analysis. Field notes were always written in the first person and include reflections on my feelings in interacting with the field. This reflects that the field notes are not expected to be shared with participants (Emerson et al., 2020). However, they varied a bit depending on what I was observing. Whenever I participated in a formal meeting, I would take notes which were as comprehensive as possible throughout the meeting, focusing mainly on what was being said, to whom it was being said, and recording as many details as possible about tone of voice, pauses between interventions, and the ambiance in the room. Writing notes on my laptop was never a problem during these meetings as most participants were also using either a laptop or a tablet during meetings; very few had only printouts of the meeting materials being discussed. These notes were then fleshed out into actual field notes either the same day or, if the meeting ended very late, the following morning. On days where I did not participate in any meetings, I would be seated either in my host MEP’s office or in an adjacent room. Since the internal office dynamics were not my primary interest, I took more sparing notes on these days, instead preparing for future interviews, talking to MEP assistants when they were not too busy, and generally trying to blend into the office atmosphere. Each day of the field work was recorded with an introduction outlining the day’s programme and then followed by a more detailed account, often in the form of an extended narrative (Emerson et al., 2020). Templates used for field notes are found in Appendix G.

Systematizing Text: Abductive Coding of the Material

In keeping with the abductive aim of this thesis, the coding process also follows an abductive logic inspired by the work of (Deterding & Waters, 2018) as well as (Vila-Henninger et al., 2022). As Tavory & Timmermans (2014: 2) put

it, ‘The theoretical account allows us to see things in the empirical that we would gloss over. The empirical description, in turn, pushes the theorization in unexpected directions.’ This back-and-forth relationship between theory and empirics must be handled in all parts of the research sequence, coding included. This section outlines the steps taken to develop an initial code list and how this list continuously evolved along with the analyses.

There is a fine line between having theoretical preconceptions which guide observations, and *de facto* testing a theory. My starting point in trying to strike that balance is the contention that by making explicit our theoretical preconceptions, we give ourselves the best opportunity to counter the risk of focusing on those very things without reflecting about what it diverts our focus away from, a risk that is related to Spradley’s (1979, 1980) concept of ‘naïve realism’. These deductive codes should be ‘intentionally broad enough to allow for inductive codes to emerge’ (Vila-Henninger et al., 2022), meaning that each code should have an adequate definition for inclusion, but not one that is so strict that it does not allow for inductive sub-codes or different ways of addressing or understanding the same underlying concept.

Based on the theoretical lenses introduced in Chapter 4, a deductive codebook with 10 broad codes and a few sub-codes was drafted (see Appendix H for complete code lists). Then, six interviews, corresponding to roughly 10% of the interview material, were selected for an initial round of coding. This had two aims. The first was to test whether the deductive codes are present as expected in the interview material. The second was to generate additional, inductive codes, both as sub-codes to nuance the broad deductive codes, and as standalone parent-level codes when interviewees provided insights not covered by the deductive codes. The six interviews for initial coding were selected to ensure maximal variation on institutional affiliation, level (technical or political), and job description. The six interviews initially coded are presented below:

Table 5.5: Interviews Selected for Initial Coding

Interview #	Institution, role, and level
Interview 1	EP, EP Assistant, technical level
Interview 2	COM, Secretariat-General, technical Level
Interview 7	Council, Attachés, technical level
Interview 19	Council, Attaché, technical level
Interview 21	EP, MEP + assistant, both levels
Interview 29	COM, Cabinet, political level

After coding these materials, the code list contained 167 codes, which were then reviewed to consolidate the code list. This included merging similar codes, arranging codes within parent-child structures and the deletion of a few codes. After this consolidation, 97 codes remained and were used to code the remaining interview material. During the full coding of the material, three additional codes were introduced. After the first round of coding, a first draft of the dissertation was written, during which two new codes were introduced. All coding was carried out in NVivo. Table 5.6 below summarizes the different steps taken in the coding process.

Table 5.6: Steps in the Abductive Coding Process

Step 1: Deductive code list	Initial, broad deductive codes were defined based on existing theory and/or empirical studies.
Step 2: Skim interviews, write keywords	Initial read of the interview material to select interviews for coding and make note of recurrent themes.
Step 3: Code a subset of data	A subset of the data was selected and coded using the deductive codes and adding inductive codes.
Step 4: Review code list	Inspection of the inductive codes generated during Step 2 to combine, structure, and delete codes.
Step 5: Code remaining material	Coding of the remaining material using the consolidated codebook, adding new codes or memos if necessary.
Step 6: Review code list	If new codes were created during Step 4, these are handled in the same way as Step 3.
Step 7: Write a first draft	Writing a first draft of the dissertation. During this process, new themes might be found in the data.
Step 8: Revisit code list	If new themes are discovered in the writing process, make a note of them for a subsequent round of coding.
Step 9: Write final version	Writing a final version of the dissertation, incorporating insights from all previous steps.

Analytical Robustness

Since trilogues are sensitive political negotiations carried out behind closed doors, a main challenge from the outset was access to both interviewees and ethnographic observations. However, the robustness of the analyses presented in this dissertation has been an equally present challenge. Throughout this chapter, I have explained all the steps taken to ensure the transparency and credibility of my accounts and the different considerations that lay behind

each choice. However, it is worth noting that any interpretive ethnographic account will always present a ‘partial view’ (Schwartz-Shea & Yanow, 2011; Ybema et al., 2009) of the subject under study. This is true both in the sense that I could not observe the full range of potential practices regarding trilogues across all policy areas, and in the sense that my own positionality as a researcher mattered for where I sought and gained access.

However, I would argue that the unprecedented level of access to these negotiations is a significant strength of this dissertation. I believe that the combination of interview data, field observations, and the background knowledge of the formal rules governing trilogues presented in Chapter 2 forms a credible data triangulation (Mathison, 1988). This allows me to draw quite robust conclusions about practices generally present in trilogues as well as make some inferences about practices which vary between actors and across policy areas. Furthermore, the ongoing interaction between field work, interviews, and ‘desk work’ allowed me to continuously probe, refine, and update my understanding of the participants’ perceptions of trilogues and their own practices, enhancing the interpretive validity of my findings.

5.6 Summary

This chapter has introduced the methodological framework of the dissertation and discussed the different considerations in this regard, relevant to each step of the research process. First, the dissertation was introduced as an interpretivist piece, and the consequences of working within that paradigm were discussed. Second, the quality criteria applied to the study were introduced, namely Maxwell’s critical realist criteria, which were argued to have the advantage of being equally applicable to both observations and interpretations. Third came introductions to the overall research design and case selection of the study, discussing how the *abductive* logic of inquiry was handled methodologically, and discussing the dissertation as an ethnographic and interview-based inquiry into trilogues. It was also argued that trilogues are viewed as a case of informal bicameral legislative negotiations, but that in line with the abductive logic, ‘casing’ is an ongoing part of the research, as different insights may be developed by viewing trilogues as cases of other phenomena. The fourth section outlined the concrete steps taken to generate data, particularly in terms of getting access to the field, reflections on contact with interviewees and the conduct of interviews, and the ethical considerations of doing research on sensitive political negotiations. Fifth, the steps taken to convert observations and interviews to text through field notes and transcription were described. This was followed by a summarizing discussion of the steps taken to ensure the robustness and trustworthiness of the analyses.

Chapter 6.

Building a Trilogue Mandate

The moment we make a proposal we know that now the real crunch time is up.
(Interview 28, COM cabinet)

By the time a legislative file ‘goes into trilogues’, the institutions have already been working on it for several months, or in some cases even years. This is because sending a *relais* actor to negotiate with the other two institutions requires that there be a mandate based upon which they can negotiate. Negotiating such a mandate can be a lengthy and contentious process. This is not surprising, when viewed in principal-agent terms, as has often been applied to EU negotiations (e.g. Delreux & Adriaensen, 2017; Kassim & Menond, 2003). In trilogues, the mandating period contains two crucial steps for the principals’ control of their agents, namely selecting *who* should be the agent and specifying the limits of the agents’ mandate. This chapter aims to shed light on the internal procedures, formal and informal, within each institution for doing those two things. Understanding these mandating procedures from the perspective of the negotiators is important because this provides the backdrop for their interactions with the other institutions once the legislative file moves into the trilogue stage.

To do this, the remainder of this chapter is structured in four parts. First, the different steps in the mandating process within each institution are explored, including how the interviewees manage intra-institutional relations, build coalitions, and negotiate mandates which will be used in the upcoming trilogue negotiations. This is followed by a comparative analysis of each institution’s procedures, highlighting similarities and differences between their mandating processes. Notably, it is found that the European Parliament spends more resources on both allocation of competence and selection of negotiators than the Council, and they are also perceived to introduce more amendments. It is important to note already here that the Commission’s preparatory work before submitting a legislative proposal is analytically treated as their negotiation mandate and compared on equal footing with those of the co-legislators. The third section analyses the importance ascribed to informal contacts within and between the institutions over the course of the intra-institutional mandating negotiations. This highlights how informal networking between negotiators begins as soon as it becomes clear who is going to represent each institution in trilogues. Finally, the findings of the chapter are summarized.

6.1 The Commission Proposal

Interviewer (WE)

The Commission is not formally a co-legislator but participates in trilogue meetings. At the same time, they have put the proposal on the table, so in some way they also have a ... negotiating mandate of some kind?

Interviewee

Yes, it's a mandate, definitely, yes. (Interview 53, COM cabinet)

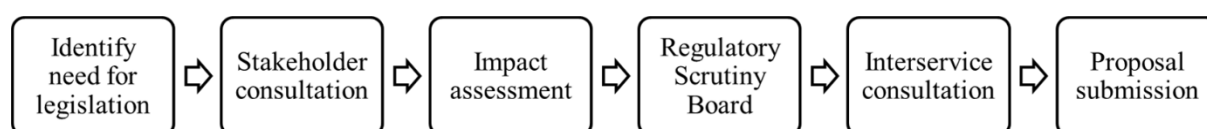
The Commission, unlike the EP and the Council, is not a co-legislator under the Ordinary Legislative Procedure (OLP), and as such it might seem strange to speak of them having a negotiating mandate. However, as has already been argued in this dissertation, and as will be further demonstrated in the analyses, the Commission plays an important role in trilogues beyond that of merely being a mediator. Thus, it is relevant to briefly touch on the steps taken within the Commission to prepare a legislative proposal, as this forms the basis for amendment proposals by the co-legislators *and* to some extent constitutes a mandate which Commission representative must defend in trilogues. This perception is evident in several interviews with Commission officials:

We are always proposing solutions and trying to build a bridge between them [...]. Of course, the trilogues will mean the outcome will not be our proposal, so we need to ask permission from the College to go to a trilogue with positions that are different from the original proposal. (Interview 26, COM official)

The Commission is there [...] as an assisting institution. Defending, of course, the core proposal that was triggering the whole legislative process but doing it as an honest broker between the two institutions and of course also providing technical expertise that both institutions don't necessarily have. (Interview 45, COM cabinet)

The quotes above further cement the point that the Commission proposal is indeed used as a mandate, though the latter emphasizes that it is done 'as an honest broker'. This notion has thus far been underappreciated in the trilogue literature, starting from Farrell and Héritier's original formulation of the *relais actor* thesis. In a footnote, they state that 'For purposes of simplicity, we do not discuss the role of the Commission, which acts primarily as a facilitator in the stages of the codecision process that we are interested in' (Farrell & Héritier, 2004: 1194). Recent research has shown, however, that most text in final EU legislation originates at the agenda-setting stage (Laloux & Delreux, 2021). Thus, knowing the process which precedes the Commission's proposal is important for understanding their behaviour in later stages of the legislative process. The main steps in the Commission's preparatory work are outlined below:

Figure 6.1: Steps in the Commission's Preparatory Work



Note: This figure shows a linear process with neatly separated categories. In practice, these steps sometimes overlap. For instance, interservice consultation is an ongoing process which is only *finalized* ahead of proposal submission (Candel et al., 2023; Hartlapp et al., 2014).

Identifying the Need for New Legislation

The right of legislative initiative lies almost entirely with the European Commission, and important source of agenda-setting power (Kleine, 2013: 59ff.). The preliminary formal acts within the Commission include determining which Directorate-General(s) should be responsible for the file and assessing the likely impact of the proposal. Allocation of responsible DGs happens as part of the Commission's long-term planning and is thus mostly settled when a concrete proposal is about to be launched (Hartlapp et al., 2014; Tholoniati, 2009). This coordination process is anchored in the Commission's Secretariat-General, and is described in the following way by one interviewee:

Of course, we trust the services completely, so it's not to keep an eye on whether they have a particular...what shall we say, agenda or something – it's more really to make sure that it all kind of comes together and stays consistent with the framework we work within. (Interview 13, COM Secretariat-General)

Having the right of initiative does not mean, however, that the Commission launches legislative proposals on a whim. Rather it tries to anticipate both whether there is appetite for new legislation among the member states, and what their preferences might be:

The Commission comes up with its proposal – there is a long preparatory work that often ensures that you are not completely at odds with the member states. This is one of the reasons why it's good that there are Commissioners from all member states, so that you have a set of ears on the ground. That way, you can see that you're not going to get something that's completely skewed. (Interview 20, MEP)

This is in line with previous studies finding that the Commission tries to anticipate the positions of the co-legislators to maximize the chances of getting the proposal through (mostly) unaltered (Häge & Toshkov, 2011; Pollack, 1997). As such, the Commission's proposal should not be taken to directly reflect the Commission's preferences. One interviewee noted that using the Commission's proposal as a starting point would be 'how the book would describe the process', adding that 'sometimes the Commission, Parliament, and

the Council have been messaging each other beforehand about what the final draft will look like' (Interview 1, EP assistant).

Regarding the Commission's involvement as a negotiator, one Commission official explains why it is legitimate for them to defend their original proposal: '[I am] not saying that everyone is trying...to destroy whatever, it's just like, there is a text with a legal basis, with an intention and an objective, and this has to be ensured throughout the entire procedure'. Here, the Commission's pursuit of its policy preferences is legitimated with reference to neutral/technocratic terms such as *legal basis* and the overall *objective*. The involvement of the cabinets in the preparatory process varies, and the initiative can either come from the political level or from the DG itself:

In principle, entirely nothing can happen without the cabinet being involved. And at least you need to OK all the steps. I mean, before we go through the internal decision-making systems where at a certain moment you have to say 'Yes, you can go ahead' and so on. That's the minimum. Now the maximum is that you co-develop the whole thing, that the idea comes out of the cabinet or out of the political environment. (Interview 28, COM cabinet)

This implies that the split between political and technical work within the Commission is not clear-cut but rather decided on a case-by-case basis, reflecting different levels of participation by the cabinets.

Impact Assessment and the Regulatory Scrutiny Board

The Commission is required to produce an Impact Assessment Report¹⁷ for 'initiatives that are likely to have significant economic, environmental or social impacts or which entail significant spending, and where the Commission has a choice of policy options' (European Commission, 2021: 30). Impact assessments can have different uses. If the Commission has a clear idea for the policy, it may be used to confirm that this idea is preferable to other options. However, they can also be more explorative:

Sometimes you have a very clear idea of what you want. And then of course you want to test, you want to confirm in your impact assessment that this is the best. For that you need a still to compare it and you need to be able to demonstrate that the one that you think is the best is better than the other [options]. So, the feeling was that it could help to have a regulation, but we still said, 'Let's keep it very open', and it was a bit of a surprise, the discovery process, to really see what the options are. (Interview 28, COM cabinet)

¹⁷ The impact assessment itself is often contracted out to consultancies according to Interview 48, though previous research has emphasized that the process is tightly controlled by the responsible DG (Bäcklund, 2009).

In the above, even though the Commission had a clear preference, the interviewee notes that the impact assessment contained some surprises. Next, when the DG has produced a draft impact assessment, it must go through internal quality control in the Commission's Regulatory Scrutiny Board, which according to interviews is no small task:

On the basis of your impact assessment, you need to go to the Commission's Regulatory Scrutiny Board. And they will shoot holes in the... in your figures, in your argumentation. This is really like, you know, you defend your thesis, it is... a tough thing. [...]. Very often the DGs get sort of a middle card saying it's OK, but you have to redo parts of it. Very rarely, they say no, not good at all, and very rarely they say, OK, good. So, it's like in life. (Interview 28, COM cabinet)

This analysis demonstrates that two important steps in the Commission's preparatory work focus on producing a factual basis for the legislative proposal. Thus, officials in the Commission start negotiations with an informational advantage compared to the co-legislators, even if the final impact assessment is available to all. In the words of one EP interviewee, this is routinely used to the Commission's advantage: 'The Commission is typically that of the three institutions with the most substantial knowledge, and they can more or less generously share this with both the other negotiators or one of them, depending on what they want' (Interview 1, EP assistant).

Interservice Consultation and Adoption

If the Regulatory Scrutiny Board approves the impact assessment, the next step is the final round of interservice consultation. This can be quite conflictual (Hartlapp et al., 2014), and the quote below illustrates that the Commission's proposal is already based on a compromise between different branches of the Commission:

The DG has a draft [...] that then goes into internal consultation of all DGs. That's a formal process through an IT system that is called interservice consultation [...]. So, the digital department sends it to the others, and they say, 'I don't like this. I like that, I don't care. I give a green light. I give a red light. I give an orange light. I accept subject to you taking into account these points.' That's a heavy moment, but interesting where you then sort of sit there with your initial text and you go through 'DG A, OK? They want this, can we accept this? Yes, we accept it. No, this we can't accept. We need to explain why.' Right? Really build a table where you say I take this comment, I don't take this, why? You have a new draft. (Interview 28, COM cabinet)

Disagreements between different branches of the Commission are not only dealt with at the technical level, but can also be discussed by cabinet members, or even by the Commissioners (Interview 6, COM cabinet). Coordination efforts have been demonstrated to be driven in part by reputational concerns

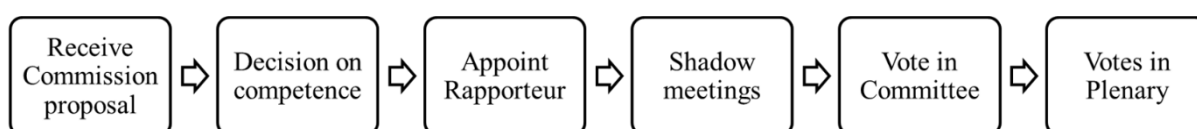
(Blom-Hansen & Finke, 2019) and by *turf wars* within the Commission (Finke, 2020). They are also found to correlate with the level of salience of a proposal – salient proposals face an over-supply of coordination efforts, while the inverse is true for low-salience proposals (Senninger et al., 2021). In addition to this internal coordination, previous research has argued that the Commission is a natural target for lobbying efforts (Binderkrantz et al., 2021), and the Commission may strategically build coalitions with interest groups to pressure the co-legislators (Blom-Hansen & Senninger, 2021). Following this comprehensive process, the legislative proposal is adopted by the College of Commissioners, through either an oral or written procedure (European Commission, 2020: rules 8 and 12), after which the proposal is submitted to the Council of Ministers and the European Parliament.

Thus, going further than Panning (2021), who argues that the Commission should be viewed as a *committed* rather than a *neutral* broker, I argue that they should be viewed as a negotiator in their own right. Additionally, I argue that a Commission proposal represents compromise reflecting both the balancing of interests within the Commission and the anticipation of preferences of the EP and the Council. As the cabinet member quoted above says of policy proposals after interservice consultation: ‘It’s totally Frankensteined. But it helps you, because it very often identifies things that you didn’t know’ (Interview 28, COM cabinet). Another interviewee expressed the view that once a file gets to the trilogue stage, the lion’s share of the Commission’s work and potential influence is spent: ‘All in all, the Commission doesn’t have the same power...and doesn’t have the same, shall we say, interest in the trilogues either’ (Interview 53, COM cabinet).

6.2 The European Parliament’s Mandate

Once a Commission proposal has been submitted, the European Parliament begins an internal procedure in several steps, which results in the adoption of a so-called Committee Report which is used as the EP’s negotiation mandate in trilogues. To be sure, the EP’s work is not restricted to this alone. As demonstrated above, contact with the Commission starts before a legislative proposal is submitted, and as will be discussed later in the dissertation, there are informal contacts between all three institutions throughout the legislative process. This section, however, deals with the internal process in the EP for adopting an initial negotiation mandate, the main features of which are outlined below.

Figure 6.2: Steps in the EP's Internal Legislative Negotiations



Note: This figure shows a linear process, while in practice several iterations may take place. For instance, more shadow meetings will be required if amendments are voted down in committee.

Competence Allocation

Many EU legislative proposals are large packages with implications for several policy areas. Thus, as a first step, the EP must decide which committee(s) should be responsible for negotiations. This is not simple, as both bureaucratic turf and diverging policy preferences may lead different committees to claim competence on the same file. When a question of competence arises, the Conference of Committee Chairs makes a recommendation on competence allocation, which is then approved by the Conference of Presidents (European Parliament, 2024c: rule 48). There are two¹⁸ overall options. First, one committee may be named the responsible committee while others are asked to give opinions on parts of or the entire proposal (rule 57). Second is the so-called joint committee procedure (rule 59) where two or more committees share responsibility for the proposal and must draw up a single report which is voted on in all committees before being presented for a plenary vote. Usually, one rapporteur is appointed from each responsible committee (rule 54).

It has been noted both by interviewees and in the European Parliament's own mid-term activity report (2021) that many of the Commission's recent proposals are crosscutting, touching the competences of several committees. This 'created additional challenges for internal and interinstitutional coordination' (European Parliament, 2021). In the words of one Council interviewee: 'it's very difficult and it really prolongs the process' (Interview 19, Council attaché). One interviewee noted that the EP endeavours to resolve competence questions faster, because prolonged turf wars send a 'bad signal', delay the legislative process, and can be used to put inconvenient proposals on ice (Interview 16, EP assistant).

MEPs may or may not be happy with decisions on competence allocation. One interviewee noted that they had been short-changed on a recent file, their

¹⁸ In the period studied in this dissertation, there was a third option, the Associated Committee Procedure. Here, one committee is responsible while one or more others are granted competence on specific parts of the proposal. This has, however, been removed in the latest version of the EP's Rules of Procedure.

committee getting responsibility for only a few articles. To combat this, they had done something ‘cheeky’ by asking their committee to propose amendments for the entire act, not just the articles under their competence. This was done both to demonstrate that they had made a serious report, and to signal to others that there was internal disagreement in the EP. (Interview 16, EP assistant).

Rapporteur Selection

The groups are battling, and the more prominent the proposal, the political context, the more interested the MEPs are, and there is more competition. Who could get it? So, this can take a moment. (Interview 28, COM cabinet)

Selecting the rapporteur, the MEP responsible for writing the legislative report and subsequently representing the EP in trilogues, is not a decision taken lightly. As introduced in Chapter 2, this process proceeds in two steps. First, the group coordinators decide, in an auction-like system, which group should receive the rapporteurship, and then the winning group decides which MEP it should be. In practice the two steps are often interlinked: ‘if the suggested rapporteur is recognised as a specialist on the issue, it can be easier to get agreement on his or her nomination’ (Corbett et al., 2016: 185). Formally, rapporteurs are appointed after the Commission proposal has been submitted to the EP, but informal negotiations about allocation may start earlier. In the words of an EP adviser:

Rapporteurship is only confirmed after, basically, the cycle formally starts. But [...] as we only have a small share of the [...] meaningful legislative files as rapporteur, we kind of pre-negotiate the ones that we would be very keen on having even before it is formally allocated. (Interview 38, EP adviser)

In such pre-negotiated cases, the interviewee continues, the prospective rapporteur may start informal contacts with the other two institutions before the formal submission of the proposal (ibid). Allocation of reports within a political group is usually decided by consensus, but as the excerpt below shows, that is not always the case:

Field Note Excerpt 6.1: Rapporteurship Allocation

I followed a political adviser to a meeting for MEPs from his group sitting on the same committee. The first point on the agenda was allocation of three files. The first was an apparently attractive file which two MEPs wanted to be rapporteur on. The chair started the debate by stating that ‘after discussing among ourselves in a very friendly manner, we have no agreement’, at which the participants laughed. He then stated that they would need to vote on the rapporteurship allocation.

Each MEP was given time to argue why they should get the file. One argued that it was a highly interesting file, that he had experience in the field from work in another committee, that the area had played a key role in the runup to recent national elections, and that he had not had a single legislative file in this committee since the beginning of the current mandate. He ended by saying that there was no big disagreement between the two on substance, so members should not worry about that, rather about what would be fair in terms of allocation and workload. The second MEP argued that he had also not had any legislative files this term, and that he wanted to work on it because the Commission proposal was too weak. It would also be a good opportunity for him to continue his work on the [policy] agenda, which he noted had *not* been mentioned in von der Leyen’s State of the European Union speech, and which had not been prioritized enough by the Commissioner.

Following the pitches, the chair explained that votes for the allocation should be sent to him (and only him) with a deadline of Monday end of business. Since it was a plenary week, the deadline was extended slightly. On the way out of the meeting, I asked the adviser whether this was how they usually allocated rapporteurships. He said they very rarely voted, but that procedures might be different in other political groups.

Several points are worth noting in this excerpt. First, the attractiveness of rapporteurship varies depending on the nature of the file. Second, MEPs use different types of arguments to get the role, including appeals to previous experience, workload, and fairness. Third, report allocation procedures may vary by group. Interviewees point towards several different considerations which may come into play in rapporteur selection, including satisfying MEPs who have not had many files, the individual MEP’s expertise in the subject matter, or their negotiation skills (Interview 17, EP assistant). They may also reflect strategic concerns, such as selecting a rapporteur who is not too closely aligned with the Council’s position (ibid) or selecting one who is unlikely to have a vested interest in the file – e.g., selecting a Czech over a Danish MEP for a file regulating the shipping industry (Interview 22, EP adviser). The opposite may also hold true, according to the same interviewee. She had worked on a file regulating aromatized wine, which was ‘*only* interesting to Italians’ (ibid). As their group did not have any Italians in the relevant committee, they appointed a Dutch MEP instead. Regardless of the considerations leading to it, the appointment of rapporteurs (and shadow rapporteurs representing

groups who did not get the rapporteurs) is an important step which is followed closely by other MEPs, the other institutions, and interest groups: ‘When you are rapporteur, you are indeed subject to lots of requests, I mean, from the external world. Lobby, NGOs, and, of course, from the Commission, in some cases, even from the Council’ (Interview 38, EP assistant).

Coordination, Coalition-Building, and Amendment Gathering

Once report allocation and rapporteur selection are settled, work on the legislative report starts in earnest. The main fora for discussion of the legislative report are committee meetings and the so-called shadow meetings where the rapporteur and shadow rapporteurs meet to discuss proposed amendments. This section introduces these as well as related informal meetings and practices that take place both before and concurrently with shadow and committee meetings. These include meetings within the political groups, informal contacts with the shadow rapporteurs, consultations with external stakeholders, and prep meetings within the political groups ahead of committee meetings.

Initial Discussions and Timeline

Work on the report may be kickstarted with an initial debate in the committee: ‘There can be a general debate in the committee [...] where the rapporteur can hear what's happening, where are we in relation to X, and so on, and take that into account’ (Interview 20, MEP). Based on this initial discussion, the committee secretariat produces a quite detailed indicative timeline on the file. According to one interviewee, it contains details on who represents each party at both political and technical level, their contact information, deadlines for proposing amendments, a timeline of shadow meetings and committee meetings, and when they aim to present the report to the EP plenary (Interview 17, EP assistant). The same interviewee assesses that they ‘tend to be pretty accurate with what the Secretariat has said from the start. It may be that something happens, and you will have to have a few extra technical meetings’ (ibid). This illustrates that scheduling puts pressure on the negotiators, and that, from the perspective of an EP assistant, this pressure is often passed on to the technical level as increased workload.

Preparing Amendments

Coordinating early with the shadow rapporteurs is deemed important by EP interviewees: ‘Of course internally in the house [EP] with the shadow rapporteurs, that will always be the first thing you do. As soon as you have been appointed rapporteur, you call your peers to orientate yourself’ (Interview 1, EP assistant). These preliminary contacts will often take place at the technical level first, and can happen in various ways, according to another interviewee:

I have counterparts in all of the political groups in the House. So, people who do the same job as me [...] I know them. They know me. And normally, if you're working in quite a distinct policy area, you tend to know the advisers from the other groups working in that policy area as well. And then it's just a question of either approaching them in the margins of the meeting or contacting them over the phone or dropping them an email, depending on how formal or informal you want to make it and, you know, how formal or informal it needs to be. (Interview 59, EP adviser)

Two things are worth noting here. First, preexisting ties between negotiators at the technical level are argued to be conducive to informal coordination. Second, different modes of interaction are explicitly considered in terms of their formality, even when contact is kept at the same hierarchical level. It is unclear whether amendment proposals are compiled by the rapporteur's team or by the secretariat. A related informal practice which comes before submission was identified by another interviewee. He mentioned that they would usually circulate their amendments informally 'to the rest of the MEPs who sit on the same committee to ask if they will sign the amendments, and at the same time we can also ask them, well, do you have any further additions' (Interview 17, EP assistant). Amendments which are already supported by more than one group is more likely to pass, so bringing others on board with amendments written by your group is seen as valuable. Rapporteurs and shadows represent their groups, so naturally group meetings are also an important forum for introducing and developing amendment proposals. However, one MEP notes that sometimes it can be valuable to look outside your own party group for support:

It also depends on where you stand politically with your own party and your own position. So, will it be an advantage for you to invite your own group to have opinions on this, or can you get your own policy through by working to get the broad majority [...] with the political groups? (interview 34, MEP)

This reasoning demonstrates that the rapporteur is not merely a neutral extension of her political party but may pursue different coalitions to further her own preferences. Relatedly, one MEP mentions that they sometimes accept compromises in internal EP negotiations that go further than they would have preferred because they expect that they will be watered down and may be used as a bargaining chip during trilogue negotiations (Interview 15, MEP). Another interviewee similarly noted that some of the EP's proposed amendments were seemingly made to placate specific stakeholders in intra-institutional negotiations and were easily dropped once interinstitutional negotiations began (Interview 48, COM official).

In practical terms, while the rapporteur will usually present their amendment proposals first and *then* ask for input from the other groups, these have

usually prepared their amendments already: ‘Obviously we are not just waiting for him or her to deliver their favourite proposal. We will have started long before then to prepare what our line should be on this’ (Interview 17, EP assistant). Sometimes proposals are similar and can be merged, but there can also be opposing amendment proposals to the same article. The number of proposed amendments can reach staggering heights – one interviewee estimated that they had had just over 1000 on a recent file for which he had been rapporteur (Interview 21, MEP and assistant). Some interviewees stress that they try to limit the number of amendment proposals they by having ‘discussions with their MEPs, convincing them to prioritize among their amendment proposals ahead of meetings, to back down on extreme points, and to discuss which amendments would be acceptable both to their own group and for others’ (Interview 32, EP adviser). These efforts are countered by the consideration that, according to another interviewee, if a group has *not* introduced an amendment proposal on a specific article during internal EP negotiations, the rapporteur is more likely to dismiss their concerns later in trilogues (Interview 17, EP assistant).

Interest Organisations

Another important source of input for knowledge, positions, and even concrete amendment proposals are lobbyists and interest groups. Consultations with external stakeholders start at an early stage: ‘Often before you’ve even been appointed rapporteur, you’ve reached out to organizations and... like-minded people, where you can get ammunition and input and all that’ (Interview 17, EP assistant). This consultation with external stakeholders is deemed worthwhile because an MEP’s team will need the ‘ammunition’ for discussions about whether their MEP will be appointed rapporteur or not. The interviewee also notes that, at least for important files, it is not necessary to reach out to lobbyists, they will come to you (*ibid*). Another interviewee echoes this, adding that the stakeholders who reach out are most often those who have enough resources, and that this can create imbalances which the public might learn about through the transparency registry. To combat this, if they ‘haven’t quite got any input from the NGOs, then we can also just actively reach out to them to hear if you have anything for us. Then we’re at least on the safe side’ (Interview 18, EP assistant). This finding is interesting as it demonstrates that MEPs are not only targets of lobbying but that their proactive engagement with them may also be driven by both a need for information and reputational concerns.

Shadow Meetings

The most important forum in the EP for discussions on amendment proposals is called *shadow meetings*, where the rapporteur meets with the shadow rapporteurs representing the other political groups on the proposal. These meetings take place both at the technical and political levels, and the ones I observed proceeded article by article, each group being asked to provide explanations for the amendments they proposed. Throughout my observations, the number of participants ranged from 14 (single committee) to approximately 30 (joint committee procedure) at the technical level. At the political level, MEPs will be present along with the same technical-level participants. According to interviewees, the technical-level meetings outnumber those at the political level (Interview 10, EP assistant), though the exact ratio will vary between cases. Generally, the rapporteur will chair the shadow meetings at the political level, while there seems to be some variation as to who chairs at the technical level. In my observations it has been either the rapporteur(s)'s team or the committee secretariat. According to both interviewees and my field observations, the order of interventions goes by group size. If multiple groups have proposed amendments on the same article, the European People's Party Group (EPP) presents first, followed by the Progressive Alliance of Socialists and Democrats (S&D) and so on. The same goes for responding to amendments by others. When reacting to amendments proposed by others, I observed statements ranging from full agreement, such as 'We support the amendment proposed by S&D', to more neutral expressions, commonly 'We can live with X amendment' or 'In the spirit of compromise...', to statements of opposition such as 'X is a red line' or 'We have a problem with X'.

To keep track of the status of proposed amendments for each article, a simple colour system is used. If an article with or without proposed amendments is provisionally agreed, it is coloured green in the working document. If there is disagreement but the ambition is still to resolve it at technical level, the line is coloured yellow. If no compromise can be found at technical level, the issue is raised to the political level, and the line is coloured red. This practice is often referred to only by the colour, e.g. 'greening a line' (Interview 32, EP adviser). It is not always clear which issues will be raised to the political level – how this is handled interinstitutionally be explored in Chapter 9. In cases where the line is *yellowed*, the parties who disagree about it are often given 'homework', meaning that they are expected to hold a bilateral meeting before the next shadow meeting to try to come up with a compromise (ibid). The goal of these shadow meetings is to produce a legislative report with amendments proposed for all the articles which a majority of the EP thinks could be improved (or deleted). In the 'ideal' case from the rapporteur's perspective, the draft report negotiated in shadow meetings will contain only

those amendments which will pass both the votes in committee and plenary unaltered.

Prep Meetings, Committee, and Plenary Votes

Committee meetings are, according to Brussels-based news outlet Politico, ‘where the legislative magic happens’ (Martuscelli & Guillot, 2024). When there have been enough shadow meetings to work through the entire legislative proposal, the amended draft report is brought to a vote in the committee. As previous research has shown that reports which make it through this stage are rarely defeated in plenary (e.g. Ringe, 2009; Yordanova, 2013), it seems fair to say that this is a critical moment for the rapporteur (and to a lesser extent the shadow rapporteurs) to see whether there is backing for the compromises they have made. I observed an illustrative example of this during a group meeting in Strasbourg: One MEP asked another, who was shadow rapporteur on a proposal scheduled for plenary vote, to table a new amendment. He refused, saying that he had not had backing for it at the committee level, and thus ‘I am not going to table an amendment that I was not even able to raise in a committee meeting!’

To prepare discussions in the committee, the members representing each political group gather for separate prep meetings before the full committee meeting.¹⁹ These are usually scheduled directly ahead of the committee meetings, last between 30 minutes and one hour, and are used to bring everybody up to speed on the state of play of the meeting’s scheduled discussions and votes. The agenda for a prep meeting often reflects the agenda of the committee meeting it precedes, but it can also be used for preparatory discussions on new files:

At a so-called prep meeting to make a very, very early introduction to colleagues for this file ... It might be a good idea to do this if you know in advance that there will be some countries that want something completely different from the majority, some bridges need to be built internally for there to be any support in your own group. (Interview 34, EP assistant)

With regard to the perceived importance of committee meetings, it is interesting to note that interviewees made extensive references to the committees, the committee chairs, and the split of competences between committees but did not devote much attention to the actual committee meetings themselves. They mainly referred to them as a place where results had to be formalized and instead identified shadow meetings as the main forum for discussions about

¹⁹ Prep meetings, it seems, are used ahead of most formal or semi-formal meetings. Thus, the term *prep meeting* will be used throughout as it is the term most often used by interviewees regardless of what type of meeting the prep meeting precedes.

amendments. In principle there is nothing except time which prevents having discussions on amendments in committee. However, two important differences between shadow meetings and committee meetings may constrain the EP's willingness to discuss in committees: while shadow meetings are closed-door and participants are all internal to the EP, committee meetings are public, and representatives of both the Commission and the Council Presidency are present (Corbett et al., 2016: 189).

Plenaries are also public and were often mentioned by interviewees, who mostly describe them in passing as steps to formalize agreements made previously. Two interviewees argued that different factors may keep MEPs from tabling amendments at plenary: 'When you have controversial files, the whole work is done at Committee level. [Example] is one of those files where members won't dare to put any amendments at plenary level, because it's so complex and it's so nitty-gritty' (Interview 27, two EP advisers). Later in the same interview, the advisers explained in more general terms that it is in the interest of the rapporteur not to have his own group table additional amendments in plenary:

[The fact that] they don't really touch in plenary, to answer your questions, provides the opportunity to deal with a process or a problem at committee level. You clean, you agree on a position, you go to plenary. Before the voting list is done for plenary, you need to present it to group and say please, I asked the group not to table amendments. (Interview 27, two EP advisers).

In plenaries, voting generally takes place by show of hands, and it 'proceeds at a rapid pace: members sometimes have to vote on hundreds of amendments' (European Parliament, 2025a). However, any political group (or at least 38 MEPs) may request a roll call vote, which means that each MEP's vote is recorded and published. This, according to one interviewee, may also be controversial in itself:

[On a] very sensitive issue they had called a roll call vote in plenary which had been very controversial since it would force some groups to vote against something that would be difficult to explain to their constituents. This had prompted one MEP to walk up to the rapporteur and shout in his face while pointing a finger right in his face. *Note: When telling this story, the interviewee was reenacting it and pointing their finger a few centimetres from my nose. I got cross-eyed trying to look at it.* (Interview 22, EP adviser)

The above example shows that it may be politically opportune to request a roll call vote, but the intense reaction from the other MEP indicates that, in addition to being politically inconvenient, roll call votes can also be unexpected and a breach of the norms rapporteurs are expected to follow. In practice, however, most interviewees do not view plenary as an important forum for

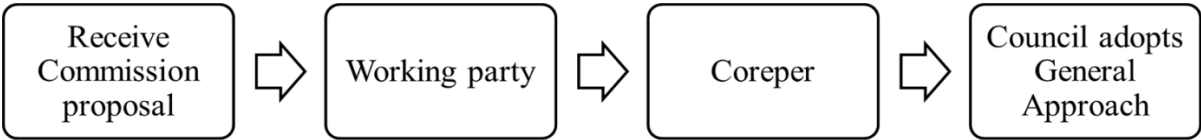
substantive negotiations. One interviewee even commenting (as described in Chapter 2) that for uncontroversial files, the EP may forego the plenary vote, merely making an announcement and then entering into interinstitutional negotiations based on the vote taken in committee (Interview 32, EP adviser). According to Parliament’s own calculations, two-thirds of mandates (187 out of 280) were adopted at committee level, and ‘out of these, 20 were challenged in plenary, albeit without success’ (European Parliament, 2024a).

6.3 The Council’s Mandate

In parallel, negotiations are taking place in the Council. They have always been conducted in secret. And this is a very serious matter, because it means that national parliamentarians – the national press – have no idea what is going on. It may well be that a mandate was given at some previous time. But it's marginal, in the end [how much that is worth]. (Interview 20, MEP)

When the Council Presidency negotiates in trilogues, they do so based on a mandate from the member states in the Council, either adopted as a negotiation mandate by Coreper or as a General Approach at Council level (Brandsma, Dionigi, et al., 2021; Laloux & Delreux, 2018)²⁰. The above quote concerns a widespread complaint about the opacity of Council decision-making. Legislative deliberations in the Council of Ministers are by default public according to Article 16(8) of the Treaty on the European Union. However, a large portion of decisions are never discussed by the ministers but are rather prepared in committees for approval without discussion (Häge, 2013). This section introduces the internal decision-making process in the Council to produce these, focusing on negotiations at three different levels: technical-level working parties, the ambassadorial level in Coreper, and the ministerial level in Council meetings. These general steps are shown below.

Figure 6.3: Council Mandating Procedure



Note: This figure shows discussions at the three levels as a linear process. In practice any issue may be discussed several times at different levels in an iterative process (see e.g. Häge, 2013).

²⁰ To my knowledge, no studies have examined the proportion of cases where mandates are adopted at the Coreper and Council levels. Brandsma, Dionigi, et al. (2021) posit that ministers only discuss politically sensitive files.

Working Party Level

The better the councillors prepare the process, the more easily the political level accepts it (Interview 28, Commission cabinet).

The first formal discussion of a new legislative proposal often takes place in one of the more than 150 working parties, which together with Coreper and other high-level committees constitute the Council's preparatory bodies (EU Council, 2025a). Generally, 'the bulk of the effort of mandate preparation takes place at the working party level' (Brandsma, Dionigi, et al., 2021). Before that, however, a file must be allocated to a Council formation and the relevant working party. Thus, there are also competence questions in the Council, but these are less pronounced than in the EP, according to one interviewee, because: 'You just have different Council formations, but the Council is only one. Of course, in practice, it doesn't always work so ideally. But...I don't think that's a challenge' (Interview 19, Council attaché).

Working party meetings are attended by representatives, mostly Brussels-based attachés, from the 27 member states, and are (with some exceptions) chaired by the rotating Presidency. These meetings are attended by the Council's Secretariat and Legal Service, as well as one or more representatives of the European Commission. Interviewees identified several norms and practices for negotiations in working party meetings, which are broadly in line with previous findings (e.g. Brandsma, Dionigi, et al., 2021). First, the Presidency can 'get information about specific sensitivities' (Interview 51, Council Secretariat) of the other member states by inviting them to informal bilateral meetings. Second, the Presidency is expected to remain neutral, and 'you would never see the Presidency raise their own flag during a working party meeting' (ibid). Another interviewee added that 'there is a what and a how in these negotiations – what you are supposed to do and how it really works [...] And knowing that is what makes a skilful negotiator' (Interview 54, Council Secretariat). This interviewee then gave the following two examples of how bilateralism in the context of working party meetings happens in practice:

Sometimes, you can have somebody who is reading out a very long and very principled instruction on the microphone and who will then come to you afterwards and say, 'This is my real red line'. Or sometimes, they will say something in a meeting and then you can engage them over a cup of bilateral coffee afterwards and they will tell you. (Interview 54, Council Secretariat)

This demonstrates that the Presidency is sometimes directly notified of the difference between 'strategic' and 'real' red lines by member states while at other times they need to actively seek out this information – and that this can be done in various ways, both at the margins of and outside working party meetings.

The Council Secretariat is held in high regard by interviewees, one saying that ‘they are absolutely key in supporting each Presidency’ (Interview 19, Council attaché). He gives several reasons. First, they are ‘the stable parts’, which is important when the Presidency switches every six months. Second, they advise in negotiations, both on content and on tactics vis-à-vis the other member states and the other institutions. Third, they assist the Presidency with the drafting of compromise proposals. And fourth, they play an important role in settling competence questions efficiently (ibid). In addition to its policy units and legal services, the Council Secretariat has a dedicated unit for Presidency preparation (EU Council, 2025b), which has a catalogue of training workshops. These include training on how to plan working party meetings, how to present issues from working party discussions in Coreper, and how to prepare for trilogues (Interview 54, Council Secretariat).

The Commission is also present in working party meetings. One interviewee makes a quite telling assessment of their role in these: ‘You have 27 member states sitting. One is the Presidency. One is the Commission, always very well prepared with all the information, and then you have 26 member states’ (Interview 23, Council attaché). While the Presidency obviously plays a central role in chairing the meetings, this quote casts the Commission in an expert role with an informational advantage over the member states. The Commission also plays a hands-on role in the drafting of Council compromises, according to one interviewee:

At the end the drafting exercise, it will be the Presidency, the Council secretariat, and the Commission services, after each working party, so there you've got the pen, you know, you can always nudge the Presidency. (Interview 29, COM cabinet)

In addition to this direct participation in the Presidency’s drafting work, more indirect ways of strengthening the connection between the Presidency and the Commission are in place. One interviewee mentioned that for the past few years, at least since the German presidency in 2020, at least one attaché will be seconded to the Commission, commonly in the Secretariat-General (interview 9, two Council attachés). This is done both to establish hands-on knowledge of the Commission’s internal procedures and to build informal networks between the two institutions.

Other interviewees mention that a ‘fourth level’ should be considered in the Council’s preparatory work, namely the capitals-based experts (Interview 23, 35). This view does not contradict the Commission’s role as an expert during working party meetings but does imply that the level of informational advantage vis-à-vis individual member states depends on the member state’s administrative capacity. The Presidency is also perceived as being at an informa-

tion advantage vis-à-vis the member states. This was explained by an interviewee who had spent a few years as a ‘regular’ attaché before chairing a working party during the presidency: ‘Because of course at the working party, they might be saying different things than at Coreper, or even at the end of the day at the Council, or in the trilogues’ (Interview 35, Council attaché). While the member states are also present at Coreper and Council meetings, that is not the case for trilogues, and the Presidency may tactically frame negotiations differently in different fora. For this reason, she argued, it was important to have experience as an attaché as it allows you to learn the processes first-hand: ‘It’s not enough only to study them, but really to live through them’ (ibid). She described taking over the Presidency as a somewhat surreal experience:

I always say chairing the working party and doing trilogues during our Presidency seemed like, you know, a Netflix series, which you watch constantly, and then you find yourself being part of the story. But then when it ends, you kind of miss it. (Interview 35, Council attaché)

An important part of the script in this series is that discussions will eventually mature to the point that either a provisional compromise has been reached, or further political input is required. When this happens, the proposal is submitted for discussion in Coreper.

Coreper

The Committee of Permanent Representatives, Coreper for short, has been described as ‘the heart of “everyday” EU decision making’ (Lewis, 2005: 938). It meets weekly (sometimes more often) in two configurations (Coreper I and II), which are split according to policy areas. Each member state has a representative in each, both with the rank of ambassador. The Coreper II ambassador ranks slightly higher and is formally titled Permanent Representative (PR) while the Coreper I ambassador is titled Deputy Permanent Representative (DPR). The PR/DPR of the member state currently holding the Presidency chairs Coreper meetings, just as attachés chair working parties. Three points about Coreper are important to dwell on from the outset: first, since Coreper only meets in two formations, each formation covers several council configurations and many working parties. Thus, Coreper agendas are often extensive, which means that time for discussions is limited. Second, these same two ambassadors (particularly the DPR, according to several interviewees [7, 14, 19, 23, 35]) often represent the Council in trilogues. Therefore, Coreper ambassadors of the Presidency are simultaneously extremely important and extremely. Third, their importance is arguably enhanced by the fact that mandates for the trilogues are often negotiated at their level without the involvement of

ministers. The ambassadors' technical-level teams play an important role in planning and structuring both internal and inter-institutional negotiations:

On Coreper I issues, I was meeting my colleagues, and we were discussing ... particularly, every single file, you know. What is the situation, if we can make a deal? So, open the trilogues or not? If it's feasible to reach the deal. And so, this planning really takes time. (Interview 14, Council attaché)

Here, the interviewee argues that the ambassador's team has some autonomy in assessing whether enough progress has been made internally to put a deal with the European Parliament within reach. This concentration of legislative decision-making to a very limited number of people, with Coreper acting as a 'filter' between working parties and ministers, meeting in closed-door sessions, has given rise to criticisms regarding lack of transparency and democratic legitimacy (Hayes-Renshaw, 2017; Häge, 2013; Meyer, 1999). More colourfully, they have been described as 'the men who run Europe' (Barber, 1995), whose meetings are tinged 'with an accent on classical diplomacy and intimate deal-making, usually over lunch' (ibid). Questions of legitimacy notwithstanding, work on codecision files takes up a significant portion of the Coreper's work: according to Bostock (2002), Coreper I ambassadors spent 50% of their working time on codecision files in 2002, and post-Lisbon their Coreper II colleagues seem to have as many if not more codecision files (Lewis, 2021).

The Commission also participates in all Coreper meetings, though usually at a much higher hierarchical level than in working parties. According to one interviewee, their participation 'makes a huge difference':

Interviewer (WE)

But you sit in Coreper, and then you get like an overview of, of who is on which ... what are the dividing lines and so on?

Interviewee

Yes, and because you are there in Coreper all the time, that makes a huge difference compared to ... sometimes I had Director-Generals coming to Coreper to defend their position, which is good. But I mean, they come, they come for their point, and we are in Coreper for sometimes 8, 10 hours, and the dynamics in which you, when you enter the room, to defend your point. But it's important to understand, what is the dynamics? How was the day so far? (Interview 11, Commission Secretariat-General)

The quote above raises two interesting points. First, Directors-General who rotate between agenda points come there to 'defend' Commission proposals rather than merely explaining and answering questions. This is in line with the view of the Commission as a negotiator. Second, in addition to defending the proposals, Commission representatives observe both the negotiation

dynamics and the mood in the room. This indicates that the Commission is attentive to political divides and tensions within the Council.

To start trilogues, a mandate must be agreed upon, and as mentioned in the beginning of this section, this can be approved either at the level of Coreper (mandate) or ministers (general approach). Interviewees in a previous study by Brandsma et al. offer the following insights:

Ultimately, whether or not to go with a general approach is the presidency's choice (R89, 92, 94, 95). Our interviewees provide different reasons: general approaches are commonly viewed as sending a strong signal to the EP that there is political backing for the mandate at the ministerial level, but they are also useful when there is a substantial minority in the Council, as a way to manage internal dissent (R94, 99). By contrast, a Coreper mandate is perceived to be faster and more flexible than a general approach (R92, 93, 97). Critically, once trilogue negotiations are underway, any revised mandates based on a general approach are adopted by Coreper and not by the ministers (R1, 91, 92). (Brandsma, Dionigi, et al., 2021: 21-22)

The last point about revised mandates is echoed by an interviewee who notes that the timing of Coreper meetings and trilogues can be tricky, as you need input from the former for the latter:

When you go to a trilogue, you need to have mandates from Coreper. It can happen, that you have the point on Coreper on Wednesday morning and trilogue on Wednesday evening. This is the worst-case scenario, because you really don't have time to prepare, but it happened a lot during our presidency, because there was, there was no time. (Interview 14, Council attaché)

In addition to driving home the point about the Coreper ambassadors being busy, this quote also illustrates how it is viewed as an important venue for updating the Council's mandate.

Coming to a General Approach

If a proposal is elevated to the ministerial level, it will be added to the agenda of an upcoming Council meeting for discussion and/or adoption. It is unclear whether the adoption of a general approach is always preceded by a discussion. As identified by Brandsma et al., adopting a general approach rather than a Coreper mandate can be used both to signal to the EP and to manage internal dissent. Regarding internal dissent, one key difference between Coreper and Council meetings is that the latter are public. Thus, member states would be forced to publicly state their dissent, which may be unattractive to some. The interviewees in my study did not comment on whether adopting a general approach sends a signal to the EP. A few did, however, introduce a complementary explanation for the Presidency raising the issue to the ministerial level:

‘Each Presidency sets milestones. For example, you would like to get to a general approach on that file, and then the next Presidency says “Okay, yeah, we would like to close this file”’ (Interview 19, Council attaché).

Similarly, one interviewee described how adopting a general approach demonstrates that progress has been made on a file even though it has yet to be concluded in trilogues (Interview 35, Council attaché). This notion is supported by the fact that both the Belgian and Hungarian Presidencies mentioned reaching general approaches on specific files as priorities in their official Presidency programmes (Belgian Presidency, 2023; Hungarian Presidency, 2024). Furthermore, Belgium mentioned two different general approaches on its list of Presidency achievements (Belgian Presidency, 2024). The difference is also visible in the social media communication used when reaching a general approach as opposed to a Coreper mandate (see Figure 6.4).

The social media communication regarding the general approach reached at the ministerial level includes a picture of the relevant minister and text about the importance of this piece of legislation and was posted by the Presidency’s official Twitter account. The post regarding the Coreper mandate was posted by the Council Secretariat and only contains a link to a press release. This indicates that the involvement of the ministerial level is considered more important to communicate by the Presidency, in line with the interviewees’ assessments.

Figure 6.4: Social Media Communication about Reaching a Mandate



Note: On the left is a tweet posted by the Council Secretariat’s press unit about a mandate agreed in Coreper. On the right is a tweet posted by the Swedish Presidency about a general approach agreed in a Council meeting.

To summarize, the Council’s mandates for trilogues are first discussed in working parties, where points of conflict and potential compromises are identified. This is followed by the discussion and subsequent approval of the

mandate, either in Coreper or at the ministerial level. Interviewees note that disagreements about competence do arise though it rarely becomes a significant issue. Furthermore, they point out that the Commission plays an active role in the Council's mandating process, participating in meetings at all levels and supporting the Presidency with drafting compromises. Finally, interviewees indicate that one reason for adopting a mandate at the Council rather than Coreper level is that reaching a general approach can be counted in the list of a Presidency's achievements.

6.4 Comparison of Procedures

The first thing to note is that Council and Parliament work in very different ways, extremely different ways. The Council is super structured, very organized, there is a path for everything, and things do not get out of this path easily, and so it's very easy to determine what's going to be the next step and with whom you should be talking for the next step and whatever. Parliament, it's the complete opposite. Parliament is a roadshow ... and there are no clear procedures for anything. (Interview 2, COM Secretariat-General)

The quote above highlights, perhaps a bit sharply, a common perception among the interviewees about the internal procedures in the Council and the EP. This section compares the findings about mandating procedures within the three institutions. This is done to demonstrate that differences in these procedures can have important implications for the trilogue negotiations which follow them, and to demonstrate that the Commission's mandating procedure ultimately is not so different from those of the co-legislators. Of course, the Commission's preparatory work is different from the co-legislators' in two important respects. First, the Commission's preparatory work happens at an earlier stage, which means that they are to some extent acting rather than reacting when producing a legislative proposal. Second, the Commission services do a great deal of preparatory work at the technical level in terms of impact assessments, public consultations, regulatory scrutiny, etc. As the impact assessments are made available to the co-legislators, this does not introduce an information asymmetry in terms of available data – but it does mean that the Commission will have a more comprehensive understanding of the file than the co-legislators when the proposal is submitted. The mandating procedures will be compared on four different parameters: competence allocation, negotiator selection, negotiation levels, and transparency.

Competence Allocation and Coordination

The previous sections have found important differences regarding competence allocation and coordination procedures in the three institutions. Disagreements about competence seem to be more conflictual in the EP than in

the other two institutions. This introduces another layer of potential conflict and is generally seen as detrimental to the EP's influence later in the legislative process. While considerable attention was given to these questions by EP interviewees (Interviews 10, 16, 22, 27, 39, 42), it did not seem to concern interviewees from the Council and Commission. According to one, the Council Secretariat helps here, and any concerns are alleviated by the fact that, in the end, the Council is 'one institution' meeting in different formations (Interview 19, Council attaché). While there is generally agreement across interviews that the EP spends more time and energy on competence questions, the quotes below illustrate that it can also happen in the Council, but that it is not seen as very controversial when it does:

There has been a bit of a fight between the [two EP committees]. There's been a bit of a fight about which of the ministers should be in charge of it in the Council ... Well, it's really just a typical competency issue. (Interview 10, EP assistant)

But I think it's really much less of a problem on the Council side than ... on the Parliament. It really can't compare. (Interview 19, Council attaché)

While some interviewees compared the competence allocation processes in the Council and the EP, they did not include those of the Commission. This may reflect the fact that the Commission's mandating happens at an earlier stage than those of the Council and the EP, that the Commission's internal coordination is opaque to the other institutions, or that it is simply not deemed important. The latter is countered by one interviewee who mentioned that during a trilogue meeting they had observed on the participant list that two different Commission DGs were present. The presence of the second DG indicated that 'they have some concerns about what the [first DG] people are trying to settle with us, right?' (Interview 24, EP assistant).

Selection of Negotiator(s)

Regarding selection, the most important difference is that the EP has an actual procedure for selecting which party and which MEP will represent them in trilogues. Indeed, there is an auction system for allocating legislative files between groups, and there may be competition within a political group for rapporteurship on attractive files. This is not the case in the Commission and the Council, where the relais actors are decided either simultaneously with the competence question and according to the set rotation of the Presidency, respectively. The Presidency and the Commission also face fewer constraints in terms of who they can bring to each trilogue meeting. Conversely, the EP's rules of procedure specify clearly which actors must be invited. Finally, however, the six-month tenure of a Council Presidency does mean that there will

likely be more changes in the Council’s negotiating team than in those of the other two institutions. This point will be elaborated in Chapter 7.

Negotiation Levels

In all three institutions, legislative proposals are discussed at different hierarchical levels, with the brunt of the work taking place at the lower levels. In the words of one interviewee, the process is comparable across institutions:

It's a mirror of what is happening within each of the institutions, including the Commission. So, you have a technical team which is drafting [...] the first attempt to do the legal text and so on. That's the technical teams. [...] the political teams say yes or no. (Interview 28, COM cabinet)

To illustrate this comparison, I have labelled the different levels *technical*, *middle*, and *political* and categorized the different decision-making formats in each institution, as shown below:

Table 6.1: Meeting Formats Used in Intra-institutional Legislative Deliberations

	Commission	Parliament	Council
Political level	College of Commissioners	Plenary	Council meetings
Middle level	Cabinets, inter-service consultation	Group meetings, shadow meetings Committee meetings	Coreper I and II
Technical level	Work in DG	Technical shadow meetings	Working parties

Note: Hierarchical levels do not translate directly between institutions. Particularly the middle level is open to interpretation, while the technical and political levels more solidly denote the lowest and highest level of discussion within each institution.

Another similarity between the three institutions is that the degree of involvement of the political level varies from case to case. For the EP and the Council, it is even possible to start trilogue negotiations with a mandate agreed at the middle level (the relevant EP committee and Coreper, respectively) without having a formal decision at the highest level. For the Commission, all legislative proposals are formally adopted by the College, though it may be done by written procedure without discussion by the Commissioners. Another important difference is that the rapporteur is present and responsible for the file at both the middle and political levels while ministers in the Council and Commissioners are only present at political level. All else being equal, this indicates

that the rapporteur is more involved in the hands-on work with a legislative proposal than their political-level counterparts. The Coreper ambassador, who, as described above, often represents the Presidency in trilogues, covers several legislative files at the same time. Thus, their calendar is unlikely to permit them to dedicate much time outside of trilogue and Coreper meetings to each legislative file.

Transparency

There are important differences between the institutions' mandating procedures in terms of transparency. Inspired by Eggeling and Versloot's (2022) distinction between internal transparency and external confidentiality in EU diplomacy, I distinguish between internal and external transparency. Internal transparency denotes the ability of the other two institutions to follow negotiations within the third, while external transparency denotes the extent to which an institution's meetings are public. Thus, a high degree of external transparency necessarily implies a high degree of internal transparency.

The Commission is arguably the least externally transparent of the three institutions, as none of their meetings are held in public. Council meetings are (in principle) public, while Coreper and working parties are not. The EP is the most externally transparent, as both committee meetings and plenaries are public while shadow meetings are not.

In terms of internal transparency vis-à-vis the Commission, the EP seems to be at a disadvantage compared to the Council. The EP can get information from Commission representatives present at meetings in committees, plenaries, and, according to one interviewee, in various governing bodies such as the Conference of Committee Chairs (Interview 2, COM Secretariat-General). The Council fares better: first, member states are present in the Commission's internal expert committees, allowing some level of participation in closed-door negotiations within the Commission (Egeberg et al., 2003). Second, the Commission is present at all levels of internal Council deliberations. According to interviewees, this gives the Council an advantage since they have easier access to information from the Commission as well as the opportunity to get to know the Commission officials in the intra-institutional phase:

Well, the Commission has a very specific role ... It's different in the Council and in the EP because every time we have a working party in the Council, the Commission is there. So, they're present in all our meetings, they present their proposals, and they defend them. They listen to what member states have to ... say. They react. They also try to, you know, get a feeling of where compromises can lay in the Council. And this doesn't happen so much in the Parliament. (Interview 23, Council attaché)

The contact specified above is rather formalized but still plays an important role, as it means that the Commission has more structured contact with the Council than with the EP. This has several implications. First, the Commission has more knowledge about the internal proceedings of the Council than of the EP. Second, the Commission has an information advantage vis-à-vis the EP due to its knowledge about disagreements in Council. Third, the Commission has more opportunities to explain and defend its positions during internal Council negotiations, thereby potentially exerting early influence on the Council's proposed amendments. While this also entails that the Commission has less access to substantive negotiations within the EP, both committee and plenary votes are public, and interviewees generally argue that it is easy to determine where the main political disagreements within the European Parliament are.

Summary

There are several noteworthy differences between the three institutions' mandating procedures. First, the Commission produces their mandate at an earlier stage than the co-legislators. Between them, interviewees find that the Council is at an advantage compared to the EP for two reasons: first, their procedure is less transparent, so it is more difficult for the EP to discover where the fault lines are. Second, according to interviewees, the Council generally introduces fewer amendments than the EP, which means that their amendment proposals seem more 'consolidated' (Interviews 48, 55). In the words of one Commission official:

There might be some small things for member states, but in theory what they have to get is the general approach element. And the general approach is the new position of all the member states. And they cannot divert any more from it. Parliament is really tricky, because the report itself, there are always points who are opposite to each other, even though they're supposed to be coherent. (Interview 55, COM official)

While the resulting mandates are quite different, the overall structure of the procedures for producing them is similar in one important respect: there are different hierarchical layers, and a great deal of the substantial work done within each institution is carried out by employees at the technical level before being approved by higher levels.

6.5 Informal Contact During the Mandating Process

The rapporteurs have bilateral meetings with both the Commission and the Council Presidency before we have the trilogue meetings. Where they kind of feel each other out and get to know each other and prepare. Probably at both technical and political level. (Interview 15, MEP)

Naturally, informal contacts between the institutions always take place, but sometimes they are more intense and instrumental than at other times. This section focuses on the informal interactions between negotiators from the three institutions during the intra-institutional negotiation phase of the EP and the Council. This is structured with reference to each bilateral pair: Commission-Council, Commission-Parliament, and Council-Parliament.

Commission-Council

As noted above, the Commission is present at all levels of the Council's internal meetings, and according to one interviewee this offers them the opportunity to both observe the positions taken in meetings and to engage informally and tease out member states' 'real' positions:

So, you find out in the conversations we have and of course the meetings, and the informal conversations, where the member states that have their, well, have their problems... It's not really something you can read about. Not always at least. (Interview 13, COM Secretariat-General)

Another interviewee notes that they are sometimes directly in contact with specific member states to 'pre-cook' legislative compromises, and that they work informally to make sure that Brussels-based attachés know that:

There is an initial hesitation. It is also that the people who are in charge in the permanent representations are the ones based here. They are not necessarily the people who run the thing, the business on the ground. So, there is an information gap maybe. This means we need to explain that in this case, the Danish councillor maybe doesn't know that we have been pre-cooking this with the Danish government team. (Interview 28, COM cabinet)

Another interviewee mentions that they will also reach out to the Council for practical matters such as scheduling, and to 'provide the clarification necessary in terms of scope and intention, and also obviously to give a nudge' (Interview 29, COM cabinet). The last part of the quote was rather tongue-in-cheek but illustrates that the interviewee finds that being in contact regarding practicalities offers opportunities to (attempt to) exert influence on policy. Another opportunity for the Commission to engage with, and nudge, the Presidency is the so-called 'drafting sessions'²¹, in which Commission officials help the Presidency draft compromise proposals based on the input they receive from the member states. These are described by one interviewee as follows:

They are like Council working parties. Discussions about a compromise text drafted by the Presidency. But you need to draft a compromise text based on

²¹ Drafting sessions are also used in the interinstitutional phase, as will be elaborated in Chapter 11

comments that you receive [...] And it's normally only the Presidency that drafts it with the support from the Commission. So, we help them to do...the proper changes. Also, because they might wonder, like 'Why does the text say that?' and 'Would it be an issue if we add this or that?' So, that's why they really rely on us. (Interview 55, COM official)

While practices may vary between policy areas, presidencies, and even individual files, this quote shows that the Commission participates not only in meetings with all member states, but also in informal, bilateral sessions with the Presidency. This is markedly different from the interview quotes about the EP's drafting process, which was described as 'independent' and 'more or less random' by another Commission official (Interview 48, COM official).

Commission-EP

As noted above, the Commission participates in fewer internal meetings in the EP than the Council. I have also argued that the Commission can easily identify internal disagreements in the EP based on public records of votes and debates in committee meetings. However, the Commission also keeps an eye on the EP before the legislative report is adopted:

So, they will not keep all the amendments, but some of them. And so, once they agree on this, this will become the report. But the stage between the draft report and the adoption, you know who has which amendment. So, you can easily know then, in the report, where it comes from. So, that's the way of knowing which party ... gets what. (Interview 55, COM official)

Inversely, EP negotiators have fewer opportunities than their opposite numbers in the Council to probe the Commission in the margin of meetings. To counteract this, one MEP describes how his team office would reach out directly to Commission officials as soon as he was appointed shadow rapporteur for a file:

It does not only start when you have your mandate. I am the shadow on the [legislative file], and before we had our amendment deadline, we had a meeting with the people who had worked on it in the Commission, who kind of explained, well, why is it that the Commission proposal looks like this? And they told us how this works legally, so that we had an understanding of it. (Interview 15, MEP)

However, explanations are not the only reason MEPs reach out to the Commission informally. One EP interviewee describes how they proactively reach out to lobby Commission DGs:

They [COM] also have some political negotiations internally, so they may well have their expertise, but the departments can also disagree on some things, [...] so, of course, we also try to push. [...] let's say it's DG ENER that presents this

proposal. But we know that DG MOVE is closer to us, so we might also try to lobby for DG ENER to come closer to our position, right. So, we also ask critical questions along the way, which means that we have an ongoing dialogue with them during our own negotiations. But it also means that when we go into trilogue, we also have a connection with their head of unit or wherever else can give us some facts on the various things. (Interview 17, EP assistant)

The interviewee attempts to gain information about, and leverage, cleavages within the Commission to bring political outcomes closer to his preferred position. He adds that this is not always something which is done strategically but also might just be ‘something you talk about in Parliament. Maybe someone knows someone over there, and they’ve picked up that there are these disagreements’ (ibid). The interest in reaching out early in the process is not one-sided. This quote from a cabinet member illustrates that they meet with the rapporteur early with the explicit goal of influencing them:

We set up lots of meetings to make sure we have those informal things. When a new rapporteur is appointed [...], we usually invite to a meeting with [Commissioner]. From my chair, it was a question of talking to co-legislators and getting them in our direction, as in [Commissioner's] direction, not necessarily the Commission's direction. (Interview 6, COM cabinet)

The quote also highlights that while the legislative proposal is the Commission’s mandate, the individual Commissioner and their team may have different preferences. Thus, interinstitutional negotiations may provide opportunities to steer the final compromise closer to these, and temporary coalitions between the institutions may develop.

EP-Council

The sections above have demonstrated that the Commission is in contact with the co-legislators during their internal negotiations. This was argued above to be both driven by a demand from the co-legislators for information from the Commission, and a natural continuation of the Commission's participation in the Council’s meetings. However, the extent of interaction between the co-legislators during the same phase is less clear. On one hand, they may prefer to keep their cards close and not give away details about their internal deliberations. On the other hand, they may want to get a head start on building relations with important stakeholders on ‘the opposing side’. The following excerpt illustrates some of these considerations.

Field Note Excerpt 6.2: Trust-Building between EP and Council

During the Strasbourg session, I attended a weekly staff meeting in the MEP's team. It included both Brussels-based and capital-based staff, so the meeting was held via Zoom. The Strasbourg delegation (MEP, an assistant, and me) was connected via an iPad, and all three of us sat next to each other at the same desk in the MEP's office. Towards the end of the meeting, there was a fixed agenda point called 'victory of the week' where each participant was to share one success. The assistant hesitated slightly before saying that he had had some trouble with building a trusting relationship with the national attaché in their policy area, but that he had recently made good progress on that account.

I later asked the assistant about this, and he explained that the relation with attachés is important because they are 'opponents' in the trilogue process. So, on one hand, they are required to have a 'professional' relation where they exchange official positions and news. However, since more people are present in the EP's trilogue delegations than the Council's (shadow rapporteurs, but no member states beyond the Presidency), they usually have an information advantage at this stage. He would like to be able to share info about this with the attaché without 'compromising the internal communication in the Council' or without him taking it the wrong way. And that requires trust!

The interaction between the assistant and the attaché outlined above was not related to a specific legislative proposal but rather aimed at improving their relationship because they expect to be working together on concrete files in the future. Furthermore, it demonstrates that shadow rapporteurs have an easier time gaining first-hand information about negotiations than member states in the Council, and that this information may be shared strategically during negotiations. This prevalence of informal exchanges with the MEP's co-national Permanent Representation is corroborated by interviewees (Interviews 10, 14). These contacts are ongoing but are intensified by member states approaching the Presidency, 'because if you want to reach a deal, you really need to get in touch with them' (Interview 14, Council attaché). The same interviewee argued that contacts between the Presidency and the EP team before trilogues start was valuable, even just a brief encounter:

We had meetings with all of the rapporteurs before the trilogues. And maybe someone we met twice, because ...we knew that it's going to be huge political discussion. So, we had contacts [...] this is, I think, really valuable to do before the trilogues. At least five minutes' handshake, just present themselves, and maybe switch some informal contacts. (Interview 14, Council attaché)

This quote indicates that exchange of information is not the only consideration when initiating informal contacts. She also argues that just having exchanged phone numbers and shaken hands before sitting down to negotiate helps facilitate the 'huge political discussion'. These informal contacts may also be initiated during the mandating phase by an incoming presidency based

on the expectation that interinstitutional negotiations will take place during their six months:

I have already had a meeting with the Hungarian ambassador because she knows that it will be during their presidency that the Council will probably have to find its mandate. And therefore, it was important for them to start a dialogue already now, before Parliament has finished its work. (Interview 34, MEP)

In sum, the above demonstrates that contacts between representatives from the Council and the EP are always ongoing, but that they are intensified at different times. These include when a rapporteur is appointed, when a Member State is approaching its Presidency, and when a specific file is about to enter interinstitutional negotiations. Finally, it is worth noting that none of the interviewees indicated that trilateral meetings between all three institutions begin to occur until after each institution has its mandate and the decision has been made to start trilogues. How the first trilateral meetings and contacts are carried out after mandating is complete will be elaborated in Chapter 8.

6.6 Summary

This chapter has introduced and compared the different internal procedures used by the three institutions to develop a mandate for trilogues and explored the informal communication practices between the institutions during this process. This was done in three main parts. First, each institution's mandating process was described with regards to selection of relais actors and negotiations of the mandate. The analysis drew both on interview material and the institutions' formal rules. It was argued that it is both fruitful and warranted to treat the Commission's legislative proposals as negotiation mandates used in trilogues.

The second part compared the procedures, identifying several key similarities and differences. First, the Commission is more closely involved in the preparatory work of the Council than of the Parliament, which offers both more opportunities for communication and coordination and an informational advantage vis-à-vis the EP. Second, the EP is the only institution which selects its chief negotiator (the rapporteur) on a case-by-case basis, and questions of competence allocation were also found to be more conflictual for the EP than for the other two. Third, mandates for both the EP and the Council to enter into trilogue negotiations may be approved at both the middle level (committee and Coreper respectively) and the political level. It is unclear whether there are any substantive differences between mandates approved at the middle versus political level. However, the interview material does suggest that politically salient cases are often adopted at the political level in the

Council, which could in part be explained by the fact that doing so offers the opportunity for the Presidency to claim progress on a file despite not having finalized it in trilogues.

The third section found that there is an ongoing stream of informal communication between the three institutions during the mandating phase, starting as soon as negotiators are selected. This informal communication primarily serves three purposes: first, for the Commission to informally explain the reasoning behind the specific content of a proposal, gather information about the positions of others, and to nudge particularly the Council to move closer to their position. The second purpose is for all institutions to exchange information about one another's positions and internal divisions. The third purpose is to simply establish an initial relationship with the other negotiators, shake hands, and exchange phone numbers before negotiations start in earnest.

Chapter 7.

Compromise or Stand My Ground? How Negotiators Experience Cross-pressures in Trilogues

When you are in a trilogue, especially in a very controversial negotiation, it's a very complex situation. Because you have so many actors influencing and having a stake and having a role, informally, to play. So, of course you try to manage that to the greatest extent possible. But you know ... there is only so much you can do. (Interview 19, Council attaché)

Any time an agent negotiates on behalf of a principal, they are faced with the dilemma of weighing the interests of the principal against their own, potentially conflicting interests (Miller, 2005). This also holds true for legislative negotiations, but as King & Zeckhauser (1999) argue, politicians face additional challenges: their principals are rarely unified, they are watched by the media and constituents, and negotiations are often on multiple issues simultaneously. The principal-agent logic has been fruitfully applied to trilogue negotiations by Delreux & Laloux (2018), who argue that representatives of the Council of Ministers (Council) and the European Parliament (EP) feature parallel principal-agent relationships, bridging interinstitutional compromise and intra-institutional policymaking (ibid: 303).

This chapter adds to the work of Laloux and Delreux in two important ways: first, building on the preceding chapter, by considering the European Commission, which has traditionally been conceptualized as primarily a facilitator in trilogues,²² as a negotiator with separate interests. Though the Commission is not a co-legislator, the previous chapter demonstrated that the Commission's proposal is *de facto* used as a mandate, and deviations from it must be approved by the college of Commissioners. Second, the constraints facing each relais actor are unpacked, compared, and systematized as the *pressure configuration* of each negotiator, and in this chapter I will argue that some pressures are felt equally by all negotiators while others vary between institutions and actors. The chapter is structured as follows: first, the different relais actors are briefly (re)introduced, as are the typical members of each institution's delegation. Second, the different pressure configurations are

²² Several studies have scrutinized the Commission as a political actor, both generally (e.g. Egeberg et al., 2014; Hartlapp et al., 2014; Nugent & Rhinard, 2016) and in trilogues (Laloux, 2024; Laloux & Panning, 2021). However, it is still common to discount its role as primarily that of a facilitator.

presented, starting with the pressures shared by all, followed by the differences between the institutions. These are pressures of *monitoring*, *neutrality*, *time*, and *reputation*. Third and finally, the chapter's findings are summarized, pointing forward to later chapters in the dissertation which will introduce strategies employed by negotiators to manage these cross-pressures.

7.1 Actors

This section briefly reintroduces the common trilogue participants representing each institution, which were first introduced in Chapter 2. First, the Commission delegation is introduced, followed by the EP and the Council delegations. The delegations are split by hierarchical level using the categories introduced in the previous chapter – technical, middle, and political. Since this chapter aims to develop the concept of *pressure configurations*, special focus will be devoted to the main negotiators, the relais actors. This is because, according to the relais actor thesis, the proliferation of codecision and trilogues has caused ‘substantial shifts in their [Council and EP] internal balances of power’ (Farrell & Héritier, 2004: 1204), empowering the relais actors due to their control of flows of information and triggering various attempts at formal and informal control of the relais actors (ibid). Twenty years on, according to Brandsma & Hoppe (2021: 360), trilogues can no longer be described as a ‘relatively rule-free environment’, but relais actors ‘still enjoy considerable autonomy in terms of structuring the process of negotiations and thereby influencing final outcomes’ (ibid).

The Commission Team

The Commissioner for the relevant policy area is the political-level representative of the Commission in trilogues. Though participation in trilogues is expected as per their mission letters, they will usually only be present at the first and the last trilogue meeting, or if the file is sufficiently high-profile. A simple explanation for this is that Commissioners are busy: ‘[Commissioner’s] calendar is incredibly crowded because she gets many, many, many more meeting requests than she can possibly say yes to, and in general, she has so many areas to cover’ (Interview 6, COM cabinet). However, the two quotes below illustrate that a Commissioner’s presence can also signal both willingness to compromise and respect for the co-legislators:

The Commissioner doesn't typically sit in on the trilogues, unless we're getting close and so on. It's very unusual for them to show up before the result is actually almost finalised. So, the fact that she's sitting there – she, a woman in this case

– means that the Commission might also go the extra mile to contribute and so on. (Interview 44, EP assistant)

Obviously, there is political pressure to attend a trilogue when there is clearly a need, and also when things are getting very serious in terms of the negotiation and it's always of course respectful towards the two other institutions if the Commissioner himself comes to attend these meetings. (Interview 45, COM cabinet)

In cases where the Commissioner is not present, trilogue meetings are normally handled by the middle level. Here, the Director-General or a deputy from the relevant Directorate-General (DG) may lead the Commission's negotiation team. One or more Directors may also be present, but Deputy Director-General seems to be the lowest hierarchical level acceptable to the other two institutions as delegation leader. In the words of one interviewee: 'It must also correspond to the representation from the other institutions. So you have an MEP from the European Parliament, and then you will typically have an ambassador from the Presidency on the other side' (Interview 13, COM Secretariat-General). Additionally, members of the Commissioner's cabinet may be present 'if the file is very important for their Commissioner' (Interview 11, COM Secretariat-General). This may be the Head of Cabinet, their deputy, or the member in charge of the file. They will, however, usually not be leading negotiations. The high-level actors are assisted by a technical team composed of representatives from the lead DG, the Secretariat-General and, when relevant, from one or more secondary DGs.

From the DGs, there will be representatives from the unit working on the case as well as representatives from the Interinstitutional Relations Unit. From the Secretariat-General, there may be an interinstitutional coordinator (Interview 13, COM Secretariat-General), officials from the Commission Legal Service, from the press team if a press release is foreseen, and 'when it's very touchy you have the spokesperson service' (Interview 11, COM cabinet). The interviewees generally estimate the size of the Commission delegation in the same range as previous studies (8-12 according to Roederer-Rynning & Greenwood, 2015), though more may be present if several DGs have an interest in the case. On one occasion, when an MEP and an assistant disagreed about the total number of participants in a trilogue during an interview, the assistant exclaimed that 'The Commission, they have a whole damn football team ... because they bring all the experts' (Interview 21, MEP and assistant).²³

²³ On a similarly colourful note, one Commission interviewee noted that 'the Parliament comes with a Mexican army' (Interview 2, COM Secretariat-General) to trilogues.

European Parliament

As mentioned in Chapter 2, European Parliament's Rules of Procedure clearly specify which political-level actors should be invited to trilogue meetings: The Committee chair leads the meeting, the rapporteur negotiates, and shadow rapporteurs must be invited (European Parliament, 2024c). As there are (at the time of writing) eight political groups in the European Parliament, the EP delegation will be composed of up to nine MEPs (chair, rapporteur, and seven shadows), double that if the proposal in question is a joint committee procedure. It is worth noting, though, that (particularly) hard Eurosceptic parties often do not participate in trilogues (Ripoll Servent & Panning, 2019a, 2021). Add to this the technical teams supporting each, and it makes for some very large EP delegations, compared to those of the Council and the Commission. In the words of one interviewee: 'Oh my god, it could be like 40. We, like Council is like eight people. 40! [...] And the Commission would be, like, up to 10, maximum' (Interview 14, Council attaché).

Three types of political-level actors with different roles participate. First, the rapporteur leads the EP negotiating team. As shown in the previous chapter, the rapporteur plays a central role in producing the EP's negotiation mandate, and in addition to negotiating on behalf of the entire EP, the rapporteur also represents their own political group in trilogues. The shadow rapporteurs, on the other hand are there primarily to make sure the rapporteur does not deviate more than necessary from the mandate. Finally, the Committee Chair is tasked with presiding over the meeting. In the meetings I have observed, which all took place on EP premises, this meant that the Chair acted as moderator while the rapporteur negotiated on behalf of the EP. Interviewees report that sometimes, rapporteurs have the double role of chairing the meeting and negotiating on behalf of the EP²⁴ (Interview 39, EP lawyer linguist). When present, Committee Chairs may occasionally take over negotiation duties from a rapporteur if the rapporteur either does a poor job (Interview 46, EP assistant) or if the shadows lose trust in the rapporteur, for instance if they suspect that he is colluding with the other institutions (Interview 1, EP assistant). Unlike the Commission, none of the actors representing the EP fall into the middle category. I can offer no definite answer as to why this is, but there are several potential explanations. First, there is perhaps a clearer delineation between political and administrative actors in the EP since MEPs are directly elected politicians and their staff are not. Second, the larger number of political-level actors present in the EP delegation perhaps diminishes the need for a middle level. Third, it might reflect that the EP's administration is smaller

²⁴ The EP's rules of procedure now stipulate that this should *only* happen if neither the Committee chair nor any vice-chair is available.

than those of the Council and the Commission. Whatever the cause, the result is that MEPs regularly interact with both the political and middle actors from the other two institutions.

The MEPs are supported by various technical staff in different roles. First, each MEP is usually accompanied both by an Accredited Personal Assistant (APA, or simply assistant) as well as a policy adviser from their political group. The assistant is employed directly by the MEP and is thus expected to have policy preferences that align with those of their MEP. The adviser, on the other hand, serve two masters, namely the (shadow) rapporteur and their political group, whose preferences may not be perfectly aligned. In addition to the teams of each MEP, staff from the Secretariat-General of the European Parliament will also be present. This includes officials from the relevant committee secretariat, from the Legislative affairs unit, and often also a lawyer linguist. While it may vary, I have observed that committee secretariats support both the Committee Chair and the rapporteur in negotiations.

Council

The Council has very few formal provisions regarding their participation in trilogues, their rules of procedure only specifying that representation before the European Parliament is handled by the Presidency. In trilogues, this is also the case (Elgström, 2006), though the rules of procedure make no explicit mention of them (Brandsma, Dionigi, et al., 2021; Leino-Sandberg, 2023). The highest level of representation for the Council in trilogues would be the minister currently chairing the relevant Council formation. More often, though, it is a (very) senior civil servant from the relevant ministry, or one of the two Coreper ambassadors. According to some interviewees, participation varies between Corper I and II:

The difference between trilogues under Coreper II and Coreper I, because the trilogues under Coreper II are not usually chaired by the ambassador. They are usually chaired by experts or a deputy minister, someone from from [capital]. But as for Coreper I, it's usually the DPR. (Interview 14, Council attaché)

This view was challenged by another interviewee, who reported that ambassadors in both Coreper formations participate in trilogues (Interview 54, Council secretariat). In any case, representation by a capital-based civil servant, rather than a Brussels-based ambassador, may have implications for how the negotiator balances the different pressures facing them in trilogues, and this should be kept in mind when working with this concept to analyse specific legislative files. For instance, the latter may be more likely to be socialized into 'Brussels norms' (Lewis, 2005) than the former. Relatedly Coreper ambassadors are often attuned to EU negotiations, which is praised by one interviewee: 'our

ambassador is - you would tell if you had seen him in trilogues – he's absolutely brilliant. He knows the notion of negotiation better than any of our ministers of our attachés' (interview 3, Council attaché). Regardless of who represents the Council at the political level, they will be accompanied by a delegation of technical-level staff.

The Presidency team consists of a handful of civil servants from the Permanent Representation and from relevant ministries in the capital. The specific composition varies from case to case, but generally it can be expected that someone from the Interinstitutional Relations team (e.g. Antici or Mertens²⁵), the attaché chairing the relevant working party, and perhaps a press officer will form the Brussels-based part of the team. The other member states are not represented in trilogues, but the Presidency is accompanied by the General Secretariat of the Council. Normally, they will only number a few people: one or two from the relevant policy unit, the Council Legal Service, and perhaps a representative from the Interinstitutional Relations and/or press offices. As such, the Council delegation is of a similar size to that of the Commission or smaller, usually around 10-15 members in total. One ambassador describes her team:

The pre-brief meeting, you have the Council Secretariat, usually at director general level or director level. I mean, it's obviously a director plus a couple of experts. And I have my attaché and I have my Mertens and I have my trilogue guy. So, at the end we are ten [...] it's the team that is going to go in the trilogue (interview 52, Council ambassador)

Comparing Delegations

To summarize, the EP usually has the largest delegation, easily numbering more than 30 people, whereas the Council and the Commission delegations are normally around 10 people. The most central actors negotiating on behalf of each institution on the technical, middle, and political level are as follows:

²⁵ Antici and Mertens are the names of two working groups in the Council tasked with preparing the meetings in Coreper II and I, named after their first presidents. The member state representatives in each group are also titled Antici/Mertens and are considered the closest advisors to the two Coreper ambassadors.

Table 7.1: Trilogue Negotiators at Different Levels

	Commission	EP	Council
Technical level	DG officials Legal Service	MEP assistants Group advisers Committee secretariat	Attaché Capital-based civil servant Council Secretariat
Middle level	(Deputy) Director General, DG (Deputy) Head of Cabinet	No specific actor at this level	Coreper ambassador Capital-based senior civil servant Director, Council Secretariat
Political level	Commissioner	Rapporteur Shadow rapporteur Committee (Vice) Chair	Minister Vice Minister

Note: Hierarchical levels do not necessarily translate easily between institutions. Particularly the middle level is open to interpretation, while the technical and political levels more solidly denote the lowest and highest level of discussion within each institution.

A few things are worth noting about this table. First, it does not include all *potential* participants, as only the EP has specific rules about the composition of its delegation. Second, while ministers and commissioners do sometimes represent their institutions in trilogues, it is more commonly the middle level leading these delegations. One interviewee observes the following regarding the Council's representation: 'Our DPR is not a politician per se. He's doing policy but he is not elected' (interview 23, Council attaché). The trilogue meetings I observed seemed consistent with this assessment. Two were open-ended, one was not. For the open-ended meetings, the relevant Commissioner was present, while for the 'regular' one, a Deputy Director-General led the Commission delegation. In all three cases, the Council delegation was led by a capital-based civil servant. By comparison, the middle level is not found in the EP, and the rapporteur is expected to always be present. Thus, the remaining potential way for the EP to vary the level of representation is to exchange the Committee Chair for a Vice-Chair, but neither my interviews nor observations indicate that this is done strategically.

7.2 Cross-Pressures

Having introduced the different actors likely to be present in a trilogue meeting, the next step is to identify the different types of pressure facing the negotiators. This is done in three steps. First, the basic cross-pressure of defending one's mandate versus compromising to reach agreement, which is shared by all negotiators, is introduced. Second, four different types of pressure which are expected to vary between institutions are introduced. These are *monitoring*, *neutrality*, *time*, and *reputation*. Third, the negotiators representing each institution are analysed using these four parameters and subsequently compared.

Shared Pressure: Compromise or Stand My Ground?

Inherent to any negotiation is the fact that the actors' preferences do not initially overlap. If they did, there would be no need to negotiate. Add the fact that each of the three institutions in a trilogue negotiate on behalf of a mandate negotiated by their constituent institutions, and it is a classic two-level game (Haag, 2021; Putnam, 1988). This represents the first fundamental cross-pressure which all three institutions must deal with: on one hand, they need to make concessions to the other institution(s) in order to arrive at a mutually acceptable compromise. On the other hand, each deviation from their mandate entails a risk that their own institution will not approve the final compromise, which in turn means that either no deal will be made, or additional trilogues will be required. Negotiators are, naturally, acutely aware of the limits of their mandate. It is also worth noting that the interviewees from all three institutions agree that the Commission does not merely act as a neutral broker but also tries to pursue its own preferences in trilogues:

On paper they are a neutral broker, but they also have a proposal they want to defend, so you can say that they prefer not to go far away from what they have presented. (Interview 17, EP assistant)

When you're sitting there, you know if the Commission is on your side or not. If the Commission can help you or not. (Interview 14, Council attaché)

The Commission, as you said, made the proposal and the Commission wants an agreement, so we want an agreement and unless it's catastrophic or it goes really in the opposite direction. As long as both institutions agree, we will be happy. (Interview 26, COM Official)

Many interviewees distinguish between 'acceptable' interference, when the proposed amendments are either not feasible, not legally sound, or go against the original intent of the proposal, and 'unacceptable' preferences, when the Commission is perceived to be pursuing its own political interests. While not

particularly surprising, it is also worth noting that interviewees from the Council and the EP are often rather critical of the Commission's fulfilment of the 'honest broker' role, giving examples of Commission representatives being 'very aggressive negotiator[s] who would intervene often to try to influence decisions' (Interview 16, EP adviser), but at the same time accepting the fact that the Commission defends the original proposal, as mentioned in Interview 17 above. Commission representatives, on the other hand, generally offer two explanations. One is to downplay the Commission's pursuit of own interests with phrases like 'our proposals are not the Holy Grail' (Interview 56, COM Directorate-General) or 'we want an agreement and unless it is catastrophic or it goes really in the opposite direction, as long as both of the institutions agree, we will be happy' (Interview 26, COM Directorate-General). The other is to argue that the Commission is defending the purpose of the proposal: 'the Commission's role is of course to ensure that we achieve what we want with our proposal [...] that it doesn't get completely either watered down or distorted' (Interview 13, COM Secretariat-General).

While the legitimacy (and degree) of the Commission defending its original proposal is disputed, there is no doubt that all three relais actors must strive to make enough concessions to make a deal without losing the support of their constituents, making trilogues essentially a two-level game with three players. But where does that leave the negotiators in terms of being able to pursue their own interests, the core question of the original relais actor thesis? I argue that the three chief negotiators enjoy different degrees of autonomy, and their different sets of constraints are described below.

Differentiated Pressures

Though the fundamental dilemma of compromising or standing your ground is present for all three relais actors, differences in the organization of the negotiation teams, the structure of negotiations, and expectations about their behaviour mean that each relais actor faces a different set of constraints in trilogues. This section elaborates on four such differentiated pressures: *monitoring*, *neutrality*, *time*, and *reputation*. Before diving in, a few things are worth noting. First, this is probably not an exhaustive list of pressures facing the relais actors. Second, and relatedly, these four pressures and the concept of a pressure configuration was developed abductively, in dialogue between theory and empirics. This means that each type of pressure has some basis in the theoretical framework of the thesis, but was refined iteratively throughout both fieldwork and coding. For ease of reading, the concepts are first introduced as theoretical constructs and subsequently applied to each relais actor. The analyses themselves thus interweave references to existing theory with references to interviews and field observations. Third, this section

focuses specifically on the relais actors and the pressure exerted on them by other actors, both those present in negotiations and those not. This does not mean that the other actors are unimportant, but the focus is on the relais actors because they are the ones who ultimately must decide whether to conclude a provisional agreement in trilogues.

Monitoring

In a principal-agent relationship, the principal's inability to observe the actions of the agent is one of the primary causes of problems with delegation. While monitoring may be theoretically possible, the cost of monitoring may overcome the efficiency gains of delegating the task in the first place (Varian, 1990). However, there may be something to gain by having more than one agent and having them monitor each other (ibid). Thus, the level of monitoring facing a relais actor is defined in the following as how well their own institution can observe their behaviour in trilogue negotiations. One may further distinguish between direct and indirect monitoring. Direct monitoring is when other actors within the relais actor's own delegation represent the interests of the principal, in the case of a unified principal, or the interests of other groupings in the case of a non-unified principal. Indirect monitoring is when other actors within the relais actor's delegation are not part of the relais actors' own team but also do not represent competing interests. In this case, other parties within the same institution may get information about the relais actor's actions in trilogues second-hand.

Neutrality

When representing others in negotiations based on a mandate, there is usually an expectation that the negotiator will negotiate on behalf of the entire institution rather than pursuing their own preferences, should they differ substantially from the mandate. However, the degree to which actors are constrained by both formal rules and informal norms shaping these expectations of neutrality may vary considerably between institutions. In this study, the analysis will consider whether an expectation of neutrality exists for the relais actor, whether such an expectation is formal or informal, how strong the expectation is, and whether consequences of not acting neutrally are specified.

Time

In any negotiation, it is important to know whether one or more parties faces time constraints, as 'the party that negotiates at haste is often at a disadvantage' (Raiffa, 1982: 16). Previous studies have identified time as an important factor in EU politics as well (e.g. Goetz, 2014; Goetz & Meyer-Sahling, 2009). In trilogue negotiations, there may be differences in the time pressure

facing each negotiator, depending on institutional differences as well as differences between individual negotiators and policy proposals. At the institutional level, it is relevant to ascertain whether there are differences in formal rules which entail that the relais actors will be under different time pressures. At the level of the individual legislative file, the relevant question to ask is whether the policy question is relatively more pertinent to one of the co-legislators. At the level of the individual meeting, the question is whether there will be consequences for one or more of the negotiators if an agreement is not reached at that meeting. An important consideration must be made with regard to the expectation of differentiated time pressure introduced above.

Both the fieldwork and most of the interviews were carried out in the final months before the end of the EP mandate (the last EP plenary session was on 22-25 April 2024, and the informal deadline for trilogue negotiations was 9 February, according to several interviewees). During this period, all actors experience increased time pressure. This end-of-mandate time pressure will be revisited in Chapter 13, but in the context of this analysis it is important to bear in mind that even though the fieldwork was conducted in this specific time period, interviewees mentioned the end of each Council Presidency as an important pressure point.

Reputation

Producing new legislation is one of the core tasks of all three EU institutions, and as such successfully negotiating a legislative compromise may be an important reputational consideration for relais actors and their institutions – particularly if the new legislation is in response to a pertinent policy issue, or if it is the first of its kind. Previous research has shown that organizations are concerned about their reputations towards multiple audiences (Binderkrantz et al., 2024). I argue that there are reputational gains towards the public in being able to produce legislative outcomes (output legitimacy cf. Scharpf, 1999) and doing so efficiently (e.g. Novak & Hillebrandt, 2020). However, there may be reputational gains vis-à-vis other actors within their own institution if the relais actor manages to successfully pull a legislative outcome closer to their institution's mandate. Thus, the relevant question to ask is what the potential external and internal reputational gains are for the relais actors when it comes to reaching a deal in trilogues.

The following sections will use these four pressure concepts to analyse the pressure configuration facing the three relais actors. As considerable variation is expected between policy areas and legislative files, tentative conclusions will only be offered for those features which are expected to be general across trilogues. For the rest, this analysis offers points of attention for further trilogue case studies.

Pressures on the Commission

The following section outlines the different pressures faced by the Commissioner (or the Commission representative) in trilogues with regard to the four concepts introduced above. As has been argued previously, the Commission is not a co-legislator under the OLP but participates in trilogues as a mediator, or a *committed broker* to facilitate a compromise between the Council and the EP while at the same time defending the original proposal (Panning, 2021). As shown in the previous chapter and in previous studies, intra-institutional dynamics in the Commission (i.e. disagreements between different DGs) matter for their behaviour in trilogues (Hartlapp et al., 2014; Laloux & Panning, 2021), and the nationality and political affiliation of the individual Commissioner may affect bargaining outcomes (Kirpsza, 2024). As the Commission is not merely a *neutral broker*, but also tries to shape the final outcome, the question of monitoring becomes relevant. While the Commission delegation is led by either the Commissioner herself or a (Deputy) Director-General from the lead DG, both the Commission's Secretariat-General and potentially representatives from other DGs are present. One interviewee from the Secretariat-General describes how they will often send a 'note-taker' to ensure coordination between the relevant branches:

We make sure that everything is kind of noted and coordinated as it should be with other departments, and that the procedures and processes and so on are respected, and that the content kind of respects the different...necessary requirements in terms of procedures and legal basis and so on. (Interview 13, COM Secretariat-General)

While the Secretariat-General does not participate in the legislative process as such, this is a clear indication that there is a degree of indirect monitoring of the lead DG. Additionally, participation by other DGs indicates some degree of direct monitoring of the relais actor, as noted by one interviewee from the EP:

The fact that two people from ... from DG Trade showed up, kind of gave us an indication that, okay, this isn't going to be easy ... They come because they have some concerns about what the environmental people are trying to settle with us. (Interview 24, EP assistant)

In other words, the Commission's relais actor is always under indirect monitoring in trilogues but may be subjected to direct monitoring in cases where it is deemed relevant to have participation from one or more other DGs. Decisions about the composition of the Commission are made at a high level, sometimes without the knowledge of lower-level participants. In the words of one official:

I actually was under instructions of the Director-General, but I don't know if he was under instructions, or this was a procedural request. But we decided to limit ourselves in view of the other participants, and I think a couple of colleagues didn't come. (Interview 30, COM DG)

In addition to providing clues about how considerations about monitoring guide the composition of the Commission's delegation, the above quotes also demonstrate that the Commission and the co-legislators are each aware that both the size and composition of the delegation sends signals to the other negotiators and thus should be considered carefully.

On neutrality, findings are mixed, both when it comes to intra-institutional neutrality and to the Commission's role as a neutral broker between the Council and the EP. The above quotes about monitoring and analysis of the mandating process show that the individual Commissioner (and the relevant DG) cannot be considered neutral vis-à-vis other departments in the Commission. As introduced earlier in this chapter, there is something of a disconnect between the formal role imparted to the Commission to be a facilitator between the co-legislators and the perception expressed by most interviewees of the Commission as a very active party in negotiations. Different, to be sure, from the co-legislators, but not neutral. This is put very directly by one interviewee:

When we're coming to the point where we start trilogues ... Here, the Commission is expected to be an honest broker. But the Commission also has interests. You cannot ... for instance, it's difficult to impose on the Commission things that have high-level political implications, like creating an independent advisory body, or that have an impact on their budget. (Interview 23, Council attaché)

In addition to being present and active in trilogues, recall that the Commission can withdraw a proposal if they believe the co-legislators are distorting its original purpose – and threats of doing so can be quite direct (e.g. EU Council, 2024d). Even if the Commission does not carry out its threat of withdrawing, they still face ratification in GRI after negotiations, which is not just a rubber stamp. In the words of one interviewee: 'There was a trilogue and the negotiator for the Commission accepted things ... that were not really within his mandate. So, when it came back to GRI we said no' (Interview 11, COM cabinet).

With regard to time, two main sources of pressure can be identified. First, the European electoral cycle offers a tangible deadline for legislative proposals to be adopted before the electoral process is halted for campaigning as well as for the European Parliament to constitute itself after the elections and for a new European Commission to be appointed and subsequently confirmed.

Second, some legislative proposals are more urgent than others, but this will naturally vary significantly between proposals.

Finally, the interview material indicates that reputation is a consideration for the Commission. One interviewee mentions that progress on a certain legislative file had been slow, and that they had had a difficult time getting the Commission to engage with it. However, an opportunity arose for the Commission to present at a summit, and that prospect changed their level of engagement: 'But when they had a deadline, they really started being active. They started really bringing parties together, suggesting things. And so, this sped up quite a lot' (Interview 23, Council attaché). In a similar vein, one interviewee notes that members of cabinet will only be present when 'the file is very important for their Commissioner' (Interview 11, COM cabinet), indicating both that the level of prestige (in terms of potential reputational gains) varies, and that the level of participation is also used to signal this. A file being mentioned in the Commission's annual working program is, according to one interviewee, a good indicator of whether it is very important (Interview 38, EP adviser). The same, I argue, could be said of files identified in the political guidelines published by the Commission President at the beginning of a legislative cycle.

Pressures on the European Parliament's Rapporteur

The following section outlines the different pressures faced by the rapporteur representing the EP in trilogues with regard to the four concepts introduced above. In terms of the first concept, monitoring, the rapporteur is accompanied in trilogues by shadow rapporteurs, representing the other political groups. Thus, the other groups can directly monitor the rapporteur's actions during the meeting. According to one interviewee, this is particularly problematic for the rapporteur if there is not a strong majority behind the mandate:

The problems arise when there is political ... When the mandate in Parliament is very weak. It's not good, of course, because then you have a rapporteur who is constantly sitting with some shadow rapporteurs who disagree. That ... creates a bad dynamic for the Parliament negotiator. (Interview 1, EP assistant)

This 'bad dynamic' refers both to the fact that having a narrow mandate means that there is less margin for manoeuvre for the rapporteur without risking having the agreement 'flip in plenary' (ibid), but also to the fact that having the shadow rapporteurs in the room constrains the rapporteur's options. According to another interviewee, the shadow rapporteurs have three primary roles: to pursue their own group's preferences, to control the rapporteur, and to keep the other groups from being able to influence the rapporteur:

We would also prioritize being involved in this to ensure that we end up in the right place, but of course also to support our rapporteurs, because we have agreed on a line, and now we are a united team, you could say. But on the other hand, we also want to make sure that ... if we hadn't turned up for it, the Greens or ... or the left wing [...] could perhaps try to influence the rapporteur more in one direction or another, because we want to have something ongoing, have some talk in the room or outside the room. (Interview 17, EP assistant)

It is also worth noting, however, that this interviewee is also aware that despite internal differences, the EP delegation has an agreed mandate and should present a unified front towards the Council. Furthermore, even though MEPs are elected on an individual mandate, most represent a national party: at the end of the ninth term, 42 out of 705 (5.95%) MEPs were independent, though all but 10 of these were affiliated with a European Party Group (EPG)²⁶. While national parties are most often part of an EPG, it is not a given that national parties completely overlap with those of the EPG. One MEP acknowledges that they all have their own national backgrounds, but argues that it is not an important consideration:

Of course we are also influenced by what we bring from home, but I don't work as a [country] representative, I say – I'm a [party], and the only dramatic difference compared to home is that we have no government. (Interview 20, MEP)

However, there are several interviewees who argue that nationality can play a role in negotiations, including through sharing a nationality with negotiators from the other two institutions (Interview 62), coming under pressure from one's own PermRep (Interviews 22, 27), or sharing a nationality with another shadow (Interview 17). Some issues are also particularly salient in the domestic politics of certain member states (Interviews 1, 27, 36), and different national political cultures can clash on the European stage (Interviews 1, 30). Since the nationality and national party affiliation of the rapporteur cannot be discounted entirely, another level of monitoring becomes relevant: recall that the rapporteur is accompanied by both an assistant and an adviser. While the assistant is employed directly by the MEP, the adviser is employed by the political group, and as such has a dual role in supporting the rapporteur and monitoring whether they loyally pursue the party line in negotiations.

For the rapporteur, the question of monitoring is closely related to the question of neutrality, as they are charged with the dual tasks of representing the entire EP and their own political group simultaneously. While the former implies that the rapporteur is supposed to act neutrally, the presence of the other political groups indicates that they do not expect the rapporteur to

²⁶ Author's count as of September 2024, based on the EP's official directory.

actually do so unless monitored. This is illustrated by the following quote from an assistant whose MEP was rapporteur for a legislative proposal in trilogues at the time of the interview:

So, of course, when we get to the parts of the text that were really important to the other groups, and not so important to the [IP's party group], I still have to be just as well prepared and just as committed to defending their case ... Even though it wasn't really something we ... well, maybe we were even directly opposed to it, but now we have to be just as much a team player for the other groups, right? ... But when we reach a point in the text where [IP's party group] had some important points ... then I'm going to go for it with all the [IP's party group] arguments, and then I can see the other group advisers sitting back and zoning out and doing something else, right? Because it's not important to them. (Interview 18, EP assistant)

The rapporteur and their team are aware that they cannot appear to be less committed to the other groups' priorities than their own when negotiating with the other two institutions. The shadows, on the other hand, can relax when the rapporteur's priorities are on the line. Thus, during the meeting, the EP negotiator balances intra- and interinstitutional considerations in the way arguments are presented to maintain the appearance of neutrality.

Time pressure in the European Parliament, I argue, follows much the same pattern as described above for the Commission: the end of the electoral cycle puts time pressure on actors across institutions and policy areas. Beyond that, time pressure will vary depending on the urgency of the proposal in question – urgency which may stem from a multitude of sources. Just as time pressure varies between proposals, so do the potential reputational gains from successfully leading negotiations on behalf of the European Parliament. However, it is important to note that there are more MEPs than legislative files: there were 346 legislative proposals to be shared between 751 MEPs during the eighth term, according to the European Parliament's (2019) activity report. Thus, being appointed rapporteur will likely be a once-in-a-mandate experience for most MEPs, and successfully concluding negotiations even on a less important legislative file is a source of political caché in the European Parliament. This leads me to expect that rapporteurs will have an incentive to be more compromise-seeking than both the shadows and their own group. This also implies that rapporteurs will be more reluctant than other EP actors to leave a file unfinished at the end of an electoral cycle as they risk not getting reelected and thus missing the potential reputational gains from landing a compromise.

Pressures on the Council Presidency

This section outlines the pressure configuration facing the Council Presidency in trilogues. When it comes to *monitoring*, the general view among the interviewees is that the Presidency represents the entire Council alone (Interview 54, Council Secretariat). Indeed, as has been outlined above, the Council usually has the smallest delegation, with participation only from the Presidency (Brussels-based and capital-based) and the General Secretariat of the Council. One interviewee explicitly states that their situation is different from that of the EP:

The rapporteurs and the shadow rapporteurs, they sit in the trilogue most of the time as well, with either the Chair or the Vice Chair of their committee. So, they are under watch. For the Council, it's a bit different because it's the ambassador to PermRep or the DPR that is sitting alone with the Council secretariat, his or her own staff, but he is alone, or she's alone ... The other member states are not there. (Interview 11, COM cabinet)

This means that only indirect monitoring will be available to the other member states, as their only possible sources of information will be the Presidency itself, the Council Secretariat, or participants from the other two institutions. One exception to the Presidency being alone, however, is mentioned by several interviewees: towards the end of a Presidency (the last six weeks to two months, according to interviewees), the next member state to take over will start participating in trilogue meetings (Interviews 9, 19, 23, 54). This was argued to happen for three reasons. First, it gives the incoming Presidency has a chance to gain experience with trilogues as such and with the specific file(s) they are working on. Second, it allows them to get to know their counterparts from the other institutions. And third, the current Presidency might use their presence to send a signal to the European Parliament: 'you invite the incoming Presidency, because it's a sign that you're willing to continue to negotiate and you're not going to reach a deal at any cost' (Interview 23, Council attaché). This notion is echoed by another interviewee, who also notes that bringing the incoming Presidency raises the question of whether they have a vested interest in the file being negotiated (Interview 7, Council attaché). Though not directly monitored, there is an expectation that the Presidency will debrief Coreper on the outcomes of trilogues.²⁷ However, there is some variation in the degree of detail accorded to these debriefs:

²⁷ Trilogue preparation and debriefing amounts to a substantial portion of the work in Coreper. For example, the agenda for the Coreper I meeting on 8 November 2023 had eight points on trilogue debriefing, seven on trilogue preparation, and two for preparing mandates, totalling 17 of 44 agenda points (EU Council, 2023c)

There are some Presidencies that just say, well, we don't inform about that. But it might become a bit more low-key. And then ... others who really get into the substance and so on, and I don't know how helpful that is – I mean, not all ambassadors know all the technical details. (Interview 13, COM Secretariat-General)

The level of reporting is a balance that the Presidency has to strike: report too little and you risk that member states will complain and begin to mistrust your neutrality in trilogues. Report too much and you risk that member states will complain of information overload and overcrowded Coreper agendas. One interviewee notes that they had handled this by keeping the detailed reporting at Antici level:

we only brought back sort of provisional agreements [to Coreper], whereas in the Antici meetings we always mentioned all the trilogues that had happened and that were planned and ... How many we had had and if there was something of particular interest to mention from this, but we did that in the antici meeting and kind of kept Coreper clean from these intermediary stages (interview 3, Council attaché)

The expectation that the Presidency acts neutrally is both foundational for the Council and paradoxical. In the Council's own Handbook on the Presidency (EU Council, 2018b), it is first stated that 'The Presidency is, by definition, neutral and impartial. It is the moderator for discussions and cannot therefore favour either its own preferences or those of a particular member state' (Handbook, 2018: 10). However, the handbook continues that 'The duty to be neutral exists alongside the political dimension' (ibid), meaning that it is legitimate for the Presidency to set out priorities for the handling of files during their tenure. When it is a Coreper ambassador representing the Presidency, this tension between national priorities and credibility vis-à-vis ambassadorial colleagues is expected to be particularly salient, as Coreper has been described as 'a key laboratory' for Brussels socialization of national officials (Lewis, 2005). According to one interviewee, this is indeed the case, and sometimes creates the impression that an incoming Presidency will be 'radically going into the opposite direction that they were defending before', distancing themselves from their national position 'almost as if they want to be more more Catholic than the Pope' (Interview 45, COM cabinet). In the interviews with member state officials, most interviewees took pride in the fact that they represented the Council neutrally, only hinting that *others* might not do that:

So we had – we were really like neutral honest brokers and we had a lot of support from different corners. (Interview 57, Council ambassador)

We have to be a very ... neutral, arbitrator, not sort of pursuing [member state] interests but rather take on a very, very neutral role in this. But of course, if you're a larger country, you might have a vested interest which you want to pursue. (Interview 7, Council attaché)

The first quote implicitly links the fact that their Presidency was perceived as neutral with their receiving support from the other member states, while the latter hints that member state size can make it more challenging to appear neutral to the other 26 member states.

The norm of impartiality is one of the most well-studied norms in studies of the Council according to Niemann & Mak (2010: 731), who argue that impartiality can be viewed either in terms of *relations*, *process*, or *outcomes*. Their study focuses on the internal decision-making in the Council, but the above quotes demonstrate that the norm of impartiality extends to the Presidency's role of representing the Council in trilogues. The second part of the analysis will elaborate how different strategies are employed outside the trilogue meetings to ensure that the Presidency is viewed as impartial by the other member states on all three dimensions identified by Niemann & Mak, as 'the member states have limited visibility into what actually happens' (Interview 7, Council attaché) in the trilogue room.

Finally, the questions of time pressure and reputation are interlinked for the Presidency. By definition, they are under stricter time pressure than the other two institutions since they are only at the helm for six months, as opposed to a five-year legislative cycle for the Commission and the EP. Additionally, a significant measure of a Presidency's success is the number (and the importance) of files they managed to conclude (Toneva-Metodieva, 2020). Thus, the pressure is generally higher on the Presidency to reach a deal during their tenure, as 'The Presidency, they want, you know, to have the credits for negotiating a big fight like this one [...] it's very important for the *bilan* of the Presidency' (Interview 62, Council secretariat). This pressure in terms of both time and reputation is viewed positively by one interviewee, who argues that it forces the Presidency to be ambitious:

We had to prioritize, but we were also ambitious, so we knew that if you aim high, then you can achieve maybe 80 to 90 per cent of what you aim. So we almost never said no. If we saw that there is a possibility of a deal, we went for it, so ... I think this is – I think the value of the rotating Presidency is that every Presidency wants to achieve as much as possible. (Interview 57, Council ambassador)

One Commission interviewee is more negative, noting that the rotation of the Presidency is problematic in terms of stability and relationships:

Look, the Council changes much more than the Parliament, because every six months with a new team, so this is a lot of instability and that's problematic because you change interlocutor every six months and you have to build a new relationship and everything. (Interview 26, COM official)

This interviewee does not specify whether he believes these changes are problematic just because they delay legislation, or if they are also detrimental to the Council's influence. Another interviewee notes that in some situations the prospect of the presidency changing may be unappealing to the other institutions, meaning that the time pressure works both ways:

We know that, in the areas that are important to Parliament, we know roughly where Belgium stands politically. And if they take over the Presidency, they have to be the neutral party. And right now, they are on the EP's side. So we don't, we don't want them to go over and become neutral. But the Spanish, who are neutral now, and who we have an idea would be negative, they could then go out and actually have a political position. (Interview 18, EP assistant)

In sum, the Presidency is most often the only member state represented in trilogues, meaning that the level of direct monitoring is low, while the presence of the Council Secretariat means that some indirect monitoring takes place. Strong norms of neutrality constrain the Presidency in internal Council negotiations, and interviewees indicate that these also apply in trilogues, particularly if a Coreper ambassador heads the Presidency delegation. The Presidency acts under strict time pressure, though it is unclear whether or not this is primarily a disadvantage. Finally, the potential reputational gains from reaching compromises constitutes a substantial pressure on the Presidency.

7.3 Comparing Pressure Configurations

The previous sections have demonstrated that all three relais actors in a trilogue negotiation must balance the pressure of compromising to reach an agreement with the pressure to defend the mandate on the basis of which they are negotiating. While this basic cross-pressure is shared by all negotiators, it has also been demonstrated that there are important differences in the *pressure configuration* of the three negotiators in terms of *monitoring*, *neutrality*, *time*, and *reputation*. In terms of monitoring, the rapporteur for the EP is clearly most scrutinized as representatives of all the other political groups are present in the room. The Commission negotiator is generally less scrutinized, though the Secretariat-General typically participates, and other DGs sometimes do. The Council is viewed as being the least monitored, as they are only accompanied by the Council Secretariat and, when their tenure is about to end, the incoming Presidency.

In terms of *neutrality*, the picture is somewhat different. The rapporteur is tasked with negotiating on behalf of the European Parliament but is simultaneously representing their own party group in negotiations, and is thus not completely neutral. The Presidency is constrained by norms of neutrality in internal Council negotiations, and this expectation seems to be carried over into trilogues. The Commission is not a co-legislator, but rather a facilitator in trilogues. However, the analysis has shown both that the Commission negotiator faces intra-institutional constraints and that they are not always as neutral as expected in the eyes of the co-legislators.

Time pressure was found to be similar for the Commission and the European Parliament, as their main deadline is the end of the legislative cycle. Meanwhile, the Presidency rotates every six months, meaning that they have a smaller window of opportunity to reach agreements before handing the reins over to the next member state. However, it is worth noting that some files are urgent due to external pressure, and that this may affect all three institutions equally.

Finally, the rapporteur for the EP is expected to have the most at stake in terms of reputation, as each rapporteur can only expect to represent the EP for a single legislative file over the course of an electoral cycle. The Presidency and the Commission will both likely have more opportunities to negotiate in trilogues, so successfully negotiating any single file will be less important. A similar assessment was provided by an interviewee with regard to the personal involvement of the rapporteur and the Presidency, respectively, on a file:

I mean, they want to claim more – I mean, there it's more personal ... because here you don't have so much. Maybe the Presidency can have a personal touch on the file, but in the – in the Parliament, the system with rapporteurships and shadows, they are more personally involved in the success [of the file, WE]. While in the Council, I think ... it's more anonymous. (Interview 58, Council attaché)

However, both the Presidency and the Commission identify priority files in their working programmes, thus staking some reputation on following through. Several interviewees note that particularly the Presidency is concerned with the prestige involved in reaching legislative compromises (Interviews 26, 32, 42). The main differences are summarized in the table below.

Table 7.2: Pressure Configurations of Relais Actors in Trilogue Negotiations

	Parliament	Council	Commission
Monitoring	+: Shadow rapporteurs and Committee Chair present in negotiations +: Committee Secretariat present in negotiations	-: Member states not present in negotiations +: Council Secretariat present in negotiations	(+): Representatives of other DGs/cabinets <i>may</i> be present +: General Secretariat present in negotiations
Neutrality	(-): Expected to represent own political group and EP equally	(+): Expected to defend Council mandate and refrain from pursuing national interests	(+): Formally not a co-legislator, expected to be honest broker. However, compromises must be approved by the College
Time*	(-): Mostly pressure to close towards the end of the EP mandate. No mention in interviews of pressure coming from EPG or national parties	+: Presidency only lasts six months. Pressure to close files (particularly priority files) comes mainly from capital	-: Arguably the most 'patient' of the institutions. Pressure depends on urgency of the file as perceived by other EU actors
Reputation	+: Most MEPs will only be rapporteur once (if at all) during a mandate; reaching a deal is an important source of reputation	(+): Presidencies are evaluated both in terms of number of files closed and reaching agreements on important/prioritized files	(-): Depends on the file: higher reputational gain when closing a deal on central files identified in annual work program or Political Guidelines

Note: *: most of my interviews were conducted in the last months of the parliamentary term, and time pressure was brought up by most interviewees. Though not part of the interview guide, I probed it in most of the later interviews if the interviewees did not bring it up on their own.

7.4 Summary

This chapter has analysed cross-pressures facing the main actors negotiating in trilogues. This was done in two parts. First, the delegations representing each institution in trilogues were introduced and their relative compositions compared. It was reconfirmed that the EP's delegation is often the largest, and that the rapporteur is thus monitored by her own institution to a higher degree

than the representatives of the Council and the Commission. This explicit comparison with regard to size, functions and hierarchy within each delegation furthers our understanding of different delegations shape negotiation dynamics. Second, the chapter introduced and empirically probed the pressure configuration framework, which compares the cross-pressures facing each relais actor in terms of *monitoring*, *neutrality*, *time*, and *reputation*. It was argued that all negotiators face the fundamental cross-pressure of defending their mandate on one hand and making concessions in order to reach a compromise on the other. Beyond that, however, it was also demonstrated that the relais actors from each institution are affected by the four types of pressure to different degrees.

As such, this chapter has two main findings. First, it provides new insights into how each relais actors is under different types of pressure in terms of monitoring, neutrality, time, and reputation. In Principal-agent terms, this is useful as it fleshes out the relationship between the EU institutions acting as principals and the relais actors as their agents. Second, the pressure configuration framework was found to be able to accommodate and analyse the role of the Commission in trilogues as neither a co-legislator nor a truly neutral broker. Insights from this chapter will be used in the following analyses, which explore the different strategies employed *before* entering interinstitutional negotiations (Chapter 8), *during* a trilogue meeting (Chapter 10), and *between* meetings (Chapter 11).

Chapter 8. Clash of Cultures? Trilogue Culture, Preliminary Informal Interactions, And the First Trilogue

I need to say that every trilogue is completely different. You can prepare, you can do whatever you like, but ... That, that surprised me a lot. (Interview 14, Council attaché)

This chapter explores the idea that a *culture of trilogues* has developed along with their proliferation over the past three decades. The starting point is the finding by Roederer-Rynning & Greenwood (2015: 1148) that ‘Trilogues today are underpinned by norms, standard operating procedures and practices linking formal and informal institutions’. This chapter critically engages with the ways in which interviewees from all three institutions describe their own role in trilogues, their counterparts’ roles, and any norms, standard operating procedures, and practices they identify. Two main challenges for the emergence of a coherent trilogue culture are presented and examined. First, there are too many moving parts in trilogues, in terms of actors, timing, and policy areas, to provide sufficient stability for the development of a thick negotiation culture. Second, even if there is a negotiation culture, mostly comprised of agreed practical arrangements, this culture is interpreted by negotiators who are simultaneously embedded in different institutions and thus approach trilogues holding different role perceptions (cf. Egeberg et al., 2003). They may therefore bring different expectations to the table which must be aligned as part of the trilogue process. This chapter argues that a culture of trilogue norms and practices *does* exist, but that it leaves room for negotiators to improvise and tailor the process to the individual legislative proposal.

To explain how that is done, the chapter proceeds with two additional analyses. First, the informal coordination which takes place between negotiators *before* the first trilogue meeting is examined. This analysis finds that informal preparation is an important step in the trilogue process, as it is used for networking and building trust between negotiators, but also for *gathering information* about others’ positions, and to create a preliminary *clustering* of the articles in the proposal which may be presented as a roadmap for negotiations at the first trilogue. Second, the practices regarding the first trilogue meeting, as described by interviewees, are introduced. Here, it is argued that the opening trilogue is a distinct type of meeting, usually focused mostly on structuring the trilogue process to come. However, it will also be demonstrated that opening trilogues are not merely a processual step but are also an

opportunity for the relais actors to ‘formally’ meet and for an initial exchange and prioritization of the topics in the legislative act at hand. These analyses aim to explore the different ways in which negotiators ‘fill in’ the uncertainties that arise from not knowing their counterparts and agreeing how to structure the parts of the trilogue process which are not covered by standard operating procedures. Finally, the article’s findings are summarized.

Talking about Culture

This chapter approaches the data slightly differently from previous chapters. Most interviewees did not mention culture directly when talking about their own behaviour in trilogues, or that of others. Culture is often unspoken, especially when taken for granted by participants. Therefore, the interview quotes below are mostly indirect references to culture, made when interviewees are talking about other topics. Particularly, the analysis looks for references to how things are *usually* done, or *should* be done, according to participants, as well as examples where interviewees recount how others have breached *norms* and implicit or direct *comparisons* between the institutions’ negotiation cultures. These examples show that differences in negotiation culture between the EP, the Commission, and the Council are perceived by participants and guide their own behaviour and expectations about the behaviour of others. This will necessarily entail that I as a researcher make analytical inferences linking the interviewees’ statements to the abstract concept of a culture. To make these inferences as trustworthy as possible (Schwartz-Shea, 2014), I will endeavour to include additional reflections on what led me to make these inferences, as well as including all views whenever different interpretations of the same culture or cultural artifact are identified.

8.1 An Emerging Culture of Trilogues?

As mentioned above, previous studies have identified an emergent culture of trilogues which is separate and distinct from the steps prescribed in the ordinary legislative procedure (OLP). But why care whether a culture of trilogues exists, and whether it is perceived in similar ways by all participants? Why does culture matter? The definition of culture used by Roederer-Rynning & Greenwood (2015) provides a good starting point:

We define culture as shared conceptions of social reality, and draw more specifically upon ‘organizational culture’,²⁸ which has been defined as ‘how

²⁸ This definition is based on Kreps (1990) and has previously been used to analyse the ‘normative density’ of the institutional environment in the Council of Ministers (Lewis, 2010).

things are done, and how they are meant to be done in the organization' (Roederer-Rynning & Greenwood, 2015: 1152)

By combining the two components of their definition, we arrive at the definition of a culture of trilogues as *socially shared conceptions of how things are done and how they are meant to be done in trilogues*. This definition has two components, one practical and one normative. The practical component comprises the various standard operating procedures related to trilogues, though these may vary between interviewees who are part of the trilogue process. The normative component aims at the degree of congruence in interviewees' perceptions of how trilogues *should be* conducted. From this we can derive two relevant criteria for the existence of a culture of trilogues (singular). First, it should be possible to identify standard operating procedures used in trilogues across policy areas, and these should be socially shared, meaning that negotiators from different institutions and levels should have similar perceptions of what the standard procedures are. Second, interviewees should also share similar conceptions of how trilogues *should be* conducted, if they reflect on this at all.

Knowing whether a single culture of trilogues exists is important in at least three ways. First, a shared culture indicates that trilogues have become increasingly institutionalized as *the* way of negotiating EU legislation. Second, shared ideas about how trilogues should be done may increase the efficiency of negotiations by limiting the risk of misunderstandings. Third, if practices and perceptions of trilogues vary across files and policy areas, it raises questions about what is the 'right' way to conduct trilogues.

Several standard operating procedures are identified by Roederer-Rynning & Greenwood (2015, 2021), and many of these are also found in my interview material. First and most fundamental is the assertion that 'trilogues are now the "new normal" of EU lawmaking' (Roederer-Rynning & Greenwood, 2021: 485). This is supported in this study by the fact that, while some interviewees complain about aspects of trilogues, only one (Interview 20, MEP) fundamentally critiqued their merits and role in the EU legislative procedure, referring to both a lack of transparency and the inquiries from the European Ombudsman. The remaining interviewees seemed to take trilogues as a fact of life. Second, the distinction between political- and technical-level meetings (and issues) also featured prominently in the interviews and my observations (this will be examined in Chapter 9). Third, the use of so-called four-column documents which contain the mandates of each institution, and a fourth column reserved for provisional agreements was mentioned by several interviewees and was referred to as 'the holy grail of trilogues' by an EP official during an informal lunch meeting I attended. Roederer-Rynning and Greenwood further identify the use of marathon meetings with frequent

breaks as a common feature, something which is also found in my data material, and which will be elaborated in Chapters 10 and 12, respectively. Finally, they identify a third layer, beyond political and technical trilogues, of informal bilateral contacts at all levels. They give examples of this, including the use of so-called *shadow meetings*, in which the rapporteur discusses a proposal with representatives of the other political groups.

All of these standard operating procedures are also found in my interview material, and they are to some extent taken for granted by negotiators, as illustrated by this quote: ‘We don't need to talk about the technical stuff, the different things in relation to setting up a series of meetings with shadows and so on and so forth. All that stuff – it's all done administratively’ (Interview 34, EP assistant). While interviewees did provide details about these processes, it is evident that they were quite happy to leave some administrative steps to be done ‘as usual’. The following sections analyse the two proposed problems for the development of a culture of trilogues (singular); that is, socially shared conceptions of how trilogues *should* be done beyond the existence of a collection of practical arrangements and standard operating procedures. These challenges, described in the introduction, are that trilogues have too many moving parts, and that negotiators in trilogues are already embedded in different organizational cultures when they enter into trilogues.

Challenge 1: Too Many Moving Parts

The first challenge is that trilogues feature many moving parts in terms of both participants and proposal characteristics. As identified in the previous chapter, there is significant turnover in the participants. Each trilogue has a different rapporteur, the Presidency changes every six months, and each policy area will have a different Commissioner and corresponding DG responsible for negotiations.

The Commission

As demonstrated in the previous chapter, a commissioner is not always present in trilogue meetings, leaving it more often to a Director(-General). Even so, one interviewee explains that the Commissioner has some discretion in deciding their negotiation style:

[F]rom the Commission perspective, most of the time ... I mean, we have Commissioners coming to trilogues, and it very much depends on their personality and whether they really want to be active negotiators, or if they are there just to show their face. I'm a bit blunt, but that's the reality. (Interview 11, COM cabinet)

Another interviewee recounted that, in a recent trilogue meeting, the Director-General ‘was much more prominent in the negotiations than you should normally have been. Also because of his personality’ (Interview 31, COM official). Both quotes refer to the personality of the Commissioner and the Director-General and display a tension between being an active negotiator or playing a more passive role. With regard to the Commissioner, the cabinet member indicates that they *should* participate actively rather than just showing their face, while the opposite seems to be the expectation for the Director-General.

The previous chapter also argued that Commissioners are more ‘stable’ than both rapporteurs and Presidencies in that they will likely complete several legislative files during their tenure. However, there is expected to be some variation over time. This is because, first, many Commissioners serve only a single term, and second, each Commissioner is a top-level politician who comes from a different national background and from a different political party at both the national and European levels. At the DG level, there is more stability as Directors and Directors-General are often career bureaucrats who have had a long tenure in the Commission before rising to their current position – in 2013, senior managers had on average 19 years of previous service in the European Commission before entering into their current position, having worked on average in just under three different DGs (Kassim, 2013a: 58). Thus, while the interviews indicate that it is expected that the personality of the Commissioner influences negotiations, this is less so for the ‘middle-level’ negotiators. This aligns both with the fact that Commissioners (on average) serve for shorter periods than their Directors(-General), and to the fact that politicians have more leeway in deviating from their negotiating mandate. In the words of one interviewee:

Commissioners are politicians and a Director-General will always be more prudent, but Commissioner, close to an agreement is a politician and could take the risk to say, ‘I will convince my colleagues this was not what we had mentioned in the note. I will go beyond the note’, but this is really [...] risky. (Interview 26, COM official)

Thus, the Commission’s role in trilogues will vary both according to which Commissioner is responsible, and whether the Commissioner is present or has delegated negotiations to a Director(-General).

The European Parliament

At the political level, the EP delegation is led by a rapporteur, and the individual qualifications and level of engagement can vary significantly between rapporteurs. According to one interviewee, these differences can affect the EP’s prospects for success in negotiations:

There are some parliamentarians who are skilled and know what they are doing and are very well prepared. And then you also have some who ... Either have been put there to negotiate on behalf of the group or have just taken a report without really knowing anything about the subject. And then you suddenly have a very, very unequal position because the Council is also prepared by the governments back home. (Interview 1, EP assistant)

In addition to knowledge of the subject and personal engagement in the file, one MEP emphasized that a rapporteur must be able to assert herself in negotiations: 'It's no use if you have social phobia and don't like to shove yourself in [to a conversation]. And it's also no use if you are afraid of literally turning your back on someone you want to bugger off' (Interview 34, MEP). It is not only EP interviewees who are aware of the differences between rapporteurs' individual characteristics. One council attaché made a similar observation:

And this again, depends, depends on each file. Because it's different personalities. They are stronger. They are weaker ... It depends which political party a rapporteur comes from, how much the Chair of the competent committee is willing to take on this role of coordinating and, consolidating the position. (Interview 19, Council attaché)

Here, the personality of the rapporteur is listed along with their 'strength', their political group affiliation, and their working relationship with the Committee Chair as important factors in the EP's negotiation success. All four are factors which vary from case to case and from rapporteur to rapporteur. Finally, it is not only the individual characteristics of the rapporteur which are viewed as a source of variation in trilogues. One interviewee describes how a Committee Chair can influence negotiations:

I ... very much respect our Chair in the committee. I think he's doing a very good job. But he's a political animal, and he's a power person as well. And he likes to be the one who makes deals [...]. I mean, he's obviously not present, he cannot chair all the trilogues. There are just too many. So, he will make, pick his choices. But he is someone who is favouring these breakout deals, the breakout sessions. (Interview 36, EP adviser)

In this assessment, the desire of the Committee Chair to be directly involved in the deal-making drives further informalization of the trilogue meetings in breakout sessions. These will be explored in Chapter 10. Coupled with the fact that most MEPs will be rapporteur for one legislative file over the course of an EP mandate, the importance ascribed to the individual characteristics of the rapporteur indicates a high degree of variability on the EP's side in trilogue negotiations.

The Council Presidency

The change of Council Presidency every six months means that an entirely new team will represent the Council in trilogues. In the words of one EP interviewee, this causes some inconsistency and delays the process: ‘We have always this time that, you know, a new Presidency starting, new team and na-na-na, it takes a bit of time. Where at the Parliament we are more consistent because... we stay there’ (Interview 41, EP adviser). This notion of differences between Presidencies is echoed by another interviewee, who indicates that there are both moving and stable parts. He also notes that the Coreper ambassador is a central figure in trilogues even though ‘obviously’, the minister is higher in the hierarchy:

The Council and the Presidencies work a little bit ... they have different people and it's slightly different rules. But there is a certain similarity in that they have their ambassadors and then obviously the minister above that. (Interview 59, EP adviser)

One example of such differences is that every Presidency has some leeway in determining the level of detail in the briefings ahead of and debriefings after trilogues in Coreper. Interviewees provided various examples, among them that the French Presidency had taken a very maximalist approach to reporting in Coreper, while the Swedish and the Czech had provided shorter briefs, only going into detail once a provisional agreement was in sight (Interviews 6, 7, 14). One interviewee speculated whether this might be because the French Coreper II ambassador had previously been in Coreper I where the files are more ‘technical’ and then imposed those working methods on Coreper II (Interview 7, two Council attachés). This difference between the Coreper formations was also noted by other interviewees (Interviews 3, 13, 14, 57).

There are, however, several measures in place to ensure some degree of continuity in different Presidencies’ approaches to trilogues. First, as mentioned in the previous chapter, it is customary for the incoming Presidency to start attending trilogue meetings during the few weeks before they take over. In addition to allowing the incoming Presidency to get up to date on the state of play of the legislative file in question, it also affords an opportunity to observe first-hand how the current Presidency conducts negotiations (Interviews 7, 9, 19, 23, 29, 54). Second, Council Presidencies are arranged in so-called ‘trios’ in which three consecutive presidencies produce a common *trio programme*, identifying political priorities for their presidencies (e.g. EU Council, 2024e). According to some interviewees, this coordination of political priorities also entails some medium-term planning of negotiation processes (Interviews 29, 35). However, previous research has shown that there is also considerable variation in the scope of objective alignment and the depth of

coordination across trios (Jensen & Nedergaard, 2014). Third, as mentioned in Chapter 6, the Presidency Preparation Unit within the Council secretariat supports continuity as they offer the same (though continuously updated) training to each incoming Presidency. On the whole, the rotation of the Council Presidency every six months entails a high degree of change in the Council's representation in trilogues. This instability is partially mitigated by medium-term planning in Presidency trios, a rolling handover of trilogue files, and support from the General Secretariat of the Council.

Stability at the Technical Level?

These variations are not only at the political level, as the technical teams of each institution partially change with the chief negotiator. EP assistants are hired directly by each MEP and thus follow the rapporteur. Attachés are connected to the Presidency and thus change every six months. There is, however, also some stability, particularly in terms of the (semi-)permanent staff in each institution: the Committee secretariats and political group advisers in the European Parliament, the General Secretariat of the Council, and the officials working in the various DGs in the Commission. One EP interviewee estimated that he had worked on between 150-200 legislative proposals during his tenure as a group adviser (Interview 38, EP adviser), and at a lunch meeting, one EP secretariat official mentioned that they had a colleague they called 'the queen of trilogues' because she had attended more than 200 of them. As such, one may view these technical-level staff as a kind of culture-bearers.

In addition to bearing culture and process expertise, an important function of these secretariats is to produce various documents for trilogues, giving them some degree of influence on the process. One EP assistant notes that 'I prepare the annotated agenda. But the actual agenda, i.e. which articles or topics are to be discussed, is prepared by the secretariat, either our secretariat or the Council secretariat' (Interview 18, EP assistant). Other interviewees add that the Council Secretariat is 'absolutely key [...] in supporting each Presidency' (Interview 19, Council attaché), and that this is 'because they are present during every single trilogue, no matter the Presidency. So, they are very experienced in this way' (Interview 14, Council attaché). Finally, one interviewee mentions that secretariats play an important role in structuring the process by making initial suggestions about the frequency, location, and length of both technical and political meetings (Interview 22, EP adviser).

The secretariats also seem to share a more technocratic role perception than the assistants, advisers, and attachés. Two Council secretariat officials, for instance, preferred that I did not record our interview, citing that 'they are civil servants, not politicians' (Interview 54, two Council secretariat officials), and thus should remain behind the scenes. This is in line with previous

research finding that the Council Secretariat ‘assiduously cultivates the impression that *‘Le Secrétariat du Conseil n’existe pas’* [it doesn’t exist]’ (Beach, 2008). An EP secretariat interviewee described his role as follows: ‘Of course the rapporteur is your team, but the other fonctionnaires are your comrades. There are people in the other institutions who have been there for 20 years like me; the political level changes’ (Interview 43, EP secretariat). Later in the interview, he casually referred to a group of people as ‘children’ and explained: ‘I’m sorry, I call the groupies [political group advisers] and the APAs children, because, well many of them are... at least mentally’ (ibid). While polemical, it does illustrate that (at least some of) the administrative staff view their role as very different from those in more political jobs.

Having this stability enables the transmission of practices and norms from one legislative process to the next. One such norm is introduced by a Commission official who notes that it is considered good practice in technical meetings to give a heads up before bringing up new amendment proposals so that ‘it doesn’t come out of the blue’ (Interview 48, COM official). However, several interviewees stress that the negotiation process is still highly dependent on the individual characteristics of the negotiators. One puts it this way:

But from my experience ... what I wanted to say is that at the end of the day it’s a people’s business. It’s how you create ... a negotiation environment, how you create ... bonds and connection between the negotiators, and it very much depends on the personality of the negotiators. (Interview 11, COM cabinet)

While this is perhaps a banal point, it does demonstrate that socially shared expectations of behaviour are not so rigid that they preclude individual differences from playing a role in shaping negotiations. The same interviewee adds that even though it’s a ‘people’s business’, there are also differences in the stability of the two co-legislators:

Obviously, I think the dynamics in the Council are more ... less volatile than in Parliament. In Parliament it can change a lot. In Parliament each mandate has a different sociology, and has a different ... is a different animal, I would say. Where Council is, well ... Of course, it depends very much on who it is in government etc., but I think it’s more predictable. (ibid)

This difference in volatility or predictability is attributed to the fact that change is abrupt in the EP (one big election every five years) while it is more gradual in the Council (elections in one country at a time). This gradual change allows for more continuity in relations, while on the other hand, she argues that with ‘Parliament you always have to invest a lot of time in understanding’ (ibid).

Proposal Characteristics

The final ‘moving part’ identified in the interviews is the proposal itself. In this regard, interviewees identify several factors which may make trilogue processes differ. One interviewee stresses that different policy areas employ slightly different working methods:

You have to see; each formation has a different ... working methodology. I mean, I've done [three different policy areas]: Each have a slight adjustment where the Presidency and the Parliament, it depends on the rapporteur, it depends – so there are a lot of dynamics you have to take into consideration. (Interview 29, COM cabinet)

There are also subtle differences in the working methods of the different EP committees. A concrete example is that some committees include the Commission’s original proposal in their working documents while others do not, as exemplified by the following exchange:

Field Note Excerpt 8.1: Next Time, We’ll Do It Your Way

In a technical-level shadow meeting on a file which is shared competence between two committees, one of them has taken the lead on preparing the main meeting document which compiles the amendments proposed by each political group. One interviewee from [Committee A] complains that they usually have a separate column with the original text of the Commission’s proposal to compare with the proposed amendments. The adviser chairing the meeting responds: ‘We follow [Committee B]’s style of doing this, my apologies. Next time, you will also have the Commission’s text.’ The complainer adds: ‘We of course prefer [Committee A]’s way of doing it’, to which the Chair retorts ‘Sometimes there are changes in life’. All laugh.

While the fact that different committees have different practices regarding something as basic as the drafting of four-column documents itself speaks against the existence of one trilogue culture, the most important difference seems to be whether the file is viewed as controversial by participants:

There are some stronger emotions at play, even at the technical level, but especially at the political level. And I could well imagine that sets a different frame for the atmosphere around it. But having said that, I think there are some very general features. The technical meetings are very ... detailed, technical ... Of course. (Interview 1, EP assistant)

Naturally, some topics are inherently more controversial than others. For instance, several interviewees mention migration as almost always being controversial (e.g. Interviews 1, 13, 26, 29, 37). However, it is also worth noting that both interviewees quoted in this section express that this variation between cases happens within a basic framework: one says there are ‘slight

adjustments’, the other that ‘some very general features’ exist for trilogue negotiations.

Between Change and Stability

Thus, the first challenge to the existence of a coherent culture of trilogues is that there are many moving parts. The section above has identified several such parts. First, the individual characteristics of the negotiators representing the three institutions at the political level were seen by interviewees as important sources of variation between cases. As each legislative file will most likely have a unique constellation of actors and will see several changes of Council Presidency, the level of continuity across cases is fairly low. Second, interviewees point out that there is some degree of variation between proposals and committees, and that the complexity as well as the level of controversy of each individual file influence negotiation dynamics. These differences, however, are to some extent offset by the higher degree of continuity at the technical level, and interviewees report that a base of standard operating procedures does exist, within which these variations play out.

Challenge 2: Clash of Cultures?

The institutional organization ... I mean, the nature of the institutions also for me plays a role in the negotiations. (Interview 40, EP adviser)

The second challenge for the development of a single trilogue culture is that even though a body of standard operating procedures exists, these are continuously interpreted by participants who represent three different institutions, and who spend most of their working time *in* those institutions. This section directly addresses the theoretical expectations introduced in the section on sociological institutionalism in Chapter 4. To assess this challenge, this section first briefly revisits the ‘classic’ views of the Commission as a bureaucracy, the EP as a political arena, and the Council as a diplomatic ‘consensus machine’. This is complemented by interview quotes and observations which directly or indirectly indicate that these proposed cultures are acknowledged by negotiators. Then follows a section which introduces and analyses interview quotes which explicitly compare the negotiation styles and culture of the institutions.

A Bureaucrat, a Diplomat, and a Politician ...

Chapter 4 introduced some previous findings about the views held by representatives of the three EU institutions. In broad terms, the Commission is often described as being a supranational bureaucracy to whom, according to critics, “The answer is always “more Europe”” (Telegraph, 2017). Less critically, this role has been dubbed the ‘conscience of the Community’ (Cini, 1996: 16), or as one of the ‘engines of European integration’ (Pollack, 2003). Indeed, the

overall most common reason stated for taking up a job in the European Commission is a *commitment to Europe* (Kassim, 2013a: 45), and a large portion of Commission officials are found to hold supranationalist views in surveys of both top Commission bureaucrats (Ellinas & Suleiman, 2011) as well as across levels (Hooghe, 2012; Kassim, 2013c: 105).

On the other hand, the Council is viewed as a fundamentally intergovernmental organization based in classic conceptions of diplomacy – it sometimes styles itself as ‘the house of the member states’ (EU Council, 2018a). This foregrounding of national representation has been demonstrated to evoke an intergovernmental role perception (Egeberg et al., 2003) when participating in Council meetings. Furthermore, the Council famously has a tradition of making unanimous decisions, even when not required to do so, a phenomenon known as the *culture of consensus* (e.g. Finke, 2017; Lewis, 2000; Smeets, 2015).

Finally, with regard to the EP, previous studies have found that they remain first and foremost national politicians, though a soft socialization happens by which the MEPs ‘develop their knowledge and skills there, their beliefs, legitimate ways of operating’ (Beauvallet & Michon, 2010). The following section examines how interviewees use notions of culture, implicit and explicit, to explain how they act in trilogues, how they expect others to act, and to make comparisons between the institutions.

Implicit and Explicit References to Culture

There are few explicit examples given to describe the culture of interviewees’ own institutions, whereas some references are made to those of the other two. The first example of different institutional cultures comes from a Commission interviewee who acknowledges that a consensus culture constrains the Presidency:

So even if you say it's the qualified majority, you always try to reach a consensus, and then So even 11 [member states against] would have been a bit – I'm not sure that the Presidency would have pushed it through with 11. (Interview 13, COM Secretariat-General)

This is mirrored by an EP adviser who noted that some Presidencies would be more willing to be flexible than others, but that they were always ‘very mindful of not overstepping the lines of bigger member states’ (Interview 32, EP adviser). One Council interviewee notes that ‘the working parties are a bit like a family, and these informal relations are the oil that makes the machine work. And the Council of Ministers is probably the world’s biggest negotiation machine’ (Interview 54, Council secretariat). This quote does not evoke the

culture of consensus but rather emphasizes the importance of family-like informal relations in the Council.

There are also a few references to negotiation norms in the EP. One interviewee offered the following reflection when asked whether questions which were initially not thought to be controversial could suddenly become so:

[M]y MEP maybe wasn't as faithful to the group line as some other MEPs ... There can be a bit of a difference in that part of a personality too. So, my MEP assessed everything from scratch every time. Which also meant that she suddenly found some detail, maybe sometimes a little late in some negotiation, where she kind of assessed, 'Well then I can't vote in favour'. (Interview 25, EP assistant)

Two EP norms are implicitly at play here. First, it shows that there is an expectation to vote with the group line. However, not toeing the party line is not viewed as prohibitively problematic, as long as one observes a second norm – namely that one should not propose changes or withdraw support late in the process. Another EP interviewee also noted that it is frowned upon to introduce amendments late in the process. She explained that 'it's just good practice that if you want to be involved in the negotiations, you have also shown that you want to do something' (Interview 17, EP assistant).

However, actions are not always interpreted the same way by all actors. One interviewee in the EP expresses frustration at being unable to influence the Council even though she knows there has been internal disagreement: 'They were completely unyielding, like concrete. And I knew there had been many discussions going on elsewhere. We couldn't play on the political process at all because they were closed off, right?' (Interview 20, MEP). Another interviewee notes that he wants to be transparent with the EP but that they must understand that he does not openly share the positions of the individual member states:

We're not concealing. I'm not trying to, you know, explore solutions under the table or, we want to be, I want to be fully transparent on what ... what's happening. I will tell, give you a map of how I see the Council at the technical level. But I won't name member states. You know, you just set out those rules, so that they understand. (Interview 23, Council attaché)

This seems to be an important norm which differs from the EP, which is rather open regarding who has introduced which amendments. Taken together, the two quotes above show that the same action is viewed differently by interviewees from different institutions. The MEP primarily views the reluctance to share information about internal discussions as a negotiation tactic, while the attaché primarily views it as adhering to a norm of confidentiality vis-à-vis his colleagues in the Council.

Finally, the following quote indicates that there are established ‘proper’ ways of doing things in informal relations between the institutions, and that stepping outside these expectations requires a certain amount of confidence, which may for instance come from previous government experience:

It was during the German Presidency, but [MEP], as Parliament's rapporteur, simply chose to reach out directly to the Presidency, because the Commission had dug in its heels, right? [...] And she got something incredibly good out of it, but not everyone, I think, knows how to do it or thinks it's the right thing to do. But [MEP] is a former minister and perhaps feels comfortable calling a representative from the Council. Maybe some MEPs think that it exceeds some ... That it's something they can't do, so there are a lot of variations, but in general I would say that the informal contacts are very, very dependent [on the MEP]. And some think that it's the most obvious thing to do. (Interview 1, EP assistant)

The examples above point to several norms, both with regard to internal negotiations and interinstitutional negotiations, even though most interviewees do not make explicit references to them. It also shows that actions are not always interpreted in the same way: what one person sees as a negotiation tactic, another may view as following a norm.

Comparing Cultures

While direct references to individual norms or ‘cultures’ were not very widespread in the interview material, comparisons between the negotiation style/culture of the institutions were more common, most often between the EP and the Council. Below are two examples from an EP assistant and a Coreper ambassador, respectively:

I was a student assistant in the foreign service, and when you sit with an ambassador, for example, or at informal Council meetings, the tone is quite diplomatic, and there is a certain diplomatic manner, and the way you negotiate is a little more dry, a little more to the facts, and a little more consensus-seeking, I think, where in the EP, the style is very undiplomatic. So, it's very much like two different camps. [...] There is generally a less diplomatic tone in the EP than in the Council. That is my clear experience. (Interview 10, EP assistant)

I think diplomats are much more tied to their positions from the capitals, they're much more diplomatic. Well, not in the Parliament. There I use.... There you really need to have this... let's say, emotional intelligence to understand, right? Is the person bluffing or is it true. Do they truly want a deal? And to speak to them as politicians like, I don't know. So it was almost in all cases like this. They're not technical people. (Interview 57, Council ambassador)

Both interviewees agree that the Council is more diplomatic than the EP, with the EP being more ‘direct’ and more political as the counterpoints to being diplomatic. The first quote notes that there is a ‘certain diplomatic manner’,

and the second quote states that ‘emotional intelligence’ is required to deal with the EP. Thus, both indicate that the existence of a diplomatic style makes negotiations more predictable, at least in terms of how interactions are structured. Additionally, interviewees point to the EP being more flexible than the Council in terms of quickly checking and adjusting positions:

Interviewee

Exactly, because they have to have their mandate in the Council ... So they need to have, like, pretty much black and white where Parliament stands ... so they can see where they have to make an agreement – that's how it was explained to me anyway ... That's why we had to be in such good time. We're a bit more flexible in EP. I can just call [MEP] and ask, ‘What do you think?’, and she'll tell me what she thinks, and then it's kind of closed, right?

Interviewer (WE)

Whereas there are more bureaucratic procedures in ... [Council, got interrupted]?

Interviewee

Exactly. (Interview 24, EP assistant)

This demonstrates that the hierarchical interaction between the assistant and the MEP in this case is very flexible, and the interviewee contrasts this to the more hierarchical procedures in the Council. While this is presented here as a cultural difference, this may also be a strategic use of a ‘tied hands’ logic: if the EP can quickly adjust its position while the Council cannot, it is more likely that the EP will be the ones to show flexibility.

The Commission is Different

Others emphasize how the Commission negotiators are different, not only because of the Commission’s role as broker rather than a co-legislator, but also because their approach to negotiations can be quite different. For instance, an EP assistant explained to me that they would sometimes have informal bilateral meetings between her and the attaché representing the Presidency, both because it allows for more frank exchanges about priorities, and because it is an advantage that the Commission is not present. When I asked why that helps, she gave the following answer:

The Commission always has a huge number of objections. After all, they are the technical experts on this. So we have, well, we have like, there's like one specific thing in this... regulation that we have now, which is a strong political priority ... that we kind of need to explain more at a political level and say, ‘Let's put aside all the, you know, small details in the legislation and all the reasons that the Commission would say why this is not possible, and let's have the political talk that this is about leaving a world for your children that you are not ashamed of’,

and stuff like that, right? ... And I think it's better to have that conversation when the Commission isn't sitting around saying, 'but, but, but, but'. (Interview 18, EP assistant)

This quote illustrates that, in the eye of the interviewer, Commission officials are more reluctant to leave aside the technical aspects of a regulation and enter into a 'political' role, talking about its overall objectives. The fact that she framed it as something the Commission 'always' does indicates that she finds it to be part of their organizational culture. Another EP assistant voiced a similar view, noting that in technical meetings, he would be 'getting frustrated that the Commission's legal advisers are going completely nuts over one word or another and so on' (Interview 21, MEP and assistant).

It is interesting to note that, unlike in the EP, but similar to the Council, there are no rules regarding the order of speakers in trilogues. This decision is mostly left in the hands of the person chairing the meeting and can be used strategically. In the meetings I observed, which were all chaired on EP premises, the rapporteur always spoke first, but occasionally it may be advantageous to let the other institution go first. However, it seems to be customary that the co-legislators take the floor first and then give the floor to the Commission for comments and clarification:

If you are talking procedure, if you have someone, a rapporteur, who gives ... the Commission the floor before the Council. I have seen that ... it makes it very complicated because the Commission's role is to come in afterwards and then sit and nudge in the right direction. (Interview 53, COM cabinet)

A similar view is presented by another Commission official who notes that the Commission is usually silent for the first go-round on an issue because they are 'officially neutral and not one of the co-legislators' (Interview 48, COM official). Both quotes indicate that there is an informal expectation that they should go last. This is ascribed to the fact that their role is different from that of the co-legislators, and both interviewees indicate that they are comfortable in this role because it enables them to 'nudge in the right direction' despite being 'officially neutral'.

Summary: Culture with Variation and Improvisation

Trilogues are a strange institution insofar that it breaks with all other sort of... working methods that you would find. (Interview 9, Council attaché)

This section has examined the idea that a culture of trilogues exists and that it is constituted of a collection of socially shared conceptions of what trilogues are and what they should be. The analysis found that, in line with previous research, a body of standard operating procedures exists for trilogues. Subsequently, two potential challenges for developing and sustaining a thick

trilogue culture were identified. The first challenge is the large number of 'moving parts', referring both to the high turnover in participants and the variation in complexity and salience between cases. This turnover is particularly evident in the fact that each case has a different rapporteur, and that the Presidency changes every six months. This makes the transmission of negotiation culture from one case to another difficult. These difficulties, however, are offset to some extent by the presence of more 'permanent' actors, particularly the secretariats of the EP committees and the Council, and the Commission officials working in the DGs. The second challenge identified is that negotiators come from different institutional backgrounds, and that this may influence how they perceive trilogues. Interviewees express that Council representatives are used to negotiating in a more 'diplomatic style', while EP representatives are more direct. The Commission was found by some to be different, both in terms of having a more technocratic approach to negotiations and in terms of usually being the last institution to intervene in trilogues.

Despite these impediments to the development of a thick trilogue culture, one major takeaway point is that trilogues are taken for granted to the extent that their existence is not questioned. The interviewee below demonstrates that he knows there is a formal procedure but argues that trilogues are 'the way' to make legislation.

So, you know that codecision has different steps. But now we end at first reading because we stretch it until we reach an agreement. So, it's a big ... you could say it's a trick or that we are cheating in a way and that de facto what is happening now is that all every time the first reading is stretched through this trilogues, which are informal in theory ... but ... I mean, very high-level. (Interview 26, COM official)

Additionally, it is worth noting that he says that trilogues are 'informal in theory', indicating that this is not the case in practice. His reasoning for this is that participation is 'very high-level', indicating that this increases formality. There are variations within the interview material about the degree to which trilogues are standardized. When asked to describe typical steps in a trilogue process, one interviewee replied, 'I need to say that every trilogue is completely different. You can prepare, you can do whatever you like, but ... That, that surprised me a lot' (Interview 14, Council attaché). However, a more commonly held view is that the basic components of a trilogue process are relatively settled, as exemplified by one interviewee:

We have two institutions negotiating with the third as a facilitator, right. And all these elements I've described, some of them are colourful. Some of them are the result of the fact that we have twenty-seven member states and so on. That's something that comes into play. Is any of that in itself decisive? I guess not,

because the structure is still relatively well established, so there are no major ... There are no big questions. (Interview 1, EP assistant)

She then goes on to identify several of the established procedures for doing trilogues, noting that over time these procedures have become more and more uniform:

[T]he longer Parliament as an institution is involved in this, the better it gets, the more monotonous the processes become. But I would say that when I sit and talk to you about all the trilogues I've been to, there is a common thread running through them in relation to the four-column document, the formal and the technical meetings. And then there are some pretty big variations in terms of actors and the role of actors and things like that. But overall, the structure is relatively simple and easy to understand. (Interview 1, EP assistant)

Here, however, it is also worth noting that for all the stability in procedures, variations in actors and roles are ascribed some influence over the negotiation process. In sum, trilogues are indeed institutionalized to the degree that a body of standard operating procedures exists and is readily acknowledged by interviewees. This, however, forms only a baseline culture, leaving room in practice for individual negotiators to shape the process and leading to significant variation from case to case. The remainder of this chapter explores the initial steps taken by the negotiators up to and including the first trilogue to get to know their counterparts, and to agree on the process going forward.

8.2 Setting the Stage: Informal Coordination Before the First Trilogue

The second half of this chapter aims to describe the informal interinstitutional meetings which take place before the opening trilogue, the opening trilogue itself, and the reasons given by interviewees for why these meetings are important. This section helps ground the previous analysis by demonstrating how these initial meetings are used to fill out the 'culture gaps' and structure the trilogue process. This structuring is achieved both by actors meeting to arrange practicalities such as the number, dates, and location of meetings, but also by allowing the negotiators to start getting to know (or size up) their counterparts and to have initial exchanges on political priorities.

Networking and Building Relations

Look, John,²⁹ frankly, I think that we really should ... invest some time to get to know each other. (Interview 23, Council attaché)

As described in Chapter 6, there is a long period of intra-institutional negotiations before trilogues start. This means that it will be settled months in advance who will be the chief negotiator for each institution, but also who will be part of the negotiators' technical teams. Several interviewees note that they proactively seek out their counterparts to informally network and prepare the ground for the coming negotiations. This is described as a rather organic process, as most negotiators at the technical level know each other from previous interactions (Interview 55, COM official). This initial networking can take several different shapes, ranging in degree of institutionalization. One prevalent practice is *speed dating* between the ambassadors of an incoming Council Presidency and the Committee Chairs in the EP (Interview 19, Council attaché) where they briefly exchange views on the different files in the legislative pipeline.

This is usually complemented by additional meetings with the Committee Chairs and rapporteurs to discuss individual files because 'these informal contacts are very, very important, and you really have to be in touch later on, so it's important to get to know these people and to, to tell them what you intend to do' (ibid). These meetings happen at both the ambassador and the ministerial level and are described as a way to put a face to a name and gauge 'what's the political commitment to advance' (ibid) on the other side. The Commission also plays a role in this process. One interviewee notes that being a mediator also involves building relationships between the negotiators. The Commission is in a good position to do that because they, according to this interviewee, are more stable and long-term, and use their 'institutional memory' to guide informal contacts:

[W]hen the Presidency starts, we introduce them also to the Parliament. As mediators like 'OK this is your point', you know? We meet the three of us also to build relationships, so we are like in a way like couples counselling, we want them to be happy. I mean, we are there when there's problem, we are there to help and we are there to match them as well when they don't know each other, but yeah, we are, we are, we are the stable in this equation, we are we are there all the time. We have all the contacts all the time. (Interview 26, COM official)

Building relations with and between co-legislators is thus viewed as fairly simple by this Commission interviewee. However, another Commission interviewee presents a different view:

²⁹ Pseudonym.

It's a bit more challenging between Parliament and Council, between, because [...] Institutionally speaking they are competitors. And Council always thinks that Parliament is there to annoy them, and the other way around. (Interview 11, COM cabinet)

Regardless of whether it is simple or not, the two quotes demonstrate that these Commission officials view their mediating role as entailing more than just drafting compromises. In addition to being a 'couples counsellor' between the co-legislators, the Commission also needs to manage bilateral relations with each of them, which is not always easy. One interviewee recalls how the EP had flat-out refused to meet informally with the Commissioner ahead of trilogues on a recent file: 'There was a fear, as I understood it, for her adviser, that we, from the Commission side, would try to influence the rapporteur and shadow rapporteur in some direction' (Interview 6, COM cabinet).

On a more general note, the relations between the EP and the Commission in recent years were described as 'tense': 'from the beginning, the relations were very tense, and this Parliament has been very aggressive with the Commission, and it is still very aggressive, and it will be even more aggressive as we approach the elections' (Interview 2, COM Secretariat-General). Another interviewee noted that, in one case, they had specifically endeavoured to include the Council early, to build trust:

[W]e went very early to the Council and said, 'We have an introduction session'. We explained the impact assessment [to them]. So that's where you prepare the ground. You're trying to create an atmosphere of trust, mutual trust where we say 'This is why we did that' [...] that's very important. (Interview 28, COM cabinet)

It is worth noting that the interviewee aims to create an atmosphere of *mutual* trust, and that this is done by sharing information and explaining their choices. He added, with a certain pride, that this is no easy task: 'So this is very delicate. You need to be firm, humble, explain [...] it's delicate. It's interesting. It's a diplomatic exercise. It's great fun' (ibid). Finally, he added that it is also a necessary exercise because there is often an initial resistance from the Council towards proposals coming from the Commission, because any new legislation needs to be implemented.

On the less formal side of the spectrum, one interviewee mentioned that he had invited his counterparts from the other two institutions over for a 'lunch with cod fish and wine, [...] a four-hour lunch' at his home (Interview 23, Council attaché) to get to know each other. Indeed, sharing food or drink is a prevalent theme in the interviews – for instance, there are 57 references to coffee in the interview material, many of which mention it as a euphemism for having an informal meeting. Some interviewees explicitly mention that this

engagement between institutions over time is both important and deliberate, as it helps to ‘create this... trusted environment’ (Interview 11, COM cabinet) between negotiators. One interviewee reminds me that, in the end, ‘this is all people [...]. It’s people who have a good day, who have a bad day, people who like your nose or don’t like your nose’ (Interview 28, COM cabinet). He explained that this was important because knowing your counterparts allows you to better understand *why* their negotiation positions look the way they do. However, networking is resource-intensive, and according to one EP adviser, it is necessary to prioritize:

[W]hat we did at the time was to create categories of importance of legislative files. So, we would allocate, of course, meaningful resources to top priority files, which would be those where we would do more, let's say, research, preparatory research, preparatory contacts, getting to know the relevant people. But ... yeah, I would say that was the case for a limited amount of files. (Interview 38, EP adviser)

Here, it is worth noting that the interviewee specifies that the EP must prioritize which files they spend resources on, both in terms of doing research on the subject matter *and* in terms of networking with the relevant people.

Gathering Information and Clustering

Apart from getting to know one’s counterparts, these informal contacts ahead of trilogues also serve two other important purposes: to seek information about others’ positions and to explore options for how to structure the trilogue negotiations. Particularly from the EP side, these informal channels are useful to determine whether amendments enjoy broad support in the Council: ‘Is it the whole Council behind it or is it some country? And it could be really, really hard to get that information out, because you'd have to search around the PermReps [Permanent Representations]’ (Interview 1, EP assistant). Since there is no public record of individual member states’ positions, EP negotiators make considerable efforts to figure out how the preferences of the member states are distributed and what that might mean for the firmness of the Council’s position on each amendment. Another important step mentioned by EP interviewees is to reach out to interest groups to solicit their input and expertise. One assistant noted that this is among the first tasks after reading the Commission’s proposal and impact assessment:

There is, of course, the concrete task of reading through the Commission's own impact assessment [...] and then set up some meetings with some interest organizations, some companies, and NGOs, and whoever else has an opinion on it and get an overview. (Interview 21, MEP and assistant)

Another interviewee presented a similar point, saying, ‘I had a dialogue with this guy from [interest group] [...] I called him like, “Do you have any ideas for this?” And he was like, “Not right now, but I can take a look at it”’ (Interview 25, EP assistant). Both quotes demonstrate that the EP are not just passive recipients of lobbying efforts, but that they also use these channels proactively to seek out information and input about their views on files.

On the Commission’s side, one interviewee notes that their unit will ‘invest quite a lot of time on what we call political monitoring’ (Interview 2, COM Secretariat-General) of the EP political groups. This entails following their social media and press releases, but also going to meet them personally to gather information and establish contacts. On a lighter note, one interviewee opined that information flows rather freely in Brussels:

There, there might be some level of flexibility in terms of when it comes to percentages, we can take from 15 to 35, but in reality, everybody knows the position. Brussels is small. I mean, Politico normally has the proposal before us so [laughs], you know. (Interview 29, COM cabinet)

While of course said with a wink and a nod, this quote implies that everybody knows each other’s position because people talk, and that the informal exchange of information is an important part of the negotiation game. Finally, there is the question of how to structure the trilogue process. The four-hour lunch mentioned earlier in this chapter illustrates quite well how informal contacts serve several purposes:

That four-hour lunch was extremely important for what was going to happen afterwards, because we got to know each other. We got to exchange first impressions on how we saw this developing, and I gave them my view of the clustering elements, and how we could progress and where to start. (Interview 23, Council attaché)

In addition to getting to know each other, the negotiators also exchanged views on the development of the file and made suggestions for how to *cluster* the different elements in the file. Thus, he effectively argues that the technical teams have some leeway in how to structure negotiations, something which will be explored in Chapter 9. On the basis of this clustering, a timeline is produced, which ‘will typically include both technical meetings and political meetings. It will be a document with all the contact details of those negotiating the case’ (Interview 17, EP assistant). Another interviewee, however, notes that even if an overall approach and timeline has been prepared, it is not possible to be certain that negotiations will develop as foreseen. Instead, she argues:

[Y]ou should say that we ... preliminarily agreed that the next political trilogue will be, either a certain date, or the next political level will depend on the work at the technical level. I think this is the more frequent case. Because, you don't know in advance if technical level will be successful dealing with all these points. (Interview 14, Council attaché)

This point is supported by a Commission official who notes that 'the calendar was basically decided by the participants on the basis of the progress of the previous one [trilogue]. There was nothing really set in stone beforehand' (Interview 31, COM official). Though it may not be possible to foresee how negotiations will develop, the quotes above indicate that negotiators discuss how to cluster negotiations, which may help synchronize the internal processes in the three institutions once trilogue negotiations start.

8.3 Doing the First Trilogue

While the differences in institutional culture and the social relations developed between negotiators are ongoing throughout the trilogue process, a point comes where both the EP and the Council have a mandate, and the first political trilogue meeting takes place. The following section will examine how interviewees describe the conduct of the first trilogue on a new legislative proposal.

Kick-off Meeting, Handshake Trilogue, Meet & Greet

Once they both have a mandate, the negotiations can begin. Negotiations always start with a trilogue. And this is kind of a formal, boring – no, boring is an overstatement – trilogue. (Interview 39, EP lawyer-linguist)

While boring may indeed be an overstatement, the first trilogue meeting is described by several interviewees (Interviews 11, 14, 18, 19, 20, 35 *inter alia*) as usually being fairly short, 'one hour long, maybe one and a half' (Interview 57, Council ambassador), but serving several purposes: first, offering relais actors 'an occasion to shake hands, exchange a few speaking points, and take a photo' (Interview 48, COM official). Second, to 'officially' state their respective positions and priorities for the file. Third, to agree to a negotiation process, including the foreseen number of trilogue meetings and provisional dates for these. Finally, to delegate work to the technical level. Two interviewees describe it as follows:

[T]here is a first trilogue that is a kind of ... getting to know each other, kick-off meeting, where the issues that need to be discussed are listed... Trilogues only focus on, what they call the political points, and most of the time, they can agree on a direction for a solution on a particular political point. But they ask ... the services from Parliament, from Council, and from the Commission to sit together

in what we call the technical trilogues to actually do the wording and the drafting of a compromise that is then presented to the next political trilogue for endorsement or modification. (Interview 11, COM cabinet)

So, at the first political trilogue, you have a quick exchange of views where the Council presents its position, Parliament presents its position, and then you say, 'Well, we can't agree' ... And then what happens afterwards is that you identify the points where you disagree strongly, and then you plan the next three to four months of meetings, meetings, with political trilogues. (Interview 4, EP assistant)

The quotes above represent quite well the sentiment expressed by other interviewees. The interviewees specifically refer to the first trilogue as a kick-off meeting or a quick exchange of views, indicating that its purpose is to begin the trilogue process. Others call it an *opening trilogue* (Interviews 7, 14), a *handshake trilogue* (Interviews 19, 42), a *meet and greet* (Interview 23), or, more colourfully: 'the first trilogue, which is just kind of pissing off the territory' (Interview 46, EP assistant). All these characterizations convey the basic idea that the first meeting is not the place for long discussions and trading concessions. The interviewees also indicate that the co-legislators use the first trilogue to decide to call some points political and not others. This implies that the distinction between political and technical is in itself a political decision, and that it is the prerogative of the co-legislators to make this distinction in trilogues. Work is then delegated to the technical level. Finally, the second quote indicates that they only 'identify', rather than discuss, points where the co-legislators 'disagree strongly'.

Pure Process or Start Discussions?

The interviewees generally agree that the first meeting is used to shake hands and outline the trilogue process. One interviewee even notes that often the shadow rapporteurs will not be present at kick-off meetings precisely because no substance is discussed (Interview 20, MEP) However, there is variation in the assessments of whether the first meeting is exclusively used for this, or if some substantial discussions are in fact handled here:

But our DPR [...] he didn't like this scenario. Because it's kind of useless, you know? There's no negotiation. So, he decided that he wanted to slightly change this practise. And during the opening political trilogue, he insisted that there will be at least one round of exchanges on certain topics ... Of course, the European Parliament needed to, to be okay with that. Usually it was, because why not? Why just, you know, to have to shake hands for 30 minutes if we were able to find the schedule? (Interview 14, Council attaché)

Interviewees note that if under time pressure (such as at the end of a Presidency or an electoral cycle), there will usually be some impetus for starting

substantial negotiations at the first meeting (Interview 14, Council attaché). As another interviewee puts it : ‘I mean, why should a kick-off only be formal? It's stupid. I mean if you have the opportunity, go into a little bit of substance’ (Interview 52, Council ambassador). Apart from the obvious goals of coordinating, exchanging positions and, perhaps, tackling some substantive issues, the same interviewee also perceived a relational benefit of meeting in person early in the process:

[B]asically, the first trilogue, which ... it may be just a formal one, say hello. Or it may have a little bit of content. It depends ... I tried to have a little bit of content in the first one, and ... they say that sometimes you can have a written first trilogue. Because at the end of the day, why is it necessary to meet? I didn't, I tried not, to avoid that. I think it is important to meet, because then you can, you establish a personal relationship, and ... you see more clearly what's the situation. So, that's very important ... First trilogue is just a... it can be just a, a kick-off, but a little bit of substance. (Interview 52, Council ambassador)

While both the length of the meeting and whether or not substantive negotiations will begin varies, interviewees seem to agree that the first trilogue is qualitatively different from subsequent meetings. Moreover, if any substantive negotiations take place, this progress is only one of several goals, the others being to establish a relationship between the negotiation counterparts, to plan the trilogue process to come, and to delegate work to the technical level.

Delegation to the Technical Level

Another important function of the first trilogue meeting is to set the direction for negotiations at the technical level (Interviews 4, 19, 23, 38, 41, 59). According to one interviewee, this delegation can be more or less detailed, depending on the file. If it is a politically charged file, the political level will plan in more detail what is to be discussed at the technical level:

[B]ecause it was so politically charged, it had another purpose, which was setting the agenda for the technical meetings. You can do two things. You can say, ‘Well, feel free to discuss whatever. Here's the file, you discuss whatever.’ But in a politically charged file and wanting to have everybody very much ... in the loop ... what we were discussing, we set the agendas for the technical meetings. (Interview 23, Council attaché)

The early distinction between political and technical issues which takes place at the first trilogue is important beyond the logistical considerations of delegation, and its importance is underestimated, according to one interviewee:

The first trilogue, I think that's incredibly important. And the first trilogue is sometimes denigrated, but I think wrongly because it is really where you're already starting to make a distinction between more political issues on the file

and less political issues. And I think if you don't do it early on, it's much harder to make, it's much harder for the Parliament to make a political point that it hasn't raised early in the game, if it comes up later. It's never as easy. (Interview 59, EP adviser)

While the interviewee argues that raising an issue as 'political' at the first meeting makes it easier to credibly argue that it is an important point and not just a negotiation tactic, the work in identifying political issues continues at the technical level throughout the trilogue process.

8.4 Summary

This chapter has examined the idea that a culture of trilogues has emerged and probed what such a culture might consist of. It was argued that the development of a *thick* and uniform culture of trilogues faced two main challenges. First, there are too many moving parts in trilogues. For each legislative file, there will be differences in policy area, salience, and urgency, and the constellation of actors will invariably be different, all affecting the possibility of a culture travelling between cases and areas. Second, in addition to any culture of trilogues, each negotiator comes from a different institutional background (Council, Commission, or EP), which has its own institutional norms and culture. This was demonstrated to influence their way of approaching trilogues. However, a *thin* culture comprised of various standard operating procedures and procedural norms was found to exist. First, and most importantly, the very use of trilogues is an internalized norm, and interviewees see this as the default way of negotiating legislation. In line with previous findings, the use of four-column documents is widespread, as is a sharp distinction between technical and political meetings (though which *issues* are technical and political is less clear, as will be explored in Chapter 9). The technical level supporting relais actors in trilogues exhibits more stability across files and thus helps transmit these standard operating procedures from one trilogue to the next.

Then, the chapter unpacked the practices of informal communication ahead of the opening trilogue. It was found that informal contacts between negotiators start early in the process, both at the technical and political levels, in various more and less institutionalized formats. The purposes of these informal meetings are twofold. The first purpose is to 'network' and build relations with the other institutions' negotiators to create a trusting environment before negotiations start in earnest. Second, and more instrumentally, they provide an opportunity for negotiators to gather information about the positions of the other institutions and to have initial exchanges about how to structure the negotiation process.

Finally, the opening trilogue was analysed, and it was found to be viewed by interviewees as distinct from an 'ordinary' trilogue meeting: it is often

shorter and mostly an opportunity for the negotiators to officially meet, shake hands, agree on the process for forthcoming meetings, and delegate some work to the technical level. However, some interviewees noted that, due to time pressure on the Presidency and the general difficulty in scheduling political trilogues, it is preferable to have at least some substantial discussions at the first meeting.

Chapter 9: What is Technical and What is Political?

Trilogues only focus on what they call the political points, and most of the time they can agree on a direction for a solution on a particular political point. But they ask the services from Parliament, Council, and the Commission to sit together in what we call the technical trilogues to actually do the wording and the drafting of a compromise that is then presented to the next political trilogue for endorsement or modification. (Interview 11, COM cabinet)

Not every recital and article of a legislative proposal is discussed at length by the relais actors in trilogues. Legislative texts are often both lengthy and complex (increasingly so over time, according to Sekut & Marcus, 2024), and discussing all parts would thus be an insurmountable task without help from technical-level staff. In all political systems, there is a fundamental division of labour between bureaucrats and politicians. However, it is also a fundamental insight of political science and public administration that bureaucracies and individual bureaucrats are not merely passive extensions of their political masters (e.g. Aberbach et al., 1981; Baekgaard et al., 2022; Blom-Hansen et al., 2021). Delegating a task entails a risk that the agent entrusted with it pursues their own interests rather than those of the principal, leading to agency costs (Miller, 2005).

When dealing with EU legislative negotiations, risks of shirking and agency costs are not only problematic for the principal. If decisions are de facto made by non-elected staff and are not aligned with the wishes of democratically elected (or appointed) decision-makers, it raises questions about the democratic legitimacy of the process (Brandsma & Adriaensen, 2017; Häge, 2013). The extent of committee decision-making in the Council has been discussed at length, and though estimates vary, there is agreement that a substantial portion of decisions are made at the technical level (ibid; Hayes-Renshaw & Wallace, 2006). This division of labour has also been identified in studies of trilogues (e.g. Roederer-Rynning & Greenwood, 2015, 2021) and by practitioners; the Swedish Presidency counts ‘technical trilogues’ as outnumbering political ones four to one (Swedish Presidency, 2023). The EP’s latest activity report notes a similar development (European Parliament, 2024a). The distinction between technical and political questions, however, is not clear-cut, neither in the Council (Fouilleux et al., 2005) nor in trilogues. Thus, an important aim of this chapter is to explore the practices linking the technical and political levels, both in terms of concrete work on legislative files and

in terms of developing trusting relations between the political level as principals and their staff as agents in the trilogue process.

To examine these questions, this chapter is structured in four main parts: the first part is an examination of the considerations the interviewees highlight when judging whether a compromise for an article (or another part of a legislative proposal) can be reached at the technical level or must be sent up for discussion at the political level – or vice versa. Second, the concrete practices for handling these questions at both the political and technical levels are identified, focusing particularly on interinstitutional technical meetings (ITMs). Third, the vertical relationship between hierarchical levels within each institution is explored, focusing on the delegation and control exercised and the trust involved in delegating responsibility for negotiations to employees. Finally, these findings are discussed and summarized, focusing on potential pitfalls in terms of democratic legitimacy.

9.1 Determining What is Technical and What is Political

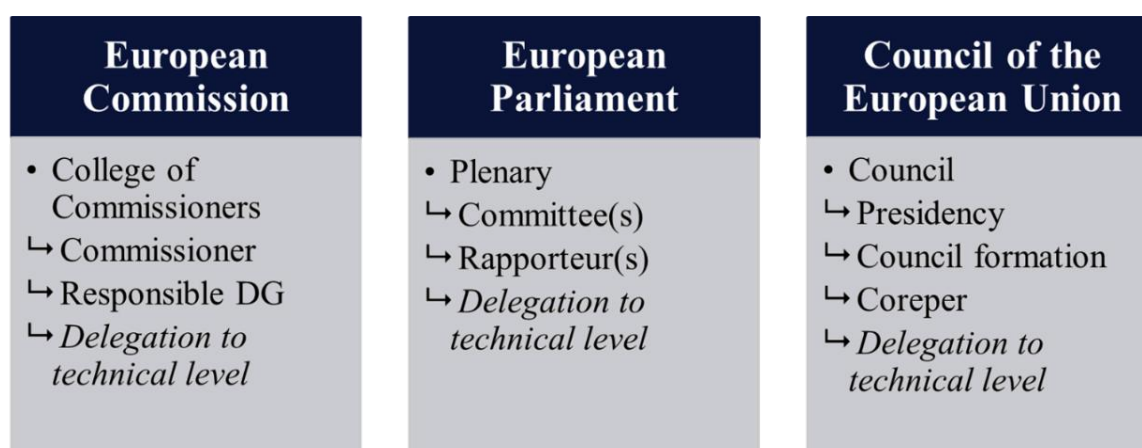
There is a great professionalism and knowledge about what is political and what is technical, and very rarely ... I very rarely find that it is controversial whether something is ... and if it is controversial, it becomes political, whether it is or not. (Interview 1, EP assistant)

It is mostly not complicated for practitioners to assess whether a question is technical or political when working on a specific case. However, the last part of the quote above illustrates that an issue may become political even if it was not thought to be so initially. This section explores how negotiators at the technical level assess which issues are technical and which require political discussion.

Delegation and Legitimacy

All decisions are, naturally, approved by the political level, including the decision to delegate preliminary discussions to the technical level. It is worth noting, however, that the delegation from the political to the technical level in the context of trilogues is the last link in a delegation chain (Bergman et al., 2000), beginning with the plenaries of each institution. This is illustrated in the figure below which adds further detail to the delegation steps introduced in Chapter 4:

Figure 9.1 Delegation Chains in Trilogues



Note: In this figure, the Responsible DG and Coreper represent the ‘middle level’ as introduced in Chapter 6.

Thus, delegating a decision from the political to the technical level, has two fundamental features with potential consequences for the legitimacy of decisions (cf. Scharpf, 2009; Schmidt, 2020): first, the technical level has a higher degree of policy expertise, which (all else equal) should lead to higher-quality decisions, boosting *output* legitimacy. Second, however, the technical level (as indicated in Figure 9.1) is one step further away from democratic accountability, which (all else equal) poses risks to the *input* legitimacy of legislative decisions. This is another reason why it is relevant to study the distinction between political and technical issues as well as the cooperation and links of accountability between the two levels: if the interaction works smoothly, decisions will be prepared by policy experts acting under informed delegation by political actors who then make the final decision, maximizing both input and output legitimacy. If not, the opposite may be the case.

It's All Technical Until It Isn't

As discussed in the previous chapter, delegation from the political to the technical level is usually one of the main points of the first trilogue meeting. As noted by one interviewee: ‘So, as you know, one of the first things we do is that you have a split of what is political and what is technical’ (Interview 40, EP adviser). In practice, the decision often entails that all points are discussed at the technical level first, though some may already be identified for subsequent political discussion:

The technical level needs to obtain mandates to work on all the points. Usually, the technical level can deal with all the points, but when there is something really politically sensitive, the ambassador and rapporteur say ‘Okay, the technical level can deal with points A to G but point E it’s going to be us’. So, that can happen. They can, you know, divide the work. (Interview 14, Council attaché)

Here, two points are worth noting. First, it is a common decision between the co-legislators to delegate work to the technical level. Second, the interviewee notes that the technical level is usually given a mandate to ‘work on all the points’. However, for politically sensitive cases, specific articles may be identified as political from the start. It is also worth noting here that being ‘political’ can apply both to a specific issue to an entire file. When the moniker is applied to an entire file, it often denotes that a case is controversial and/or expected to be difficult. As one interviewee describes with regard to a well-handled case: ‘So... yes, it was quite a successful story, although it was thought it would be a disaster because of the subject. That one was really, extremely political’ (Interview 35, Council attaché).

In most cases, all issues are *discussed* at the technical level first, even if they have already been identified as political in advance. As one interviewee notes: ‘And we can discuss the different articles, even though it's quite clear, and has been from almost the first moment, that deadlines are political. Then they are put in square brackets’ (Interview 46, EP assistant). Square brackets here signify postponing the issue. During discussions at the technical level, any institution can request a political discussion of an issue, but typically there is a joint decision about which issues need discussion at the political level:

Once the process of establishing the positions is settled, the technical meetings can start – you sit and fight over commas and wording, all the way in the subtext of the article. And that's where you typically identify – and it can be the rapporteur, it can be the Presidency, it can be the Commission, and especially, perhaps, jointly identify which areas you want to discuss. (Interview 1, EP assistant)

Interviewees find it difficult to specify general rules defining what is a political or a technical question, but they do offer some ‘rules of thumb’ for what may influence the distinction. First, if either co-legislator has proposed amendments which either significantly alter the Commission’s proposal or go in different directions, an issue will probably be classified as political. According to one interviewee, ‘it's actually pretty easy because... the places where the two different mandates are very far apart [will be classified as political]’ (Interview 46, EP assistant). Second, however, differences in the mandates do not always mean that an issue will be raised to the political level – it must also be sufficiently important:

It's not quite so ... black and white. It's about the political importance of the topic. For example, whether a deadline should be three or four days. Well, we can disagree on that, and we can disagree for a long time. But ultimately, it's not something I would ask politicians to sit and decide. (Interview 18, EP assistant)

In this example, there was a clear disagreement between the negotiators, but the matter was not important enough. This judgement is made by negotiators at the technical level without consulting their political masters, but it remains unclear which considerations go into the calculation of importance. Some of it will likely depend on the personality of the technical-level negotiator and on the degree of trust in the relationship between the negotiator and their political master. The latter dynamic will be described later in this chapter.

Finally, it is worth noting that there can *also* be spillovers between procedural and political issues, and that separating them is to some extent artificial. In the words of one interviewee:

In its own self-understanding and institutional self-understanding, Parliament has sometimes taken the procedures a bit hostage in some kind of battle. For example, the fact that the Commission is obliged to carry out impact assessments, but very often fails to do so. This is sometimes used as a bargaining chip in negotiations. And can, in principle, postpone them altogether if the Parliament really puts its foot down. If you know that an impact assessment is very likely to show that Parliament's position on something is the right or sensible one. (Interview 1, EP assistant)

The point here is that a procedural issue can also become 'political' if it is used by a negotiator, here the EP, in an attempt to gain concessions on substantive issues. Another interviewee notes that issues related to planning trilogues can also be highly contentious, which had surprised him at first:

Planning and preparation of trilogues is very challenging. I could not understand the point to which it is challenging because everything that centres around challenges is like a power game. It's positioning, so setting a date, setting a time – colleagues can confirm over and over again – that it has taken them hours of phone calls or emails to just agree on the timing for a trilogue. And this has been remarkable. I could not understand the extent to which this would be the case. And then the room, the place – so this thing about having every other trilogue in the two institutions has really been an issue. We've had to struggle to insist on that. (Interview 3, Council attaché)

Here, the interviewee is clearly incredulous regarding how even the planning of trilogues can be a power game: he repeats twice that he could not understand it. However, several interviewees describe both the discussions about planning and the ambition that the EP and the Council should take turns hosting (Interview 3, 9, 33, 49, 62). One argues that it is done 'to be on an equal footing' (Interview 33, EP adviser), while another argues that the EP hosts more meetings because 'the Council premises are way smaller', and that this 'gives a huge advantage to the Parliament' because chairing enables them to 'influence the way the negotiations are conducted' (Interview 62, Council

secretariat). One might say that any issue is *potentially* political if somebody thinks it is.

Numbers, Deadlines, Definitions, and Scope

Another rule of thumb is that numbers and deadlines are often reserved for the political level. In the words of one EP assistant: ‘Things like dates – deadlines for when something must be implemented or achieved, percentages for goals, objectives and the like – we are often very far apart, especially on things like deadlines’ (Interview 46, EP assistant). The reason is twofold: first, numbers and timelines are often important to the ambition level and implementation timeline of a legislative act, so there will often be disagreements. For instance, it makes a huge difference for both citizens and industry whether an emissions reduction target is set at 65 or 70 per cent, and whether the target must be reached by 2030 or 2035. Second, more pragmatically, numbers and deadlines are good bargaining chips because they can be adjusted incrementally to balance a compromise. Similarly, one interviewee brought up definitions when asked about issues that were often in the ‘grey zone’ between technical and political:

[W]e have huge discussions on how to create the definitions. Because the definitions determine the architecture of the of the file of the regulation. And the definitions also encroach on the scope. Scope usually is a highly political question. (Interview 50, Council secretariat)

The scope and definitions of a legislative proposal are part of the standard structure of the enacting terms of any legislative file (EU Council, 2023a). For instance, the final text of the AI Act mentions the word ‘scope’ 48 times: 32 in the recitals, 14 in the articles, and 2 in the annexes. It also contains 68 definitions laid out in Article 3 (Regulation (EU) 2024/1689). Thus, while definitions inherently sound technical, they may become political because of their relation to the act’s scope, which is generally viewed as a political question.

No Agreement or a Need for Political Backing

Finally, an issue will be raised to the political level if an agreement cannot be reached in a technical meeting, whatever the reason. Sometimes this will happen even if a tentative agreement has been reached, but the technical level wants to make sure it has political backing. This process happens in parallel both within and between institutions. The following excerpt is from a technical-level shadow meeting in the EP, though similar dynamics are at play in interinstitutional technical meetings:

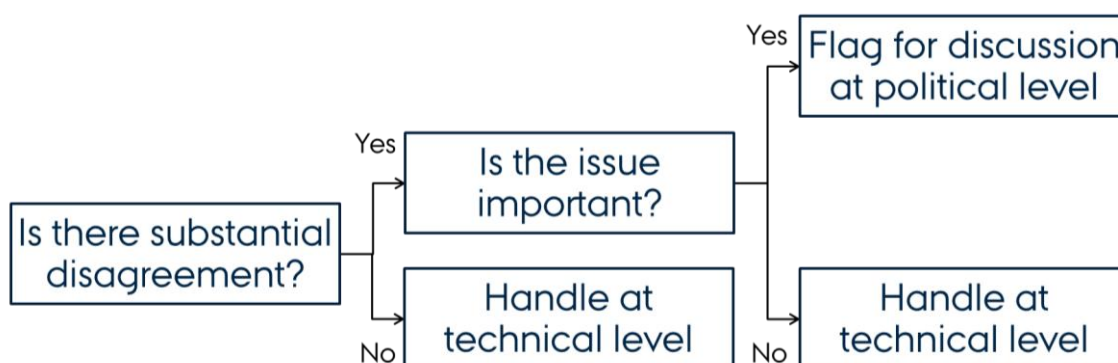
Field Note Excerpt 9.1: Political Weight

During technical discussions on a joint committee file, two groups have presented a joint amendment proposal. The meeting's two Chairs, advisers representing the political groups of the two rapporteurs, are discussing how to proceed in hushed tones. After a short while, one of them (my contact) takes the floor and states that 'We are going into things that are more complicated so if you already start locking flexibility already, I don't know how we will ever make progress'. She adds that they are exploring different options and were close to ending up with reverting to the Commission's proposal, but that they will take it up with the rapporteurs. The ECR representative requests to put it on the agenda for the next political-level shadow meeting, and the Chairs agree to do so.

After the meeting, my contact explains to me that 'at the technical level we do what we can but at the end of the day if we are not comfortable, we will send it to the political level'. In this instance, a political agreement had been close, and they could probably find a majority. In the end, they had decided to send it to the political level to make sure there was political weight behind the decision.

Here, two things are particularly relevant to note. First, the meeting chairs urges the other groups to remain flexible, reminding them that this will be necessary to make a deal. Second, the Commission's proposal is referred to as a fallback position in case no majority can be found for the proposed amendments. This reminds negotiators of the potential consequences of not being willing to compromise. Basically, the process of deciding whether to raise something to the political level entails answering two questions: whether there are substantial disagreements between the three institutions, and whether the issue is important enough to warrant discussion by the political level. A decision tree could look as follows:

Figure 9.2: Technical-Political Decision Tree



Note: This decision tree is from the point of view of a technical-level negotiator and could apply in both internal and interinstitutional negotiations.

Such a decision tree, of course, grossly simplifies things, and answering these two seemingly simple questions is often difficult in practice. One challenge is

that there may be second-order disagreements about whether divergences in position are substantial and important *enough* to elevate to the political level. One interviewee correctly points out the following: ‘if the negotiators [...] identify something where they can't really agree, or where agreement would mean changing your initial mandate [...] you need to go to the political level’ (Interview 28, COM cabinet). However, a second challenge is that negotiators (at levels) have a strategic interest in *not* revealing the limits of their mandate (cf. negotiator’s dilemma introduced in Chapter 4), so ascertaining whether they overlap is difficult in practice. In the words of one EP assistant: ‘In a negotiation, everything is important. If they ask me, “Is this important to Parliament?”, I always say yes. I would never say no’ (Interview 18, EP assistant).

Pressure to Progress

The technical level is expected to prepare all points, make as much progress as possible, and try to keep things off the political agenda. One interviewee explained that on a recent file, progress had been slow in technical meetings, and ‘that the second trilogue had therefore not been successful’ (Interview 48, COM official). This had put pressure on the technical level, and they had responded to this pressure by scheduling more meetings and by being more willing to compromise: They had gone from a full-day meeting and a half-day meeting each week to full-day meetings almost every day of the week, and ‘the EP in particular was willing to drop some of their many amendment proposals and show much more flexibility and willingness to speed up the process’ (ibid). The sentiment that most decisions are made at the technical level and that they prepare *all* points is echoed by an EP adviser:

We would normally only go to the political level once we have kind of a, more or less decent product, and where we come to certain points where we'd say, ‘Well, this is something for our bosses to sort out’. But I would say 90% of the things, plus/minus, we find an agreement on issues, and then there are some things that people just want to discuss at the political level. (Interview 36, EP adviser)

This quote once again demonstrates that the decision to elevate something to the political level is often taken by the technical-level actors themselves, and that they must demonstrate via a ‘more or less decent product’ that they have made the effort to advance negotiations as much as possible and prepared the ground for compromises to be made at the political level. Another interviewee explained why they try to avoid raising complex issues to the political level: ‘it doesn’t make sense and it’s a waste of everybody’s time’ (Interview 32, EP adviser).

Summing up, the first section of this chapter has presented several findings regarding the distinction between technical and political issues. Generally, interviewees do not find that a catch-all distinction can be made, as much depends on the context of the individual proposal. Second, there are two ways in which an initial distinction is made. Either some points are already identified by the political-level actors as requiring political discussion, or the entire text is delegated to the technical level for them to identify which issues require political attention. Third, some guiding principles for identifying political issues were found: If there is substantial disagreement between the negotiating positions, an issue is more likely to require political discussion. However, this only applies if the issue is sufficiently important. Moreover, deadlines and numbers are usually kept for political discussions, since they are often important for the overall outcome of a proposal, and because numbers lend themselves to back-and-forth adjustment when the final compromise is being reached. Finally, it was demonstrated that there is an expectation that the technical level will work hard to find compromises and exercise restraint in the number of issues they send up for political discussion.

9.2 What Do You Do Then? Handling the Distinction in Practice

Given that it is difficult to distinguish between technical and political issues before the start of a trilogue process, it is probably not surprising that several different practices have sprung up to deal with this distinction. This section first introduces the so-called interinstitutional technical meetings (ITMs), the main forum for technical-level negotiations. Then several different practices are explored, including the use of four-column documents and colouring systems to keep track of negotiations. It is also examined how an initial split is suggested, and how issues may be sent up and down between levels several times.

Interinstitutional Technical Meetings (ITMs)

Like, you invented something that was supposed to be a little bit more of an informal discussion ... to the formal discussion, but then you made it formal, so you now have to have another informal thing, and it's [sighs]. (Interview 50, Council secretariat)

This interviewee sighs at the idea that trilogues have become so 'formal' that they have lost their purpose, and that the real negotiations have moved to 'another informal thing'. That 'thing' is the so-called interinstitutional technical meetings (ITMs), also known as technical trilogues, which have become the main forum for technical-level negotiations on legislative files. In response to

my question in an interview about whether ITMs and technical trilogues were the same thing, another interviewee explained:

Because it is confusing; what are you talking about? Because if people say, ‘the next trilogue’, and then say ‘well, well, technical or political?’. So, now the notion of trilogue is reserved to the political one. So, we don't have to refer to political trilogues, or technical, we now refer to trilogues or ITMs. That is the current language. (Interview 56, two COM officials)

Linguistic preferences aside, ITMs mirror the setup of trilogues, with representatives of each institution present and the two institutions taking turns hosting meetings. One interviewee added, however, that unlike trilogues ITMs may be hosted by the Commission (Interview 22, EP adviser). However, an important difference is that the relais actors are not present. As such, the number of participants is usually smaller:

The assistants to the co-rapporteurs, the [committee] Secretariat, the assistants to the shadow rapporteurs, the legal service, so normally you have, like, I don't know, less than five people on Commission's side, between 5 and 10 on Council side, and 15 plus on Parliament side [laughs]. This is how, at least this is – how it is for my file, that I am always in the minority (Interview 2, COM Secretariat-General)

Even if there are fewer participants, the numbers above yield a total of 25 participants or more in ITMs. These meetings are perceived by participants as being less formal than the political-level meetings, for several reasons. First, they are less restrictive in terms of who may speak (Interview 32, EP adviser). Second, although ITMs are ‘very official’, they are also ‘very relaxed’, participants can ‘make a bit of jokes’, and ‘there's ambiance’ (Interview 40, EP adviser). Third, they are ‘less scripted’, and there is more leeway to have open exchanges about ‘what you think will fly or will not fly’ (Interview 51, Council secretariat). However, even if ITMs are less scripted, there are still some unwritten rules at play. One EP secretariat interviewee notes that she would not speak unless invited to do so by the rapporteur's team, because the Presidency might object that ‘we are not discussing with the secretariat’ (Interview 43, EP secretariat). One interviewee reflected that ITMs usually go smoothly ‘because they are smaller and there is no major drama’ (Interview 49, Council secretariat).

As ITMs generally outnumber political trilogues, though the specific ratio seems to vary from case to case, technical staff often spend a substantial amount of time in each other's company. One interviewee estimated that ‘it's definitely more than 90% of the time is spent at technical level’ (Interview 36, EP adviser), and that the technical level also finds agreements on ‘90% of the things, plus/minus’ (ibid). Another interviewee noted that recently he had

spent 26 hours in one week in ITMs for a single file (Interview 46, EP assistant). Another interviewee noted that the amount of technical work is surprising to many new employees:

You save a few lines for the political trilogue. The rest of the lines you will have to go through on technical level. And that is a tedious work. It takes a lot of time. I think that's the general ... I think that has been a bit of revelation to colleagues in the PermRep. The amount of time you have to put aside for the technical meetings. Very time-consuming. (Interview 9, Council attaché).

Others express frustration at how slowly the work progresses: 'Sometimes you have the impression if it goes like that [exhales] you're completely stuck, oh my god. How many days do we still have together? [laughs]' (Interview 56, two Commission officials). The sheer volume of ITMs, though not evidence of decisions being made at the technical level, indicates that technical-level actors work closely with a file and spend a great deal of time together. Thus, there is ample opportunity to develop expertise as well as get to know one's counterparts.

The Four-Column Document

Arguably the most important single document in trilogues is the four-column document, mentioned in the previous chapter as 'the holy grail of trilogues'. It contains three columns with the positions of each institution and a fourth one for provisional compromises. These documents are drafted by either the Council secretariat or the relevant EP Committee secretariat. Some interviewees indicate that it is mostly the Council secretariat (Interviews 1, 22) while one argues the opposite (Interview 11, COM cabinet). This is attributed to the fact that the Council secretariat has more resources (Interview 32, EP adviser). It is viewed as uncontroversial to leave the drafting of these documents in the hands of one institution, though a few interviewees note that mistakes do slip in, and that negotiators can have different understandings of what was agreed (Interview 22, EP adviser). One interviewee adds that situations can arise where they have to say: "Hey, you didn't get this!" "Oh no!" And then you kind of sit there not knowing if it was intentional or not, but it's typical because there are so many... People who participate' (Interview 1, EP assistant). Four-column documents are often enormous³⁰, containing the full text of the act three times (four, once a compromise has been made). Handling these documents has its challenges:

³⁰ A 'short' document may be less than 100 pages, but for larger proposals such as the GDPR or the AI Act, the tables numbered just over 600 and just under 900 pages, respectively.

It is very stressful, and I am an old man. With all these columns, the document is a thousand pages, easy. If you move a bit too fast, the document crashes and everybody starts throwing things at you. (Interview 43, EP secretariat)

Practices for highlighting amendments in these documents vary, but two methods seem to be common: one uses bold italics to highlight new text and strikethroughs to highlight deletions. The other resembles the track changes function in MS Word: blue, bold, underlined italics for additions and strikethrough, red italics for deletions. Finally, as mentioned in the previous chapter, a dedicated software for this, called the Trilogue Table Editor, has been developed in collaboration between the EP and the Council (EU Council, 2018c). This software is described by one interviewee as ‘brilliant’ since users can add more columns, which can be expanded and collapsed, to get an overview of different political groups’ positions and different draft compromises. He also added that one never puts positions in the fourth column because these are ‘official and subject to Freedom of Information requests’ (Interview 43, EP secretariat). Regardless of its brilliance, the take-up of the new software seems slow, with many still preferring to stick to MS Word. Appendix I shows an example of a four-column document.

Suggesting an Initial Split

Once the four-column document has been made, each institution compares positions to suggest an initial split of issues to be handled at the technical and political levels. In the European Parliament, the committee secretariat produces a first suggestion of this split, which is then approved by the rapporteur and the shadows. Though there is some initial confusion between the interviewees quoted here, the procedure is similar in the two committees they represent:

Interview Excerpt 9.1

Interviewee 1

It's a proposal of the rapporteur, which is technical and political. When you have the four-column document for the trilogue that you start to have these coloured [interrupted]

Interviewee 2

No, for us it's the secretariat, who marks, I mean what you see is really what it is, where it differs a lot between the position of the Council and the Parliament [...] when the position of the Parliament and the Council differs a lot this, this is red. When the position, the position is more or less alike, it's yellow and what is technical is technical and we try to push as much as possible.

Interviewee 1

But it's the secretariat of the committee, indeed, the fonctionnaires, and from the Council that they prepare like this. If it's identical, well, it's technical, but it's approved by the rapporteur and by the Presidency [...]. And it has to be approved by ... the Parliament team. (Interview 27, two EP advisers)

The secretariat suggests a split by comparing the Council's and the EP's amendment proposals and noting where positions differ. The guiding logic seems to follow the decision tree introduced above: where there is substantial disagreement, a political discussion is required, while different wordings of amendments pointing in the same direction politically can be discussed at the technical level. While this split is approved by the political level, it does leave some discretion for the secretariats to estimate what degree of difference is enough to warrant a political-level discussion. One EP adviser explains how a split is negotiated:

So, we received this proposal [...] with the split in the text into what is political and technical ... When you are rapporteur, you just check it. You negotiate basically by e-mail, or you meet, but it's not an official meeting. You negotiate with the Commission and the Council say, 'yeah, this is political. This is technical. OK'. And then this document is sent to the shadow rapporteurs [...] to agree. I mean, 'do you agree with that?' True, cases or scenarios you can have that nobody checks. And it happens ... And then after the negotiations someone says, 'But why is this technical?' 'Ah, but it was agreed'. It doesn't mean that something that is technical cannot go to political. There is this flexibility of course. (Interview 40, EP adviser)

On the Council side, interviewees are less clear on who suggests the initial split. One interviewee from the Council secretariat notes that they prepare all documents for meetings (agendas, minutes, draft proposal, and non-papers) in collaboration with the Presidency (Interview 47, Council secretariat). Others do not specify how they know what the key political issues are, and indicate that they work out the split in collaboration with the EP in ITMs:

[Y]ou probably understand already before you go into the first trilogue what the key political issues are ... So, that's the start, and then you go into the technical meetings, technical meetings should be prepared to a certain extent ... While you're in the technical meeting ... you understand ... the red lines of the Parliament more or less. (Interview 19, Council attaché)

Often, Council presidencies 'inherit' ongoing files from the previous Presidency, for which an initial technical/political split has already been worked out with the EP. As one interviewee notes, the trilogue process takes a long time, and concluding a file during one Presidency 'is impossible. Two is ambitious, three is normal, four is OK, five is bad, anything more is a disaster' (Interview 43, EP secretariat).

There is not much in the interview material to suggest that the Commission plays a proactive role in deciding whether an issue should be tackled at the technical or the political level. One cabinet member notes that 'you have a technical team who is drafting options papers within the Commission, drafting policy papers, drafting the first...attempt to do the legal text and so on' (Interview 28 COM cabinet), adding that there would of course be moments in this process where the political level would say yes or no to different things. However, when it comes to deciding whether something is technical or political by comparing negotiation mandates in trilogues, he said of the Commission's role that 'actually – it's not really a trilogue, it's a dialogue plus one' (ibid), indicating that it was primarily a discussion between the two co-legislators. There are exceptions, however, such as when the co-legislators both decide they want to delete something:

Interesting case: Commission proposal proposes something – Parliament mandate deletes. We don't want that. Council deletes. For Parliament and Council, this is technical. Yeah, we agree on that. But the Commission says "No, it's political for me because I propose that and it's important". (Interview 40, EP adviser)

Finally, it is worth recalling that the institutions at this point have already gone through a round of internal negotiations to arrive at a mandate (described in Chapter 6). In the words of one interviewee: 'The Presidency has awareness of sensitive political issues from the working party meetings, and from the Coreper meetings as well, because their member states stated directly that this is very important for them, politically or not' (Interview 50, Council secretariat). In this view, the negotiators already have a good sense of which issues were controversial in *those* negotiations and will likely continue to be if positions differ once interinstitutional negotiations begin. Once the co-legislators have had internal discussions on the technical-political split, they will have an ITM to see whether they all agree to it:

[O]ne of the first things that you do in a technical meeting is that: ‘Do we all agree on the division of what’s political and technical?’ That’s the moment to say it. That’s the moment. If there is a big war, one group says ‘No, I’m not – this is political’. This is political. (Interview 40, EP adviser)

Note that the same logic applies in internal and interinstitutional meetings: any one party can legitimately request that an issue be raised to the political level. Another interviewee added that this was normally respected, but that ‘a small group could sometimes be ignored’ (Interview 22, EP adviser). Once the initial split has been settled, substantive negotiations on the articles can begin.

Colouring the Four-Column Document

The practice alluded to by the interviewee above of colouring the four-column document is used at both the technical and political levels throughout the trilogue process (and, as described in Chapter 6, in internal EP negotiations). At the technical level, three colours are used: red, yellow, and green. One interviewee notes how they are used, both in preparation for and during ITMs:

There’s a lot of e-mail exchanges as well before ITMs, so some agreement is already reached there on writing and then these things on writing are talked about again during ITMs, so they say on the spot. ‘We agreed on this being political, let’s leave it aside’. ‘Yes, we do. Let’s move to the next line’. And like that, we go to greening lines or leaving them yellow or red. Red lines are usually the ones that are very political. (Interview 50, Council secretariat)

Red is used if an issue has already been flagged for discussions at the political level, either because it was deemed ‘very political’ from the beginning, or because discussions at the technical level have not led to a compromise. An issue is coloured green in the table if a provisional agreement has been made, pending approval at political level. An issue is coloured yellow if the issue has been discussed at the technical level but has been postponed to a subsequent meeting at the same level (Interview 32, EP adviser). This happens mostly when there is a need for clarification of the factual basis for negotiations, or if they ‘might need some guidance, but it’s not insurmountable at the technical level’ (Interview 9, Council attaché). However, yellow may also signify that they ‘have identified the landing zone, [but] we’re not really sure if that’s within the scope of our mandate’ (ibid), and thus the issue is sent up to the political level.

In interinstitutional technical meetings, discussions are often quite detailed, going through the proposal line by line. However, there is some variation in how the discussions are structured:

They go through, what can we agree? Some do it from A to Z, and some do it area by area. Both things have advantages because if you do the area by area, you can evacuate lots of things and you identify what is connected. If you do it line by

line, it is a bit more formal, but it is clearer to follow. (Interview 28, COM cabinet)

Proceeding topic-wise rather than line by line leaves negotiators more flexibility to leave points aside and discuss them in connection with other points. The practice of colouring the four-column document helps manage the complexity of large legislative proposals by clearly sorting issues into three categories. The important point remains, however, that the technical level has some leeway to structure the process, and often also to decide what gets sent up for political discussion.

Sending Up and Sending Down

As demonstrated above, an issue that was first deemed technical may become political – and vice versa. Issues are often discussed in iterations, being sent up and down between levels. But how does sending up and down happen in practice? The following excerpt is from an internal EP discussion on a file which had not yet entered interinstitutional negotiations. However, as the technical-political split is similar in intra- and interinstitutional negotiations, it illustrates quite well how an issue is generally sent up to political-level discussion as soon as one party group requests it:

Field Note Excerpt 9.2: Sending Up

After a round of introductions, the Chair, an adviser from the rapporteur's political group, asks whether they should do a *tour de table* on the first issue on the agenda or go straight to business. As nobody expresses a clear preference, she opts for straight to business. There are no microphones, so the participants speak loudly and are often asked to repeat things. The other participants have hushed internal discussions while one participant is stating their position on a note. They are pointing at the relevant place in the document, and most participants have brought a large stack of papers. Every group takes the floor on this specific issue. The employees to my left and right are taking notes directly into their copy of the document, using Microsoft Word's comment function.

They are proceeding one amendment proposal at a time, and the participants voice different levels of (dis)agreement with each and their reasons for introducing various amendments: 'It's not to the best of our liking, but we can accept it', and 'Can the EPP send their justification for this amendment after the meeting?'. At one point, progress has been slow in the meeting, so when disagreements die down, the Chair states: 'You see, we have maybe an agreement on this one amendment, so this is not bad', at which all the participants laugh.

One political group has requested a political-level discussion of an amendment proposal. The Chair agrees, saying: 'We have sent this document around, so can we take a *tour de table* to get a feel for it? We will send it to political level, but it would be nice to have this'. Another issue is pushed to the end of the meeting because it is controversial: 'If we make it, we make it, if not, it is naturally pushed to the next meeting'.

Three things are worth noting here. First, the atmosphere of the meeting seems quite informal: the Chair asks for input on how to proceed with the meeting, there are no microphones, and the discussion is to some extent interactive. Additionally, the Chair's jokes about the lack of progress are well received. Second, the impetus for raising the issue to the political level comes from a single political group. Third, even though the issue has been marked as political, the Chair insists on having a round of discussions at the technical level to prepare the political discussion. The notion that the assessment of whether an issue is political lies initially at technical level is shared by this interviewee, who also notes that they may suggest a potential compromise *in* the four-column document:

Then we'll assess if it's something we can solve at technical level, and if it's something that's at political level, then I'll say, 'Well, it could be a runway, let's put it in the document, but in square brackets' or whatever, and say 'Well, we'll move this to ... to political level', right? (Interview 17, EP assistant)

At the political level, colours are used in a similar way. If provisional agreement is reached for an issue, it is coloured green. Other issues may already be identified as important points of disagreement and reserved for the final trilogue. These are coloured red and/or put into brackets in the four-column document. Finally, the political-level negotiators may discuss an issue and conclude that further technical work is needed. This can be either because there are disagreements about the factual basis of the issue, or because an agreement in principle has been reached politically while the specific wording is left to the technical level. The following excerpt demonstrates how an issue can be sent back down following a brief discussion:

Field Note Excerpt 9.3: Sending Down

The trilogue, which takes place in a large, round meeting room inside the European Parliament, has just started. First, there is a brief introduction by the Committee Chair, who then gives the floor to the Presidency, represented by a capital-based official. He gives thanks, most notably to the technical teams for 'clearing the ground for a compromise today'. The Commission, represented by a director, praises the technical level's 'good work on bridge building since the last trilogue'. He then adds: 'Let's see how far we get with the long agenda today'. There are two rapporteurs representing the two responsible EP committees. They both thank the technical level. One rapporteur agrees with the goal of reaching a compromise before the end of the current Presidency, adding that 'We are ready to do our part of the work, but we also hope for flexibility from the Council'. The second rapporteur refers to some non-papers which have been circulated ahead of the meeting and which represent 'painful concessions from the EP made in the spirit of compromise'.

The Chair notes that there are 10 political items on the agenda and then gives the floor to one rapporteur for the first point. He reads out the EP position and refers to a discussion at the previous trilogue. The Presidency responds that they are happy that progress has been made and then responds to the EP's position, noting that more flexibility for implementation in the member states is required and asking whether this can be worked on at the technical level. The Commission says that they are not far from reaching agreement, and that 'we have been thinking about a compromise', which the director then introduces. The rapporteur agrees to discuss the question at the technical level. The Presidency notes that 'we are close to each other, but the differences are very sensitive'. He then acknowledges the EP: 'We understand that you have taken a big step, but... It is also a concession on our part', before agreeing to send the issue to the technical level. The Committee Chair concludes that the issue will be discussed at the technical level and moves on to the next point on the agenda.

This excerpt raises two points. First, there is no substantial discussion between the institutions beyond the presentation of their respective positions and the subsequent agreement to send it down. Second and relatedly, the reference to non-papers circulated and the praise for the technical level indicates that a lot of preparatory work had taken place before the meeting. Thus, the political-level discussion was mainly used to confirm the decision to delegate to the technical level and to remind the other side of the 'painful concessions' made to get there.

Another advantage of having initial discussions at the technical level emerged from the interview data: it lowers the stakes of exploring potential compromises and lowers the potential 'costs' of positions being leaked. Two examples of this are introduced below:

Interview Excerpt 9.2: My Hands are Tied!

In an interview with an MEP and an assistant, the assistant was explaining why it was necessary to have an informal room to discuss potential compromises. He explained that if you acknowledge in front of everybody that you are able to budge *under certain conditions*, the conditions can get lost, but everybody will remember that you are able to budge. The MEP nodded and agreed. The assistant then added: 'It's much easier at the technical level sometimes, you can just sit there and say, "My politician doesn't want to do that"', at which he, the MEP, and I all laughed. The MEP added, with mock exasperation: 'My hands are tied!' (Interview 21, MEP and assistant)

An interesting parallel to this emerged in an interview with a Coreper ambassador. We were discussing the confidentiality of negotiations, and had come to the topic of leaks:

Interviewee

It's a fact of life. You need to cover it. It will be leaked.

Interviewer (WE)

But the technical level, not so much?

Interviewee

The technical level may be leaked, but the people don't know if it really has the political backing. So... (Interview 52, Council ambassador)

The two examples share the same underlying logic: having preliminary discussions at the technical level introduces a fallback possibility in referring to the need to ensure backing at the political level. Thus, new potential compromises can be explored with lower perceived stakes, and the fear of leaks is alleviated because of (real or feigned) uncertainty about the political backing for an idea. Regarding the usefulness of this uncertainty, the ambassador stated matter-of-factly, 'You need to keep it a little bit blurred' (ibid).

There can be many reasons for sending something up and down between the technical and political levels. Sending something up can help set political direction on issues where progress isn't made at the technical level. It can also be used to politicize an issue. Conversely, sending something down may be used to depoliticize the issue, and it gets the issue off the political level's table (for now). The latter point is important since providing political guidance and then postponing also gives negotiators time to work on softening positions within their own institutions, to meet informally, and to gather more information. These dynamics are discussed in Chapter 11.

9.3 Relations Between the Technical and Political Levels

For delegation to work effectively, there must be a functioning link of accountability between the principal and the agent. The previous two sections have explored what characterizes technical and political questions and how this distinction is handled in practice at the. This section connects the two levels by inquiring into the relations between the actors. This analysis looks at the mechanisms of control between levels, the development (and level of) trust between them, and how their everyday interactions foster one, the other, or both.

Control

Legislative negotiations constitute a particular case of delegation: the principal has, in theory, complete control over the outcome, as they must approve any compromise before it can take effect and become new legislation. Thus, it would seem like a very low-risk delegation. However, there is a clear

information asymmetry between technical and political actors: Commissioners, MEPs, and Coreper ambassadors (or other high-level actors) typically have many other responsibilities than negotiating in trilogues, while technical-level staff typically devote a large share of their working time to an ongoing legislative file. This section explores the control practices between technical and political actors within the three institutions.

The European Parliament

In the European Parliament, one interviewee explains, having discussions at the political level is not useful if you want to go into details:

If there are a lot of ping-pongers [high-level participants] and MEPs involved, it can quickly become a superficial chat, whereas if you want it to be a bit more technical, it would have been smart to gather all the shadow rapporteurs' assistants ... who are the ones who work with it on a daily basis and make the groundwork. (Interview 10, EP assistant)

The interviewee indicates that there is an information asymmetry between the political level and their staff, who 'work with it on a daily basis'. However, he follows up directly with a reflection that while he might not be a technical expert to the degree that he could foresee the practical implications of choosing one option over the other, he is acutely aware of what his political master prefers. He continues that being able to make this judgement is important, lest there be consequences:

So, I'm at my first technical meeting ... six months after being hired ... and I was asked some questions that I had to answer yes or no to in 10 seconds, and it was a big responsibility, I could feel. So, if our office came up with some compromises that some others in [party group] weren't particularly enthusiastic about, there could well be a fallout, and it could be tough – very tough communication, and you get a bit shocked by that. (Interview 10, EP assistant)

This quote demonstrates that the rapporteur faces scrutiny from his own group as well as from the other groups in Parliament. However, the assistant continues to note that things can get heated even when issues are still at the technical level:

Another MEP one morning ... comes down to the office and wants to talk to [MEP] ... because he was ... terribly dissatisfied with some proposed amendments we had agreed to support in some technical meetings, and he wanted to talk to [MEP], and [MEP] wasn't there... and then I realized that I was the only one in the office, and so they had to talk to me [...]. And then he shouted at me – not nicely, but really violently, almost like [...], verbal assault, right, about us being corrupt and paid by South Africans, and I don't know what, so it was completely ... absurd, and I was like, 'I'm terribly sorry sir, sorry, I'm just trying to do my job'. (Interview 10, EP assistant)

While this is an extreme example of one MEP trying to exercise control over an assistant representing another MEP, it demonstrates that some level of alignment between MEPs and their assistants is expected. Another interviewee notes that the degree of monitoring carried out by MEPs varies significantly:

There's no one taking minutes for the technical meetings. But some rapporteurs ... are more controlling than others and some are more thorough, some are more ... just need that. So, there are some who have assistants sitting and taking notes for everything and also reviewing it. (Interview 1, EP assistant)

This section has shown two types of informal control of the EP's delegation. First, rapporteurs and shadows are controlled by MEPs from both their own and other political groups who are not present in shadow meetings and trilogues. Second, MEPs exercise varying degrees of control over their assistants and advisers who negotiate on their behalf in technical-level shadow meetings and ITMs. In principal-agent terms, the technical-level employees supporting a rapporteur (or shadow) act as agents for and have an information advantage over their MEPs, the principals. The rapporteur (or shadow) in turn act as agents for and have an informational advantage over the broader group of MEPs.

The Commission

Seen from the political level in the Commission cabinets, DGs sometimes resist their efforts to control them by limiting the level of detail in their reporting from technical meetings:

Sometimes the DGs have an interest in you not paying too much attention [...] DGs are also quite political and the DGs have their own agenda sometimes ... So, it's about being proactive and asking for reports. Sometimes the DGs don't want to share the technical reports with the cabinets because they say we don't need it. Then sometimes they just give an oral briefing of whatever happens. So, there's a bit of a power struggle between the cabinets and the DGs to get the information about what's happening in the technical meetings. (Interview 53, COM cabinet)

This quote demonstrates that the preferences of the cabinet and the DG are not always (perceived to be) aligned, given that the DGs are seen as having 'their own agenda' and engaging in a 'power struggle' with the cabinet. Interestingly, the same interviewee notes that even though she could in principle just attend the technical meetings, she does not, because, 'you don't do that, you could say that it's a bit below your ... level' (ibid). Thus, there is an interesting tension between the need to monitor or control the technical level and a norm that cabinet members should not attend technical meetings. In

practice, one Commission cabinet member notes that the flow of information between themselves and the DG is straightforward: ‘the DG will have a meeting with their technical counterparts [...] and they will discuss [...] then they will file a report like they do from Coreper, and it will just land on our e-mails’ (Interview 45, COM cabinet). Based on this report, the cabinet member can then ‘provide political steer[ing] if needed’ (ibid).

Another important, institutionalized instrument of coordination and control between the DGs and the Commissioner’s cabinets are the so-called *jour fixe* meetings, which are specified in the Commission’s working methods and were introduced in Chapter 2. These are mentioned by two interviewees (both cabinet members) as an opportunity to discuss ‘files where the DG requires the Commissioner’s steer[ing] and can pose questions. And it’s always prepared with a note that explains the whole issue’ (Interview 45, COM cabinet). The other described it in similar terms, noting that based on ‘explanatory notes’ and ‘options papers’, they will agree on a direction, ‘and then the DG experts know we go this way’ (Interview 28, COM cabinet).

The Council

On the Council side, the most cited control mechanism is the trilogue coordination teams working under each Coreper ambassador (Antici and Mertens, as introduced in Chapter 7). One Coreper ambassador makes the following observations about the coordination team:

[Y]ou also know where it doesn’t work really, and where there are ... not holes – but you know, which, let’s say, weaker points you have. And there is management control coming, controlling the negative consequences, and in this my team is vital, so Mertens really helped me a lot. Mertens is key. Then we had the trilogue coordinator. I forgot to tell you – which is important. We had a trilogue coordinator. He was seconded from the Parliament. (Interview 57, Council ambassador)

Here, the ambassador notes that he relies heavily on his coordination team to both identify and manage the ‘weaker points’ within their own Permanent Representation. The importance of the Antici/Mertens group was also highlighted by the other ambassador interviewed (Interview 52, Council ambassador). The practice of bolstering the Antici/Mertens teams with temporary hires who have EP experience was noted by interviewees representing different member states (Interviews 14, 52, 61) and has also been observed in the preparations for the upcoming Danish Presidency. On the whole, there are some control mechanisms in place within each of the three institutions, but these are not very comprehensive and leave the technical-level actors considerable autonomy in negotiations.

Trust

Technical-level negotiators across institutions report that they have a high degree of autonomy in terms of reporting from technical meetings. The following examples highlight different reasons for this degree of autonomy:

There's not so much coordination. So, I'm like referring back to [MEP] the loose lines and like what are the implications. Well, [MEP] is not that deep in this file, so I'm telling [MEP] that generally things are not going so well, or going better, or that there's some progress here and there, but kind of telling the main lines. (Interview 46, EP assistant)

[T]he briefing notes [...] need to be very complete and very sort of ready to be used on the spot, whereas in the past we would give him [Coreper ambassador] things and he would look at them and then he would put away the paper and then he would deal with everything without any support. Now he's in a situation where he depended on paper much more [...] we knew that now he is in a different position. He cannot possibly keep everything in his head. (Interview 3, Council attaché)

But because, thanks to the fact that ours wasn't political or wasn't brought in this way, our hierarchy left us doing this. So, we just brought them the solution, but it didn't cost us anything. And also because they trusted us in that way. And so, we had kind of all the freedom to do whatever we wanted, but at the same time to be sure that we were not doing crazy things. Which we could have done, but we didn't. (Interview 55, COM official)

Two different explanations for why the political level trusts (or at least does not control) the technical level are presented here. First, the EP assistant indicates that their MEP is not sufficiently familiar with the details of the case for it to make sense to report them. This is similarly reflected in the attaché's assessment that briefing notes must be usable on the spot since the ambassador has too much on his plate to 'keep everything in his head'. Second, in the Commission official's example, they are left unsupervised because the issue at hand 'wasn't political'. Additionally, he adds that they could do 'whatever they wanted' but would not do 'crazy things'. This implies that the trust mentioned by the interviewee is predicated upon not crossing an implicit boundary of what is acceptable to the principal. Common to all three is a minimal level of reporting or coordination, which is enabled by the political-level actors trusting their counterparts to know the limits of their autonomy. This assessment of autonomy linked to responsibility is echoed by a Commission cabinet member:

Now there is an autonomy from the DG and they're not necessarily obliged to ask. They can also, you know, point out into a direction because we have either had already a discussion and a steer [direction] beforehand, or because they

know basically what are the red lines that we could accept and not accept. (Interview 45, COM cabinet)

The political-level actor (cabinet member) and the technical-level official both invoke autonomy as important. The official adds that having this autonomy gives them ‘more freedom to help the co-legislators’ (Interview 55, COM official). Sometimes interviewees at the political level evoke both control and trust in their responses. This is illustrated in the following quote by a cabinet member explaining why he *does* participate in technical meetings:

I knew the text inside out and I knew all the people and I was keen to be there, so I was participating in some of the technical meetings just to take the temperature and to be there. But it was my colleague, the head of unit, in charge of the, so she led the negotiation, so I was then talking to her all the time. But hey, I mean, I know her since really long and we speak anyway, so I'm completely informed what is going on in this case. I don't know whether it's the same for all my colleagues. Maybe it's different in other teams. (Interview 28, COM cabinet)

As introduced above, and as also alluded in this quote, Commission cabinet members do not normally attend ITMs. This quote demonstrates an interesting dynamic. The interviewee states that he had a particular interest in this case, which drove his eagerness to participate. However, he downplays his own role, emphasizes that his colleague was in the driver's seat, and notes that he would be informed about it anyway because of their personal relation. Thus, the interviewee implicitly argues that the existence of this relation allows him to do something which would normally be viewed as exercising too much control over the technical level. Another interviewee summarizes neatly how trust in most cases is enough to make the technical–political distinction work smoothly: ‘generally speaking, there is a relationship of trust in that we would indeed warn them when important things are happening. And in the vast majority of cases, it works rather well’ (Interview 38, EP adviser).

Influence Going Both Ways?

Another important aspect of the relationship between actors at the technical and political levels is for the former to make sure the latter is sufficiently informed about the progress of technical-level negotiations to avoid missteps in political-level trilogues:

It's also about explaining to them that it's actually because ... we might say to them, well, you need to discuss this political issue ... And they think, ‘Well, we can be much more ambitious’. Then it's also about explaining to them that we've actually got quite a lot [of concessions] on this issue that we're not discussing, because we've already settled it at a technical level, so this could be a solution, right ... so it's also things like when you sit in the technical trilogue negotiations:

‘Yes, we can push this to the political level, but you've got a lot here’, and we know that we can't stretch it too far. (Interview 17, EP assistant)

According to this interviewee, the technical-level exchange of concessions is substantial enough to informally constrain the political level's negotiation options. The assistant in this case not only explains the status of negotiations, but also *why* the proposed political-level compromise should be viewed as sufficiently ambitious considering concessions obtained at the technical level. Another interviewee similarly describes how the technical level plays an important role in the EP: ‘the parliamentarians are at very different levels. For this reason, the groups' advisers play a key role in helping to ensure that the parliamentarians are equipped for what they need to do’ (Interview 1, EP assistant). Speaking of a group adviser, one MEP echoes this sentiment:

Yes, he knows me well. We have a completely safe relationship [...] I also often do something when we're in the negotiations, the shadow meetings, I say, ‘I'd like to ask [adviser] to come in here, because he's the one who knows things best here’, [...] and he's happy to do it, and most rapporteurs and advisers are extremely grateful that he does it, because he also understands what's going on in the other groups. (Interview 20, MEP)

The MEP allows the adviser to speak on his behalf because both he and the other MEPs trust that this adviser has expertise with regard to the policy and is aware of the political balances. Another EP adviser notes that time pressure on the rapporteurs makes it necessary for them to give some autonomy to the technical level: ‘I mean you need the political leadership. But you also need that they trust you because in the meantime they have a thousand other files’ (Interview 41, EP adviser).

Similar dynamics are found between the technical and political levels in the Council, exemplified in this description of a briefing which took place between the Council secretariat and the Presidency ahead of a trilogue:

Yes, General Secretariat of the Council [GSC]. And you are going through their brief. And of course, if we change something, DPR says ‘Okay, thank you for the brief but we don't want to say this, we change this’, and explain, whatever. Then of course you have last-minute information, so whatever comes up, you still have time to discuss with the GSC, because they are present during every single trilogue, no matter the Presidency. So, they are very experienced in this way. (Interview 14, Council attaché)

Here, the interviewee emphasizes that the DPR makes the final decisions about changing the brief but also notes that it is worth listening to the GSC because they are very experienced in trilogues and thus know what to make of last-minute information. One ambassador adds that these briefings are indeed an important part of his trilogue preparation:

[Y]ou have a briefing and then you have a pre-oral brief with your attachés, up to one hour, just before the trilogue [...] during the Presidency, it's the moment when I prepare. [...] I don't have time to read the briefing before. I just read it in the car or in that hour before the brief, before the trilogue. (Interview 52, Council ambassador)

The takeaway from the two quotes above is that there is significant work at the technical level to prepare the ambassador for the upcoming trilogue. This work is condensed into a brief prepared by the GSC which, along with an oral briefing with the attaché and the GSC, the ambassador relies upon heavily during trilogues because that is all she has time for. As such, the interview material clearly demonstrates that the busy calendars of both the rapporteur and the ambassadors mean that they rely extensively on the support of their technical-level staff.

9.4 Discussion and Summary

This chapter has examined the distinction between technical and political issues in trilogues. The widespread use of technical-level meetings to prepare compromises at the political level taps into established concerns about the democratic legitimacy of trilogue negotiations. This chapter has discussed several findings relevant to this discussion. First, interviewees agree that a substantial portion of decisions are delegated to the technical level and that many decisions are de facto made at the technical level, including decisions about which issues should be discussed at the political level. Second, the exact portion of issues varies between cases. Sometimes issues are 'reserved' by the political level from the beginning, other times not. Third, the analysis identified several practices for identifying and raising issues from the technical to the political level. Technical-level negotiators compare positions, and if opinions differ significantly, any participant may request that it be brought up. However, the technical level is expected to show restraint and avoid raising issues which are not important enough to warrant political discussion. Finally, technical and political actors work closely together to make sure the political level is adequately informed about proceedings at the technical level. This is supported by both written documents and by the (generally) trusting relationship between political and technical actors. At the same time, some control mechanisms are in place, but these are often based on other actors controlling the political-level negotiators and, by extension, their technical-level representatives. The relais actors are all busy and seem to rely rather on trust, particularly seeing as no major misalignment of incentives between levels is found. However, one interviewee argues that there has been a trend towards more delegation to the technical level, and that this is problematic.

Interview Excerpt 9.3: A Reversal of Principles

If I compare 2009 with 2020: First of all, there seems to be an important shift when it comes to the role of technical and political trilogues [...] My initial experience was that basically everything was political. That some issues, let's say, where the text would look very much alike, would be delegated to the technical level. Or when there was an overall agreement on the outline of the compromise, and then for the precise wording, [...] would be also delegated. But under a very tight mandate. In any case...all the lines on a trilogue table, that would be dealt by the technical level, would come back to the political level under the principle of agreement if no objection. [...] which in a way made the process rather slow... But, personally speaking, I have nothing against being slow for the sake of quality. But what I saw afterwards, given that there was an imperative to go faster, given that these years were very much under crisis dynamics... the technical trilogue started to take a more and more important place, to the extent that over the last years, it was almost reversed, the principle that I mentioned. That in, in a way that everything was technical, and that what could not be solved by the, at the technical level [...] will go up to the political level with the aim of limiting that to the maximum extent possible. (Interview 38, EP adviser)

The quote above problematizes the increasing level of delegation to the technical level, arguing that the political level relinquishes control due to an ‘imperative to go faster’. I would argue that delegation to the technical level isn’t problematic in itself – as noted in the beginning of the chapter, delegation is a fact of life in political systems. Moreover, this chapter’s finding that technical–political categorization is an ongoing exercise at both the technical and political levels in trilogues aligns with the findings of Häge (2013) and Foulleux et al. (2005: 620) in their studies of decision-making levels in internal Council negotiations. The latter accurately note that ‘ambiguity over the technical–political divide is actually an essential part of EU decision-making. Without the flexibility that this ambiguity allows, much less legislation would ever reach the EU statute books’ (ibid). However, this chapter does raise two potential concerns regarding delegation to the technical level. First, transparency is even lower in technical meetings than in the already opaque trilogues.

Trilogues have been criticized by academics (e.g. Hoppe, 2023; Leino-Sandberg, 2023), civil society (Transparency International, 2022), and the European Ombudsman (2016, 2019), and delegating to an even more secluded forum will do little to assuage these concerns. Second, the fact that the initial decision about the split of technical and political split is often delegated to the technical level entails a high degree of autonomy for these actors. This may be offset to some extent, however, by the fact that technical-level actors from different institutions monitor each other.

Chapter 10.

The Constructive use of Breaks

Difficult trilogues, they can go on for hours. But it doesn't mean that everybody would sit at the table for hours and discuss. You have breaks all the time. (Interview 19, Council attaché)

It is often said that trilogues can be prolonged affairs – to my knowledge, the longest one was held last year during negotiations on the AI Act, lasting for a total of 38 hours spread over three days: 23 in the first sitting Wednesday to Thursday and another 15 hours on Friday (Breton, 2023a). However, these many hours are not all spent sitting at the ‘plenary’³¹ table with the relais actors exchanging pre-cooked positions around the room. Instead, a significant portion of meetings is spent in smaller groups, typically composed of either each delegation or the relais actors meeting separately. These breaks are most often used in the final trilogue when aiming to reach a political agreement, but they may also be used throughout the process if a compromise on a specific issue is within sight.

The use of breaks in negotiations to overcome deadlocks has a long history in negotiation studies (e.g. Druckman & Olekalns, 2013; Odell, 2009; Susskind & Cruikshank, 1987), and as such it is not surprising to find them in trilogue negotiations. However, shedding light on the practices governing them is important for two primary reasons: first, these breaks during trilogues are at the very heart of EU legislative decision-making, where important decisions are de facto made. Second, understanding breaks is important for understanding the dynamics of trilogues in general as they are used to manage who gets access to sensitive information when, and to build bridges between the intra- and interinstitutional negotiations.

To examine the use of breaks, this chapter is structured in four main parts. First, I examine why breaks are needed and how the decision to take a break is made. Second, the different types of breaks commonly used in trilogues are explored. This section also investigates what those left out of breakout discussions do to pass the time in a productive way. Third, there is a short section detailing how breaks are brought to a close so the negotiators can resume more official negotiations. Finally, the findings of the chapter are summarized.

³¹ The term ‘plenary’ is used throughout this chapter to denote the full gathering of all participants in a trilogue.

10.1 Why Are Breaks Needed?

Though trilogue meetings are secluded from public view, they can attract a large number of attendants: ‘30–50 people’ for an ‘unsexy’ political trilogue, ‘easily 100’ where there is ‘political sex’ (interviewee quoted in Roederer-Rynning & Greenwood, 2015). This general range is in line with estimates by interviewees (e.g. Interviews 11, 14, 38), and is also reflected in the (to my knowledge) only publicly available participant list (European Parliament, 2023), in another list shown to me by an interviewee with 55 participants, and in a count of participants in the trilogues I observed. As one interviewee puts it:

Plenary is basically what you would say, it’s the trilogue. But you also have the option of, of course, breaking out from plenary, to have breakout sessions during the trilogue, which is a smaller circle of people. Because the trilogue is still ... you would perhaps envisage that, you know, it’s only like three people coming together in a dark room and then you have a deal. That is not true. [...] you would have had at least 30-60 people attending a trilogue. It’s quite crowded. [...] you can have constructive [discussions], but it’s certainly not intimate to sit in a room like that. (Interview 9, two Council attachés)

When negotiators sit at the plenary table in a political trilogue, the level of monitoring is higher, both intra- and interinstitutionally. By indicating that the plenary is neither intimate nor resembles deal-making in a dark room, the quote illustrates that breaking out into smaller groups can help facilitate deal-making. This notion is supported by another interviewee, a Commission official:

If we need to build consensus, if we need to understand the the nuances of each position, and if we have to try to to build a bridge and to be constructive and helpful – which is the point – we need to speak in full confidence. And that could be bilateral meetings between the Commissioner and the rapporteur – [...] with the Ambassador as well, or the Director-General with the Ambassador tête à tête – or with small teams or bigger teams, or all the three of them, also in different formats. (Interview 26, COM official)

Here, the underlying idea is that the various smaller formats are conducive to confidentiality. The following section analyses the different reasons interviewees give for the need to have breaks during trilogues.

Breaking Deadlocks

Sometimes negotiations get stuck, and another round of exchanges at the plenary table may not resolve it. Interviewees note that they often know in advance which topics will be easier and which will be more difficult:

[I]t's important to have the agenda prepared correctly. We start with the with the agenda item which is maybe already foreseen that you can achieve a deal. You tick it off, you tick the second, third, fourth, and then you come maybe to more difficult issues. You exchange the views of the Parliament and the Council and then you make a break. And in the break, they're real negotiations. The Parliament recollects in groups, they go out, they meet. I and the Commissioner, we also go talk to one political group where we know that there is a problem, to the second, to the third, to the rapporteur. (Interview 57, Council ambassador)

The ambassador makes at least three relevant points in the quote above. First, he notes that breaks are primarily used for difficult issues. Second, that they are 'real negotiations', implying that this is not the case when you sit at the trilogue plenary. Third, he notes that breaks are rather flexible in terms of who talks to whom. Taken together, this indicates that breaks are viewed as qualitatively different from the plenaries. Another interviewee notes that breaks can be used to come up with a compromise proposal, and that it takes leadership skills to see when things are not going anywhere:

Leadership skills are important in the sense that when you see that things are going in circles then you will – I mean this is when you should have these breaks where either the tension is rising, you know either you're going in circles, or either you picked on a cue, which you need to work a bit further within 10 minutes and come up with a compromise. (Interview 29, COM cabinet)

Though the interviewee notes that knowing when to take a break is important, doing so is not a unilateral decision. In the following field note excerpt from a trilogue meeting, the suggestion to break comes from a rapporteur, and even though no break was ultimately held, it demonstrates how breaks are a go-to solution in the trilogue toolbox.

Field Note Excerpt 10.1: Almost a break

We have reached the fifth point on the agenda, and so far, all points have been concluded by a brief exchange between the institutions before deciding to send it down for further work at the technical level. For this point, the Council Presidency first presents their position in a rather lengthy intervention in which he insists on several points but ends on a single point where they can move closer to the EP's position. One of the rapporteurs replies that 'We can accept much, but we are very sceptical about [specific policy point]. I am here with a mandate from the shadows. Maybe we can have a little break to consult the shadows, so we don't have to postpone this again? To see if we can find a reply.'

As soon as the Council and the Commission nodded, everybody started chatting, and a few people stood up, ready to move to the people they needed to talk to. However, the Committee Chair took the floor and asked for an intervention from the Commission before the break. The Commission takes the floor and notes that they are concerned that what is proposed is not proportionate, adding that 'I have no mandate to agree with this today – this is of course in the end for Council and EP to decide but we have strong reservations about whether this is the way to go'. The rapporteur and the Presidency both ask for a bit more clarification, which the Commission provides. The rapporteur says that 'It doesn't sound like it will be solved tonight. Maybe we should look at it more on the technical level and get back to it. Unfortunately, it means more work for the technical level.' The Committee Chair adds that 'maybe we don't need a break anyway' and decides to move on to the next point.

Several things are worth noting in the excerpt above. First, the break is suggested to avoid postponing the issue to a subsequent meeting. This is, naturally, only an option when the meeting is not (supposed to be) the last. Second, the EP rapporteur suggests the break, indicating that they are willing to be flexible, which initially suggests that the break might be successful. However, the break is called off when the Commission notes that they have no mandate. This indicates that even though 'it is up to [the co-legislators] to decide', the EP and the Presidency are not willing to ignore the Commission's position. Third, the suggestion of taking a break immediately energized the room, indicating that more actors play an active role in breaks than in plenaries.

Puncturing Formality

It is a common view among the interviewees that trilogue meetings (and to some extent ITMs) are highly staged or scripted. In 18 of the 62 interviews metaphors of this kind are used, often followed by reflections on the various informal formats, both within and between meetings, in which the 'real negotiations' take place. One Coreper ambassador describes the 'theatrical' part of trilogue meetings in the following way:

When you go to the trilogue, there are three stages, three, three stages. First, you need to have a mandate. And this you negotiate in Coreper. Once you have the mandate, you get a briefing, which the Council secretariat prepares for you in cooperation with your attaché. And this tends to be very long, very theatrical. 'And the first round, you will go, and you will do this, and then he's going to say this, and then that.' Which, honestly, I try to reduce. I try to say, 'Okay, let's have it shorter and clearer'. And just... I will do the theatre. The theatre I can do alone. (Interview 52, Council ambassador)

This quote demonstrates two things. First, the need for 'theatre' is acknowledged by the ambassador and is also present in the briefing by the attaché and the Council secretariat. Second, the ambassador's insistence on doing the theatre on his own indicates that he uses this to demonstrate mastery of the diplomatic theatre at play in trilogue negotiations. Another interviewee presents similar observations, noting that trilogues initially feel very 'formal':

If you enter a trilogue room, an official trilogue, you will find that there is this formal ... there is this formal atmosphere. Well, a formal atmosphere that can of course be punctured in many different ways. For example if you have a Presidency that thinks Parliament is foolish. I have experienced ministers who are both arrogant and really not respectful. Similarly, I have experienced rapporteurs who have been stupid and clumsy. (Interview 1, EP assistant)

It is specifically worth noting that the interviewee refers to trilogues as 'official' and subsequently notes that this 'formal atmosphere' can be broken in unproductive ways, notably when negotiators behave rudely or fail to display mastery of the relevant negotiation practices. There are, however, more productive ways of puncturing the formal atmosphere, and among those are the use of breaks. Several interviewees reflect on how breaks are more productive than plenaries. Here, an EP assistant reflects on the differences after his boss (MEP) asks him for input:

When you're sitting in such a big room, nothing is... what can I say, secret. So if he has to move, the ambassador [...], they need, well, they want this room where they can sit and say, 'Well, I have problems with some of these member states'. So, you can talk more freely. And I think they find that a little more difficult in the big room ... And that also applies to us ... Being able to sit and say 'Okay, we have, some things that need to happen'. It's a more free space to ... 'develop ideas' in quotation marks. (Interview 21, MEP and assistant)

The MEP then adds that 'the ambassador didn't like sitting in the big room. That was pretty clear' (ibid). However, it was not only the ambassador who felt that way: 'I thought it was much easier, in the little room, to discuss those things' (ibid), referring to the central goals of the legislation in question. Another interviewee explains that an explicit goal of going into breakout rooms is to restrict the number of participants:

So we go to the breakout room. [...] we agree that the ambassador, the rapporteur, and the Commissioner can each bring three people. And on top of that, they agreed to add secretariats and legal services. And it was an explicit strategic choice on our part to say three ... Because, we hoped that if we kept it to as small a group as possible ... Actually, we would have liked to just say two or one ... because we wanted to avoid those [other DG] people. (Interview 24, EP assistant)

While this quote does not directly address the level of formality, it demonstrates two things. First, the format of the break may also be subject to a negotiation between the relais actors. Second, the interviewee thought it would be easier to make a deal if the Commission delegation was split, removing the direct monitoring (as introduced in Chapter 7) of the Commissioner during the break.

Drafting and Number Crunching

EU legislation is often complex – as mentioned in the previous chapter, the four-column documents can be upwards of 800 pages. However, when negotiations reach an inflection point, the detailed drafting of an article can be what makes or breaks a compromise. The stereotype that legislators can fight for hours over the placement of a comma holds some truth. At the same time, changing the content of one article may have implications for other parts of the legislative proposal. In such instances, breaks may be needed to do some ‘number crunching’ on a compromise proposal to see whether it will work:

But in trilogues, especially the subject matter that we're dealing with, we're not talking about numbers, because the break could be needed for number crunching, you know, numbers to see the percentage, should it be 50, should it be 20, you know, statistically, what have you... So, normally these breaks are at the last, the final trilogue, you know, because there is the will to reach the objective to wrap it up, you know. (Interview 29, COM cabinet)

Another interviewee shares a similar view in response to a question about the point at which it became necessary to go into a separate room or a break: ‘When you need to discuss more technical things surrounding a certain element. And then when an agreement was found, it was presented to the whole plenary’ (Interview 31, COM official). While both interviewees downplay the importance of this work as ‘number crunching’ and ‘technical work’, it is still sufficiently prioritized to spend time on it during political trilogues. This is in line with the view that details and numbers may have important political implications and speaks to the arbitrariness of the division into technical and political issues identified in the previous chapter. It also means that the political level is involved to some extent in detailed discussions of contentious issues: ‘Some DPRs [Deputy Permanent Representatives] really like to know the

details of things, because sometimes it's in the details of things that they find elements that could help unblock negotiations' (Interview 23, Council attaché).

This view is supported by another interviewee who notes that the political level takes part in drafting: 'You see a small group of people like a commissioner or the minister and some technical [staff] ... writing something on the paper during a break' (Interview 41, EP adviser). Another interviewee notes that the political level is not always involved in on-the-spot drafting, and that breaks are important both to avoid misunderstandings between the institutions and to help explain to the political level why the proposed compromise should be accepted:

[I]t's like 'OK, OK, we're going to provide you that in writing'. There is someone writing. It's printed and in 20 minutes you have it, and then you are again, 'OK can we stop the negotiations a moment? We need to do a little a little chat' [...]. And then you are there trying to explain to your MEP what is the change. Sometimes ... you know, sometimes they see, sometimes not. (Interview 40, EP adviser)

It is important to add, however, that the need for new drafts does not always mean that a break is needed. Sometimes, a point can be postponed to later in the meeting to allow members of the Commission's delegation to draft a compromise: 'We had quite a lot of side meetings during the trilogue to draft a compromise and then go back to the room [...]. And then the Commission would put it on the table' (Interview 56, two COM officials).

Summary

This section has identified three primary reasons for the widespread use of breaks in trilogue meetings. First, they are used to break deadlock on politically sensitive points by creating a more restricted or 'intimate' negotiation room. Second, and relatedly, interviewees note that trilogues are very 'formal', and that breaks can be used to puncture this perceived formality, enabling more dynamic discussions. Third, it is also noted that breaks are sometimes needed to settle technical questions and to draft written compromises on the spot. Finally, two additional points are worth noting. First, while breaks may be (and are) used at all points in the trilogue process, interviewees indicate that they are more widespread in the final trilogue meeting. This may be part of the explanation for why these final meetings are often so long (more on that in Chapter 12). Second, while most of the interviewees emphasize breaks as a tool which is used to break deadlocks at the political level, some interviewees also report that they are used at the technical level:

[F]or me the technical meeting itself was of less use. The only thing which I did, and this I found at the really technical negotiations, very, very useful, that normally I took a lot of breaks, and I went around the table and discussed also with the assistant of the shadow rapporteurs. And then I've learned that actually it's the S&D who is, and the Greens, who are the most reluctant to any of our proposals. (Interview 35, Council attaché)

This illustrates that the meetings themselves also offer an opportunity for meeting 'around the table', and that these exchanges are viewed as playing an important role in helping negotiations progress – at both the technical and political levels.

10.2 What Happens During Breaks

Having established that breaks are considered important and serve several purposes, this section looks more closely at how breaks are used in practice. The first insight is that all breaks are not created equal: it matters how they are structured. There are generally three types of breaks employed during trilogue meetings: brief chats behind the table without leaving the room, each delegation meeting in separate rooms, and the relais actors meeting with a few staffers in attendance. The following section introduces each type of break, describes what happens in them, and analyses how they help facilitate the flow of negotiations.

Short Breaks

During a meeting, there will be several exchanges of positions between the negotiators. As noted in Chapter 9, meetings are chaired by the hosting institution, and it is the prerogative of the chair to suggest the order of interventions. The order of interventions is considered carefully in preparation for the meeting and can be included in the chair's briefing notes. When a position has been presented by either institution, the other is expected to respond. This can happen with no delay if the proposal is either anticipated or falls within the scope of the receiver's mandate. If not, there will often be a short pause of up to a few minutes during which the receiving institution consults behind the table with their microphones turned off. The field note excerpt below describes the choreography of an open-ended trilogue:

Field Note Excerpt 10.2: A Trilogue Timeline

20:10–21:33: Introduction and first points. A few short breaks but I didn't record the exact times

21:33–21:42: Break, internal EP discussion on one agenda point, people are walking around, and the Commission has left the room

21:42–22:06: Discussion on EP proposal, short breaks between interventions

22:06–22:14: Break, Presidency discusses EP proposal in a separate room

22:14–22:20: Discussion of what the Presidency has proposed

22:20–22:26: Break, EP discuss, Presidency proposal displayed on screen

22:26–23:18: Exchange of views. Short breaks between interventions, nobody leaves their seats

23:18–23:57: Break, first discussion between rapporteurs and Commission, then everybody in small groups across institutions. Most people have left the room. Commission prepares a one-pager

23:57 - 00:05: Presentation of Commission one-pager, break while people read it

00:05–00:16: Discussion of the one-pager

00:16–00:26: Break, EP delegation discusses one-pager internally

00:26–00:32: Discussion of specific point mentioned in one-pager

00:32–00:35 Break, Commission is thinking

00:35–00:36: Short exchange between Commission and EP, Presidency asks Commission to clarify something

00:36–00:39: Pause, Commission is thinking

00:39–00:49: Discussion, agreement to postpone the point, moving on to the next

00:49–00:51: Pause, Presidency thinking before response

00:51–00:56: Exchange of views, decision to postpone another point, moving on to next point

00:56–01:15: Discussion on the two remaining points, they finish the agenda

01:15–01:18: Pause while Chair sums up which points have been postponed

01:18–01:21: Presentation of remaining points, decision to have a break for package deal

01:21–01:37: Break, discussions within delegations

01:37–01:40: EP present package deal, 'and we will see if Council can accept'

01:40–01:50: Presidency reflects on EP package deal in a separate room

01:50–01:53: Presidency presents a counteroffer

01:53–01:56: EP discuss internally

01:56–01:58: Committee chair makes a statement, rapporteur presents concern on one point

01: 58–02:02: Pause, putting the latest proposal on screen sharing

02:02–02:08: Discussion about strengthening one word in a specific paragraph

02:08–02:10: Decision to revert to previous version, there is a deal, everybody claps

This meeting timeline shows both shorter and longer breaks. The short breaks tend to happen organically and serve the purpose of ascertaining whether the proposal can be accepted, a counterproposal can be made, the Commission should be asked for input, or a longer break is needed. However, at least two other things of note happen during short breaks, both of which are captured in the following interview quote:

And it's clear that the rapporteurs could, well, he kept looking down along the table, right? And then [shadow] nods, so they sit and communicate in that way. Whereas you could say that the Council is very much one person who negotiates and only pulls back and listens to the civil servants. But I don't know if you noticed, but on both [days], there was a man sitting left of the ambassador, and he shook his head and was very ... well, he couldn't hide his, his personal, or Council's opinion on some things. (Interview 44, EP assistant)

The first part of the quote illustrates that non-verbal communication in the EP delegation allows for quickly checking whether a proposal by the Council can be supported, whereas the same option is not available for the Council representative. This demonstrates that the presence of shadow rapporteurs, in addition to increasing the monitoring of the rapporteur, provides additional negotiation flexibility, and inversely reduces the likelihood of making a credible tied hands argument (Schelling, 1960). Second, it demonstrates that non-verbal cues are noticed and interpreted by negotiators during the meeting. If, after a short break and potentially an intervention by the Commission, no way forward has been identified, the next step is a longer break, either with each delegation meeting separately, or for the relais actors in a restricted session.

Longer Breaks

Somebody has to make the decision to take a break in negotiations, and this generally falls on the Chair of the meeting. Decisions regarding breaks are thus a source of procedural power for the meeting Chair. One interviewee explains: 'How long the break is going to be, if there's going to be a break, if we need to take time for just 10 minutes, or is it going to be two hours? That's up to the Chair' (Interview 14, Council attaché). This power, however, is not absolute, as exemplified in the following:

Field Note Excerpt 10.3: Breaking

The Committee Chair takes the floor and announces that the agenda has been completed but that a few points have been postponed until the end, which she then lists. She then says: 'What I suggest – but I am open to other options – we can take a 15-20 minute break. There is also food outside. Maybe we can combine the two and make it more efficient? 15-20 minutes with some flexibility?' The negotiators agree and quickly people get up and leave the room, some bringing their laptops while others don't. After about fifteen minutes, most people come back into the room, bearing white boxes with food in them. It's pizza. They eat it while discussing the outstanding points. The negotiators form a circle – the EP delegation are standing in the middle, looking at the Council delegation, who are sitting at the table. After about ten minutes of this, the relais actors leave the room, and shortly after, I get a text from an EP assistant which just says 'package on the way'. The break ends up lasting just over an hour. Everybody sits back down and the Committee Chair says: 'Okay, let's resume. It took a bit more than 15 minutes, but I hope it was a constructive break. The rapporteur can present the result of the breakout.'

This excerpt illustrates three things: first, the meeting Chair is the one who initially suggests the break, but she does so in the form of a suggestion, indicating that a break will be ineffective unless the negotiators agree that it is a sensible way to proceed. Second, the discrepancy between the suggested duration of the meeting and its actual duration indicates that once the break has been initiated, its length depends on the progress made within each delegation. In the words of one interviewee: 'This is mostly what happens in these breakout meetings. And you really have to provide people the time because we want to come out with... a solution' (Interview 23, Council attaché). Third, the break described above deviated from the two common types of longer breaks discussed below as it was dynamic, incorporating elements of both types. First, the negotiators left to get food, then discussed away from the table but with all the actors in the same room, and finally the relais actors left to finalize the compromise. Another interviewee notes that once a break is announced, it is not always immediately clear how it should be structured, and that negotiators' behaviour in the beginning of a break may send important signals:

But then there are those little pauses along the way ... Who talks to whom? Who goes over to the other first, to talk. The way the Commission behaves can be such that they quickly stick to the Council. And, like, does a bit of two-against-one ... informal signalling ... (Interview 34, MEP)

She adds that these dynamics are something one needs to be aware of as a negotiator because they affect perceptions of power:

I have also experienced a trilogue where I was shadow, where it was clear that the rapporteur had not noticed that every time there was a break, the Council

and the Commission went out too quickly and talked to each other. And you must not, as rapporteur, let that happen. You have to constantly make sure that we are all in the room so that you can keep an eye on who is talking to whom. Because that's simply the part of a power ... the movement of power in the room. (ibid)

Thus, it is important to bear in mind that while the two types of longer breaks (separate delegations and relais actor huddles) are often used, variations that incorporate elements of both are also possible, and that decisions about which type of break to use are often made on the spot.

Each Institution Separately

Well, the break can take like, for example, six hours [...] usually, it's the European Parliament and shadows and all their staff ... they stay in one room. We go to another room, the Council and the General Secretariat [...] And the Commission is usually on the couch ... in the hall just waiting. (Interview 14, Council attaché)

The quote above illustrates that breaks can take up a substantial portion of a trilogue meeting, and that breaks are often structured with each institution going into separate rooms to have discussions 'behind the table' (e.g. Sebenius, 2013). This section examines what happens during these meetings and finds that there are three primary activities during these breaks, as illustrated by the quotes below: 1) discussions within the delegation, 2) calls to important stakeholders, and 3) exchange of compromise proposals:

Sometimes you might agree it in advance and then say 'Okay, when we get to this, why don't we take a break?' Either because it's something you need to confer about, or because you might want to send a signal to the Council or to the Commission. (Interview 15, MEP)

The breaks are used to give the phone calls, check positions with the, for the Council with the member states. For the Parliament, they might call the shadow rapporteurs ... that are not there. (Interview 11, COM cabinet)

Each institution was internally discussing the article in question, drafting a compromise proposal. The discussion would revolve around whether they could change their position to 'accommodate the EP's concerns but also stay within the line of their negotiation mandate'. [...] In this case, the Council had printed their proposal, delivered it to the EP and then waited for their response. This would go back and forth a few times 'like a ping pong game'. (Interview 51, Council secretariat³²)

The first quote indicates that there can be tactical considerations behind when to call a break; asking for it on a specific point signals that it will be difficult

³² Interview notes are used here since, at the interviewee's request, the interview was not recorded.

for the EP to make concessions. Once the delegations go into separate rooms, the EP delegation will either produce their own compromise proposals or react to those created by the Council or the Commission, or, as the third quote demonstrates, call absent shadow rapporteurs. According to one interviewee, the EP's internal discussions would 'normally go along the lines of the rapporteur saying "Okay, so you have Priorities 1, 2, and 3. If you are willing to drop 3, I will guarantee to get you 1 and 2"' (Interview 32, EP adviser). In this sense, the shadows rapporteurs are also put under pressure to show flexibility.

The internal deliberations within the Council delegation look somewhat different. Even though the Presidency is alone in trilogues, they use these breaks to reach out to other member states via telephone or WhatsApp. When deciding which member states to reach out to (first) during a break, one interviewee notes that 'of course, he would talk to the member states that have... clear red lines on some elements first' (Interview 23, Council attaché). This approach is echoed by others (Interviews 9, 41, 57). One ambassador, however, notes that while these calls happen, they can only be used to make marginal adjustments:

[M]y experience is that your attachés may do it with their colleagues and so on, but I don't call my colleagues at 3 in the morning and ask them, 'Can you go a further kilometer, a further meter?' Because he is sleeping. He won't be able to come in impromptu [...]. I know how we work. If somebody asked me, 'Can you go a further mile?' I would say, 'I need to ask for instructions'. (Interview 52, Council ambassador)

He further argues that negotiations should be prepared to the extent that you 'remain more or less in your comfort zone. If you find yourself way beyond your comfort zone and so on, it's because you didn't prepare well. Rather, stop the trilogue and go home and re-strategize again' (ibid). Though this telephone or online contact is particularly intense during breaks, interviewees also note that there is ongoing contact between the Presidency and the member states throughout the meeting:

When you are into really political stuff, you are calling, you are texting, it doesn't matter if it's 2:00 AM or 6:00 PM, whatever ... you need to check some things, you're in permanent contact with your DPRs [Deputy Permanent Representative] and Mertens [adviser to the DPR]. (Interview 14, Council attaché).

Separating the delegations thus allows each negotiator to check 'behind the table', both with the actors who are present and those who are not, though there are limits to how far mandates can be stretched during a meeting.

In the Council's room, while the ambassador is busy calling their colleagues, the rest of the delegation may spend the time working on compromise

drafts which can be shared with the EP. One interviewee explains: ‘You know I have a folder with ... drafting options for, for everything with several possibilities’ (Interview 23, Council attaché). Another interviewee explains how options are weighed when they receive a compromise proposal from the EP:

So if the Parliament follows our position, this is what we're going to do. If they oppose it, what should we do? Should we find a compromise on this topic? Or should we just block it and say that we need to go back to the working party? Which is a good argument, because they know that it takes time, you know? (Interview 62, Council secretariat)

The argument here hinges on the Presidency’s willingness to apply time pressure on the EP. To some extent, this runs counter to the argument in Chapter 7 that the Council is usually the more time-sensitive negotiator. However, this does not preclude the Council from being willing to apply this pressure in some cases, or in any case from threatening with it. Additionally, discussions are more direct, dynamic, or interactive when away from the plenary table, according to several interviewees (Interviews 26, 50, 57). This is attributed to everybody being able to speak, as opposed to only the relais actors in the full meeting (Interview 57), but also to the fact that ‘real red lines’ can be exchanged more freely when the other institutions are not present (Interviews 21, 24).

The role of the Commission during these breaks is contested among the interviewees. One interviewee maintains that ‘the Commission is usually on the couch ... in the hall just waiting, because they basically don’t have anything to do. So [Commissioner] was really sitting there for like eight hours and was like “Oh my God”’ (Interview 14, Council attaché). Others argue that the Commission plays a rather active role, including during breaks:

The Commission hectically tries to come up with yet another compromise, that is satisfying possibly, the two other teams, but that is closer to our initial ... so the Commission is in a very delicate situation because we are actually not part of the negotiation – well, we are part of the negotiation. (Interview 28, COM cabinet)

Here, the interviewee touches on two interesting points: first, that it is unclear the degree to which the Commission is (supposed to be) part of the negotiations, and second, that they are expected to provide compromise drafts that will bridge the gap between the co-legislators’ positions. The stipulation that these drafts should ideally also pull the compromise closer to the Commission’s original proposal clearly demonstrates that the Commission delegation is under pressure from the rest of the Commission. Another cabinet

member notes that the Commission also uses breaks to call other DGs and/or cabinets to address this pressure:

So, there were breaks ... to give me a call, so that I was on board, you know, they were telling, 'Okay, so this is where we are going in the negotiation, is it something that is okay for you?' (Interview 11, COM cabinet)

It is also worth noting that the drafting by the Commission is not limited to the breaks; officials will have 'quite a lot of side meetings during the trilogue, to draft a compromise, and then go back to the room and put it up. And then the Commission would put it on the table' (Interview 56, COM officials).

Breaks in separate delegations may be called by the Chair of the meeting when an issue needs further deliberation. The break serves to enable a freer exchange of positions within each delegation as well as to contact important stakeholders who are not present. When a meeting is called, positions may be exchanged in writing between the two institutions. The break lasts until sufficient progress has been made, and when the negotiators believe this is the case, they return to the plenary table to (semi-)formalize the deal. The Commission may play a facilitating role during this process or may just sit in waiting. It is my impression that separate delegation breaks usually tackle one issue at a time, while the final package deals are usually hammered out in the last type of break, involving the chief negotiators from the three institutions.

The Relais Actors 'Huddle'

The break can also look like shadows, and our DPR, and the rapporteur, and the Commissioner will all go to one room, you know? So, we would have like 10 people there. All their staff ... we're waiting in the main room, and they are trying to somehow coordinate. (Interview 14, Council attaché)

The second type of longer breaks used in trilogues is so-called trilogue 'huddles', where the chief negotiators and select aides leave the plenary table to have a secluded discussion on how to structure the final compromise. The specific number and constellation of actors may vary (for instance whether shadows are included or not), and the meetings may be used both for more general discussions about trades and for concrete drafting. The two pictures below illustrate this variation:

Figure 10.1: Pictures from a ‘Huddle’



Note: Source: Kerstin Jorna, Director-General of DG Grow, post on LinkedIn. The first picture shows approx. 20 participants negotiating during a break. The second shows a smaller group finalizing a draft.

The pictures above feature two fairly disorganized breaks with many actors, but often the format is more controlled (and restricted). Deciding on the specific format of the meeting includes some improvisation, as described by one interviewee below.

Interview Excerpt 10.1: Who Gets to Go?

Interviewer (WE)

But, but in terms of who gets to go into the small room...

IP

Yeah, it's funny.

Interviewer (WE)

How do you find out?

IP

It's very much like ... there are some who know they belong in that room, and then you just go. And then there are some who are kind of on the edge, like, 'Okay, should I join?' And then it's very much about the person's determination, you could say. You know, just going along. [...]. It's immediately obvious that it's the ones who speak. There are very few people who don't speak who are in the room. So, for example, from Parliament's side, the assistants are clearly not allowed to join. It's a set rule. From the Council side, you have the Presidency, of course, and then you have different ... the legal service, and the directorate from the Council secretariat... and then from the Commission, it's always a bit more like, looking at each other, 'Should I join?' (Interview 53, COM cabinet)

This excerpt demonstrates two things. First, the interviewee directly sorts people into three categories: those who unquestionably can go, those who definitely cannot, and the gray zone in which there is some leeway. Second, the 'set rule' that EP assistants do not participate is belied by the fact several EP assistants interviewed describe their own participation in such meetings. As such, even what are perceived as set rules may in fact be variable.

The fact remains, however, that some participants will be left out of the 'huddle'. One MEP explains that in a recent case for which he was rapporteur, the shadow rapporteurs were not pleased with being left behind:

MEP: Sometimes I'll go into a separate room with the ambassador. They weren't too keen on that at first. Our people didn't like that, our shadow rapporteurs, because they were afraid that ... they want to follow it, right? They don't want me to make some kind of deal with him that they're not in favour of, and then I go out and say 'Well, that's how it turned out, now I have to accept it'. They were worried about that ... but in the end, they had to accept that it's also a question of trust, right? That they trust that I'm loyal to the mandate. (Interview 21, MEP and assistant)

Here, the MEP emphasises that the shadow rapporteurs feared that he would ignore their concerns and present them with a *fait accompli*. He adds that in the end they had to trust him to negotiate in good faith. However, his assistant adds, this trust was accompanied by requests for live updates via text message from the breakout room:

Assistant: we were like one, a handful of people, maybe ... They were always like that, the other shadows, sending text messages saying, 'You have to come out now' and 'What's going on in there?' and so on. So, it was a bit of a stressful experience. (Interview 21, MEP and assistant)

The two quotes above, paired with the same interviewees' quote earlier in this chapter about how the breakout room offers more freedom to develop ideas and speak directly, indicate that the other participants in the meeting, most notably the shadow rapporteurs, accept (perhaps reluctantly) being shut out of the breakout room because they know that exchanging sensitive concessions is less likely to happen in plenary. As such, the breakout room is useful because it lowers the level of monitoring and is perceived as more informal. This is further illustrated later in the same interview:

We have to meet at some point, so we both have to move, but he didn't like sitting in the open room and saying 'Let's go to [X amount]', or something like that, and doing that negotiation. He would rather do that when a few of us sat down and said 'I can go up there, but then you also have to give in on such and such'. And I also think it was more difficult to do in the big [room], because then all the shadow rapporteurs sit there ... (Interview 21, MEP and assistant)

Here, the interviewee describes how negotiations became very transactional once they are in the closed room. A similar example of discussions being more 'free' in the breakout room comes from an EP assistant, who told me that their team had sent a draft compromise to the Presidency ahead of the trilogue. The ambassador was much more forthcoming in the small room than in the plenary:

As soon as we get into the breakout room, he's sitting there with this paper in front of him, and then ... the ambassador just starts saying, 'That one, yes. That one, yes. That one, yes.' And then we're completely shocked, right? [laughing] ... So he shows a completely different willingness to accommodate us than when he had been out in the big room. (Interview 24, EP assistant)

However, this 'willingness to accommodate' was not (only) because the ambassador had been convinced of their viewpoints, or because he was in a hurry:

Then at the very end, he says, 'Okay, but then ... of course we also expect that our proposal in relation to [specific point], that it ... that it will be the way we want it. We're not going to negotiate about that, that's just the way it is. You get what you want. We get what we want.' (Interview 24, EP assistant)

The exchanges above illustrate quite clearly that negotiations can be more direct and transactional when the format is more restricted. It also allows negotiators to disclose which member states or political groups have which red lines, as well as which issues they are willing to drop:

[I]t was like the Council saying, 'But we have ... some red lines from member states, and we can't cross them' ... And they even named the member states and gave examples ... 'And we can't cross them' [...]. And at the same time, Parliament had asked them a lot of questions that the rapporteur was ready to drop it all. But he had one... important point that he wanted to get across. (Interview 53, COM cabinet)

The quote indicates that having the ability to disclose who has a red line makes it more credible to stand firm and reaffirms that trading concessions is a prevalent feature of these breaks.

Waiting Time

During these 'huddles' between the relais actors, most other participants are left out and will have to pass the time while waiting for negotiations to progress. Most notably, the shadow rapporteurs are often left behind, but it may also happen that the Commissioner is not invited:

But the Commission is not present, you know? At this moment, it's really co-legislators, and Commission is waiting in another room. So, it was a bit funny because I think they waited like one hour alone in their room [laughing]. (Interview 41, EP adviser)

These breakout meetings may be lengthy, which potentially means a lot of waiting time for those left out. When asked what they would do in the meantime, one interviewee initially just said that they were 'sitting around, waiting' (Interview 9, two Council attachés). However, he also added that those waiting would of course try to get information from the 'huddle':

You have all the shadows sitting in the room, for example, you have all the APAs [Accredited Parliamentary Assistants] sitting in the room, you have half of the GSC [General Secretariat of the Council], you have experts from the capitals sitting there waiting, of course there is contacts. Either as text messages or there's, you know, someone comes out to consult ... especially on the Parliament side. (Interview 9, two Council attachés)

This observation is echoed by another interviewee, who notes that there can be several iterations of the 'huddle' breaking up to go out and consult 'behind the table':

You sit and you wait for information and then they come in and then they explain what, so 'We discussed this and this – we obtained this and this and this and this' and then all the groups say, 'For me, this is no go because I need this more', and then another one would say 'I need *this* more'. So, then they get their points and then they go back [...]. Also, you have time to make alliances or, you know, you discuss what you just heard. (Interview 30, EP adviser)

Other interviewees note that waiting time is spent working on the proposal, ‘polishing what had been discussed before’ (Interview 31, COM cabinet), ‘fine-tun[ing] some drafting’ (Interview 23, Council attaché), or just trying to ‘predict where the landing zone might be’ (Interview 51, Council secretariat). Another interviewee puts it as follows:

No, we're not just sitting and waiting, obviously. Because breaks are very crucial, because usually they happen before finding a common position on a very sensitive article. And we also reviewed the package, as I said, so the trade that we were trying to make when it comes to articles. (Interview 62, Council secretariat)

Yet others note that there is also time for doing other work, such as checking e-mails, for eating a sandwich (Interview 30, EP adviser), or for ‘sleeping in the couches’ (Interview 14, Council attaché). The pictures below from an Instagram story posted by an EP assistant during an open-ended trilogue are quite illustrative – in them, the assistant expresses feeling left out since she is not part of the ‘huddle’. She spends the waiting time checking her e-mails and crocheting.

Figure 10.2: Waiting Time in Trilogues



Note: Pictures reproduced with consent of the original poster. Captions: 1) ‘No negotiations in plenary since 16:00... Feeling very left out’, 2) ‘Couple’s ceremony [breakout room] about to enter its eighth hour [small text about chocolate] #carryon’

Summary

Three different types of breaks were introduced in this section: short breaks, breaks in separate delegations, and the relais actor ‘huddle’. Each serves different purposes and is governed by different practices. First, the brief breaks tend to happen organically during exchanges at the trilogue plenary and are

mainly used for brief consultations within the delegation to prepare a response, usually based on the briefing notes/contingency plans prepared by each delegation. However, these short breaks happen at the plenary table, which was described in the previous section as rather ‘formal’ by interviewees.

Two other types of breaks address this by changing the composition of the meeting. First, breaks within delegations are used as they enable frank exchanges about compromise proposals within the EP delegation, and phone calls to recalcitrant member states by the Presidency. Second, ‘huddles’ where the chief negotiators (relais actors) go into a separate room allow more direct and interactive negotiations *across* institutions by creating a more intimate and confidential space, facilitating ‘idea generation’. This is summarized neatly by one interviewee:

All that is part of the game of course. I mean it is necessary. It is more informal. It is more personal. And you can also understand things that you cannot understand in in the in the bigger room because then all the groups are present, so the the rapporteur is not free to speak... his or her opinion or the views – or the analysis that he has of the situation with all the all the groups in the room. So you need all the other formats as well. (Interview 26, COM official)

Finally, it is worth reiterating that the meeting formats described above are ideal types, and that hybrids exist. Interviewees gave several examples (some rather colourful) of how things ‘broke down’ during meetings and became more chaotic. For instance:

I was personally convinced that the third trilogue would be unsuccessful and we would just, you know... But [ambassador] was a machine. [Ambassador] just didn't want to hear about not being successful. Very, very ambitious, you can imagine ... This is what they are. And when the rapporteur went out to the toilet, [ambassador] went after [rapporteur]. We went after and we discussed in a very secret corridor. (Interview 35, Council attaché)

The interviewee above expresses doubts about whether an agreement could be reached, as does the MEP in the excerpt in Box 10.1. In both cases, agreement was made possible in the end because of a strategically placed break. Chapter 12 on ‘the final trilogue’ goes further in depth into the ways in which meetings can ‘break down’ and how they are subsequently salvaged.

Box 10.1: Calls, Bombs, and Drafting During Breaks

Towards the end of the interview with an MEP and her assistant, I asked why the final trilogue on the proposal for which she had been rapporteur had ended up taking sixteen hours. First, the MEP offered the following explanation.

‘We start in that big room ... Then we test each other, specifically we go through everything. It's a big directive, so there are many articles. Then we go through the controversial points. There are a number of these, the ones where we disagree. Then we just start by outlining the positions, like, I stand here, and you stand there. And then we try to push each other a little, and that might not get us very far. Then we go into a room and leave most people out there. And then we sit and have a real talk. Then we go out again. Then I talk to my shadows... They say “No, no, that's terrible” and “He needs to move a lot more, otherwise we can't accept it”, and so on. He [Coreper ambassador] also has some threads to some of the governments ... And we go back again. And those meetings take a long time. I remember I was impatient in there. I think it took a really long time, and they sat and pushed each other. And then we have to start, we start writing it down at some point, so that we kind of agree on what it is that we are agreeing. And we don't know what we've agreed yet, because we haven't agreed anything yet... Not until the very end. Until everything is agreed, nothing is agreed, you could say, right? And those sessions in there just took quite a long time, right?

And then some things arise where you... well, most controversial things we have an overview of, but there are also some things that suddenly, like bombs in the middle of it all. So, you think, “Fuck man, that's crazy. We hadn't really thought much about it, but we actually really disagree on this point.” This point two in some annex or something, where the Commission is also sitting there, and they suddenly say, “Well, you should be aware that if you include this, you open the door to [terrible consequence]”. And we're like, “Well, we don't want that”. And the Council *would* like that. The Council then says, “Well, if we don't get it, then we don't have any deal at all”. So, bombs like that can happen, and they did. And I think they do in many cases, if the legislation is complicated enough.’

The MEP fell silent for a moment and looked at her assistant, who then added:

‘Well, and it's a legal text, so there are also legal experts. [...] each institution, they have to have their legal experts read things to see, well, the interpretation they have of it. So that also takes time. So, and this is the thing, the Commission has spent a long time writing a legal text, and if you change something, you have to explain what it actually means.’
(Interview 21, MEP and assistant)

Coming Back to the Table

Once an agreement has been made during a break, it must be presented to the trilogue plenary (Interviews 23, 31, 36). Some interviewees further note that coming back from a relais actor ‘huddle’ often follows a specific rhythm:

Yeah. So, you come back, and the people that were in this breaking room, they all agree that this is the final way. Then you go back. Then everyone talks with their own teams. You say like, “This is the deal, this is what you can agree and it's

fine' ... And then basically say like, 'Yeah, we can accept in the, in the formal setting'. (Interview 55, COM official)

So when we've sat in that breakout room and talked it all through, figured out where we can agree, we say, 'Thanks for the chat', and then each delegation goes off to their own breakout room. So we have a closed room just for people in the EP to explain to them, 'Here's the deal we think we can get. And we would recommend that we take it.' (Interview 24, EP assistant)

Both examples highlight that the relais actors do not go directly from the huddle to the plenary table to present the deal. There is an intermediate step where they return to their own delegation and repeat the steps outlined above (internal discussions in the EP and phone calls to other member states) to convince them that the deal is as good as it is likely to get, and to assuage their concerns that it was a *fait accompli*. Additionally, having this 'formalized' step serves to ensure that all parties agree to the provisional agreement *and* that everybody shares the same understanding of what is agreed. The challenges in this regard are elaborated in Chapter 12.

10.3 Summary

This chapter has demonstrated that trilogue negotiations, while already informal, are often punctuated by breaks in various formats to help facilitate deal-making on sensitive topics. The first part of the chapter introduced different reasons presented by interviewees for why these breaks are needed. First, breaks may be used when negotiations in plenary get stuck. Second and relatedly, this often works because, according to interviewees, this punctures the perceived 'formality' of the meetings and removes negotiators from intra-institutional scrutiny, enabling frank and earnest discussions and exchanges. Third, breaks also allow both technical and political actors to 'crunch numbers' and draft new concrete wording for compromise proposals.

The second part of the chapter introduced three different types of breaks: short breaks, breaks in separate delegations, and 'huddles' between the relais actors. The shorter breaks happen throughout the meeting and are primarily used for brief discussions within delegations, enabling chief negotiators to signal whether they can accept a compromise proposed by the other parties without leaving the table. The longer breaks in separate delegations were found to be used primarily for internal discussions within the EP delegation, phone calls to the other member states by the Council Presidency, and for drafting compromise proposals by all three institutions. The relais actor 'huddle' in which the chief negotiators and select aides negotiate away from the other participants were found to be used primarily to form a package deal for a final compromise. The restricted format is particularly useful at this stage

for two reasons. First, it allows negotiators to explain which political group or member state has a particular problem, and what it will take to placate them. Second, it is viewed as easier to 'try out' different options without taking these initial steps toward a binding commitment in the plenary. These provisional deals are then 'formalized' at the plenary table before the trilogue ends.

Chapter 11.

What Happens Between Meetings?

That's a very extreme definition of, of informality [...] I would not call a trilogue informal. It is a formal meeting. It can take very different shapes, of course ... Also, the technical meetings that we have, I would not call informal. These are formal meetings. What I would call, however, informal is everything that is outside these regularly scheduled meetings and so on (Interview 36, EP adviser)

The quote above indicates that trilogues are not really viewed as 'informal' by interviewees and also contrasts them with other, 'truly informal', meetings. At various points throughout the dissertation, interviewees have expressed that trilogue meetings are 'choreographed', that deals are 'pre-cooked', and that a lot of things happen 'behind the scenes', or as the title of this dissertation indicates, in the corridors of power. This chapter deals with the purposes and practices (the whys and hows) of informal contacts among negotiators in the time between trilogue meetings.

It is common knowledge that showing up well-prepared is a good idea, for negotiations and in general. Indeed, the old adage that 'by failing to prepare, you are preparing to fail', often (incorrectly) credited to Benjamin Franklin, rings somewhat true here. Most negotiation literature also states that preparation is a key step in achieving a successful outcome (e.g. Fisher & Ertel, 1995; Gates, 2022; Zartman, 1989). However, these preparations often focus on what an actor can do *before* they sit down with their counterpart. In trilogues, preparations often go beyond discussions within each delegation, including meetings between negotiators for substantive negotiations before the actual meeting. The rest of this chapter is structured in four main parts: first, the purposes of these informal contacts between trilogue meetings are introduced under two headings: 'pre-cooking', which enquires into why it is deemed important to have a compromise prepared before the meeting, and 'trust-building', which analyses how ongoing contact between negotiators fosters trusting relations which in turn facilitate decision-making. Second, the internal discussions within each institution between trilogues are examined, focusing primarily on informal formats, but also touching on more institutionalized channels of coordination. Third, various informal meetings between the institutions are probed, both with regard to their direct relevance in meeting preparation, but also to how these exchanges help build trust between the negotiators – at both the technical and political levels. This examination includes revisiting the interinstitutional technical meetings (ITMs), introducing a related

but more restricted type of meeting called drafting sessions and probing less structured formats. Finally, the chapter's overall findings are summarized.

11.1 Functions of Informal Meetings

Negotiating new, complex legislation obviously requires some level of preparation. There are practical aspects such as producing an agenda, deciding where to host the meeting, and sending out invitations. But this section argues that meetings both within and between institutions serve at least two more functions. The first is 'pre-cooking'. When the political-level negotiators sit down in a trilogue meeting, there should already be a clear indication of what a compromise could look like, and to some extent a roadmap of how the meeting should proceed to arrive at this compromise. Second, I argue that the other function, trust-building, is not the primary purpose of these informal meetings, but interviewees do highlight how trust develops over the course of a trilogue process, as well as how it facilitates decision-making.

Pre-cooking

When you arrive at the trilogue, normally you have something pre-cooked. It's not like you arrive and boom you try to have a deal without any preparation. (Interview 41, EP adviser)

It is a common observation in the interview material that one should not go into any meeting, particularly not a trilogue, without having a good idea of what will happen and where it will end. Indeed, the overarching purpose of all these informal meetings outside of meetings is to prepare a compromise proposal which can be adopted at the next trilogue meeting without (too much) discussion. One interviewee explains that this is 'to avoid theatre in front of everybody in the meeting' (Interview 32, EP adviser); having those discussions during the meeting would 'expose disagreements in an unfortunate way' (ibid). Several interviewees refer to this as 'pre-cooking' a deal, and I have adopted this terminology because it is both well-fitting and widespread. Table 11.1 below is a display of all the times interviewees explicitly referred to these preparatory meetings as 'pre-cooking'. The following section below draws on these as well as examples where interviewees describe the same types of practices without specifically using the term.

Table 11.1: Display of References to Pre-cooking

Everything needs to be pre-discussed and pre-cooked for results, because ... you can't move for real in a trilogue, unless you have a 13-hour trilogue. (Interview 7, two Council attachés)
The people who are in charge in the permanent representations are the ones based here. They are not necessarily the people who run the thing, the business on the ground. So, there is an information gap maybe. So, this means we need to explain that in this case, the Danish councillor, maybe doesn't know that we have been pre-cooking this with the Danish government team. (Interview 28, COM cabinet)
Normally what you do is that, okay you do some technical, you try to have some agreements already at technical. Everything is pre-cooked. And then you go to trilogue and normally it's more like a formality or to, or you try to on your best-case scenario you have like a ... choreography organized, you know? [...] When you arrive at the trilogue, normally you have something pre-cooked. It's not like you arrive and boom you try to have a deal without any preparation. In my case, we did so much stuff at technical and also informally, and we pre-cooked a lot, that with one big trilogue, we managed [...] we started maybe, I don't know, maybe at 5 and we finished at 3AM. (Interview 41, EP adviser)
It was also IP's impression that 'the whole deal had been pre-cooked between the EP and the Council', and that the meeting itself was mostly a show. (Interview 48, COM official)*
Yes, usually it's the deal is pre-cooked with certain rapporteurs [...] I was surprised, but this is this is how it went. If a rapporteur is very reliable and then, you know, you get – and you have this feeling from before, from either the previous Presidency, you hear – or on the basis of your experience. It is OK, I can move on point where one, I can move up to here and point two here, and on point three here. Let's say I move on this – this – so basically, it's pre-cooked but not on all the files. If a file is rather, easy, if you have enough time, if you pre-cook, if you have three political issues, then it's fine. But on certain issues, for example, you aim very high. And you know, it's quite mission impossible if you have 10 open issues and one of them is hugely political. [I]f something is pre-cooked and we see that there is possibility of a deal, we say to the legal service, 'Now this is where we want the deal to be, please write like some text, legal text'. So, they can maybe write an hour or so. Usually we prepare in advance, but you can never know. You need to have a clear view of the majorities, so at least in Coreper I, it's much more pre-cooked. (Interview 57, Council ambassador)
Usually, the last trilogue is a bit pre-cooked. No. And you know, I mean, maybe there's an area of grey, you know, that it can be decided during the trilogue, but yeah, more or less. If it's successful, it's because you know more or less that you have found something that is mutually acceptable. (Interview 58, Council attaché)
'We hear that this topic is important to you.' Showing understanding of what they are after and take it into consideration is key to showing empathy. 'Co-creation only works if you have pre-cooked an approach.' (Interview 61, COM cabinet)*

Note: Input for the display was made by doing a text search of 'pre-cook*', 'precook*', and 'pre cook*' in the full interview material. *: Interview not recorded, but quotations were written down verbatim.

Several features of the quotes in this display are worth noting: first, the term ‘pre-cooking’ is mostly used to describe having discussed a compromise on specific issues ahead of the meeting. However, Interview 61 also mentions pre-cooking an ‘approach’ to the meeting, indicating that pre-cooking can cover both the substance and the conduct of a meeting. Thus, interviewees argue that pre-cooking is used to organize the meeting, and to make sure it is conducted ‘efficiently’ by reducing uncertainty about whether a compromise can be reached as well as how it might look. Second, pre-cooking is used at both the technical and political levels, and both within and between institutions. Relatedly, it is notable that pre-cooking can happen with a variable set of actors: Interview 28 indicates that deals may be made directly between the Commission and a member state’s government, while Interview 48 describes that a deal had been pre-cooked between the Council and the EP without involving the Commission. Third, whether or not pre-cooking works is dependent on the level of trust between the actors (Interview 57). The role of trust is elaborated below.

Other interviewees use terms other than ‘pre-cooking’ which signal similar purposes of these informal meetings. One interviewee laughingly noted that ‘there’s one word that’s crept into my vocabulary. It’s “explore options”’ (Interview 23, Council attaché), which he found important because ‘there’s always this idea someone is negotiating something behind my back’ (ibid). This indicates two things. First, as pre-cooking is usually done in a more restricted group, it involves the risk that somebody else is pre-cooking a different deal. Second, and relatedly, ‘exploring options’ signifies keeping the door open for other pre-cooked deals.

Getting Information

Other interviewees report that even when one is not part of the pre-cooking, informal contacts between meetings are important to gather information both about which positions different actors hold and about what is being pre-cooked:

Is this the Council – is that so? Is it the whole Council behind it or is it some country? And it could be really, really hard to get that information out, because you’d have to search around the PermReps. (Interview 1, EP assistant)

So, there is a lot of information that doesn’t get out of the room, even if you have an assistant who wants to brief colleagues on what is happening and what has been agreed, it is a big black box with what the actual negotiations are and what is happening. (Interview 10, EP assistant)

These two quotes share the same underlying logic: it is necessary to informally gather information about what happens in the room to complement what can

be gathered through more institutionalized channels. Other interviewees note that it is also possible to reach out to the other institutions as a shortcut to understanding both the substance of the issues and the different political perspectives:

If you have issues that you don't understand or you need to analyse, of course you can speak to the Commission people. I mean, I sometimes talk to someone from [interviewee's country] PermRep, let's say, to get an insight of what the Council thinks – from a national perspective, let's say, I mean they are of course very much in the national perception, which we're not. (Interview 30, EP adviser)

[In a previous job in a DG,] I was myself spending long days in Parliament just to meet people and talk to people. So, I was feeding my Director General with this type of... let's say, soft knowledge and intelligence information, so that he knew what was the positioning. (Interview 11, COM cabinet)

Yet another interviewee notes that these informal talks can be used to tease out internal divisions in the other institutions which may be exploited in later rounds of negotiations:

[Y]ou can ask them some questions like 'Why did you choose this number?' And they might not be willing to answer that directly, but then it becomes clear to us that there is a room for manoeuvre where we can move on this issue. (Interview 17, EP assistant)

Overall, pre-cooking emerges as an important purpose of the informal meetings which take place between trilogue meetings. This pre-cooking may involve both drafting the wording for compromises on specific articles as well as agreeing to an approach to the next trilogue meeting – how to structure the agenda, how to present different issues, and so on. Relatedly, interviewees also reported that gathering information about the political priorities of the different groups within each institution was essential, as it enabled them to tell whether their opposite number was being sincere when presenting 'red lines' or just trying to extract additional concessions. This information-seeking was described by both relais actors seeking information about others' priorities and by those who were not directly participating in trilogues seeking information about the progress of negotiations to better be able to control their agents.

Trust-building

Another important, albeit more indirect, outcome of the ongoing informal contact between negotiators is the potential for building trust over time. Indeed, previous research has found that 'trust is essential for ensuring information exchange' (Versloot, 2022: 526), and as was already shown in Chapters

6 and 8, negotiators start informally networking with their counterparts during the initial stages of the legislative process. Trust is viewed by interviewees as important both between levels within the same institution and across institutions. Twenty-four of the 62 interviewees mention trust directly in this regard at some point in the interview, most of them unprompted (in a few instances I inferred that an answer hinged on trust and asked directly about it). Apart from trust between negotiators, one interviewee commented on the trust between voters and their elected MEPs (Interview 31, COM official), and one noted that he will often share draft compromises with ‘lobbyists that I trust’ to get input for negotiations (Interview 40, EP adviser). This section explores how interviewees view these relationships, and further, how they argue that trust matters for their ability to reach compromises in trilogues.

While several of the quotes above emphasized information-seeking as an essential part of pre-cooking a deal, the following quote demonstrates how information-*sharing* is an important part of trust-building:

Give them the road map and then say, ‘Look here we are at this point, we’re discussing this, this and that’. That’s absolutely essential [...] because most of what you’re doing in this process is communicating. as an attaché in a Presidency, you communicate with your DPR and your Mertens teams, [...] with your experts back home. You draw up this approach, you keep them constantly involved because they also can activate their regular networks [...] and can start constructing bottom-up solutions [...] Then you have to communicate with EP of course, with the Commission. So it’s actually [...] quite a lot of people that you have to keep up to par with information. (Interview 23, Council attaché)

Here, sharing information is both used to leverage the networks of colleagues in the interviewee’s own team, but also to demonstrate to the other institutions that he is a trustworthy negotiation partner. However, this is a balancing act between disclosing enough without betraying the confidence of your own institution: ‘you don’t want to ... disclose too much of what’s happening in the Council because you know that there are administrations struggling and you’re not going to say that’ (ibid). This speaks to the co-constitutive nature of information-sharing and trust. Sharing information is seen as a useful way of building trust, but at the same time trust is seen as a prerequisite for sharing sensitive information. One interviewee summarizes this idea quite nicely: ‘They do a lot to create this network, and especially, I think, to create the confidentiality that is needed because [...] you can’t disclose very much to someone you can’t count on – you can’t trust’ (Interview 13, COM Secretariat-General).

An inherent risk when sharing sensitive information is that it will be leaked. The risk of leaks is part of the explanation for why more restricted formats are preferred, as one interviewee matter-of-factly states: ‘It’s probably

going to be leaked, what's happening in the big room, right? There are so many people sitting there' (Interview 21, MEP and assistant). Unsurprisingly, some interviewees note that leaks are not conducive to the development of trust between negotiators: 'We have many, many leaks. That can also, of course, influence your relation, trust. Because for us, basically, every file that was sent around to our team was leaked, every time' (Interview 42, EP adviser). These leaks may both be about trilogues themselves as in the quote above, or about internal deliberations within one institution:

[T]he big problem is that this is your, this is your mandate. This is sometimes also your negotiating tactics, so you don't want the Parliament to see that. But then ... as soon as you put something on paper, in Brussels, there are no secrets. So, things are leaked to the Parliament very, very quickly. (Interview 19, Council attaché)

Another interviewee, a Coreper ambassador, explains that the risk of leaks means that it is necessary to do a bit of 'blurring' in Coreper, meaning refraining from providing too much detailed information in those meetings: 'Because the Coreper... negotiation will be leaked' (Interview 52, Council ambassador). Another interviewee describes how negotiating can be difficult if there is a lack of trust between the negotiators, particularly the Commission:

I mean all this preparatory work that was full of complications, for whatever reason, but the rapporteur at the end of the day has been collaborative, honest in presenting the Parliament's position, maybe not with a mandate to really compromise, but at least there has been a straightforward dialogue, where the Commission is being helpful. But in 7-8 out of 10 cases it's not been at all like that. It's been like coming there with suspicion of the other parties' intentions. (Interview 3, Council attaché)

This lack of trust led to an 'awful climate', with subtle insults such as casting doubt about whether negotiating partners were being honest in presenting their mandate, calling into question the authority of the ambassador, and ending up 'getting really uncivilized' (ibid). This report is the worst I encountered in the interviews, and most processes were described as more civil. One interviewee notes that even if things get a bit heated during negotiations, 'you always represent an institution, so it never really becomes personal' (Interview 49, Council secretariat).

Several interviewees mention that there is a time component to trust-building (Interviews 2, 11, 49), and that this begins with networking before a legislative proposal reaches the trilogue stage, with negotiators leveraging existing networks when negotiating informally. For this reason, several interviewees note that it is smart to send attachés to Brussels well in advance of taking over the Presidency:

It's extremely important to be here before you start the Presidency [...] the most important thing as you might find useful is of course knowing people... knowing their true nature. Whom to trust and whom not to trust. That's extremely important, and not only people, but also politics in the member states. (Interview 35, Council attaché)

The importance of having experienced diplomats with existing networks in Brussels is emphasized by other interviewees as well (Interviews 11, 14). Generally, trust is viewed as particularly important to the Presidency, not only in terms of who can be trusted, but also in terms of the other member states trusting the Presidency: 'Your only capital as a Presidency is trust' (Interview 54, Council secretariat), and 'Trust is really all you have' (Interview 9, two Council attachés). These statements are in line with findings from previous studies of Coreper such as Lewis (2005: 949), who argues that 'Thick trust is especially important during endgame negotiations'. Building trust is also viewed as important to EP interviewees:

Interview Excerpt 11.1: Trust

Sitting opposite each other in armchairs, each with a cup of coffee, I asked her about her relations with her colleagues, and she said that 'knowing each other is key'. Then she added that this is also the reason you have a difficult time in the beginning. First, you need to get familiar with both the policy area and the people in the committee, and you also need to learn how to get on well with others. Here, she added that the more time you spend with each other, the better you also know each other, which 'helps us trust that we all do what is necessary'. (Interview 32, EP adviser)

The interview quote above refers to internal relations in the EP, but the notion that 'the more time you spend with each other, the better you also know each other' applies to trilogue negotiations as well. As mentioned in Chapter 9, technical-level negotiators spend a lot of time together in ITMs, offering them ample opportunities to get to know each other – 'you become quite familiar when you meet for 10 hours a day' (Interview 22, EP adviser). Another interviewee notes that for a recent file the negotiation teams initially 'had a beer to get to know each other' (Interview 58, Council attaché), and that 'you spend so much time that sometimes you go for a coffee, or you eat together' (ibid). Additionally, one interviewee noted that 'Brussels is a small city, and many people know each other' (Interview 49, Council secretariat), particularly when working in the same policy area.

All this indicates that while negotiators at both the technical and political levels may have some pre-existing relationships when a legislative file gets to the trilogue stage, the intensity and frequency of interactions increase at this stage, providing more opportunities for the development of vital trusting

relations (cf. Versloot, 2022). In addition to being a side effect of ongoing interactions between negotiators, establishing contacts between the institutions is also used strategically and actively encouraged:

But I also encourage them to go and meet them personally if they have the opportunity to do so and to establish contacts because then when we need to know which political groups are going to support this or that decision in the Conference of Presidents and whether or not this debate is going to have the necessary supports to make it to the agenda, and so on and so forth – we need those contacts. (Interview 2, Com Secretariat-General)

It is worth noting here that ‘contacts’ and ‘trust’ are two different concepts. While the former may be purely transactional and does not necessarily require the relationship to be trusting, the age of a relationship between actors has been found to matter for the potential of achieving trust (Versloot, 2022). Thus, establishing contacts within the other two institutions may be motivated by instrumental concerns such as access to information, but may at the same time facilitate the development of a trusting relationship over time.

11.2 Practices of Coordination Between Meetings

Having introduced pre-cooking and trust-building as the main purposes of meeting informally between trilogue meetings, this section will explore the different types of meetings and practices used by negotiators to fulfil these two purposes. First, the various formats for internal coordination and discussion in each of the three institutions are explored. Then, the different types of interinstitutional meetings are examined, starting with a brief review of the interinstitutional technical meetings (ITMs) before covering the more informal formats which are used to prepare both ITMs and political trilogues.

Internal Discussions in the Institutions

An important step for the negotiating teams when preparing for a trilogue is to make sure their own institutions are updated on the progress so far, and to gauge whether they are still within the limits of their mandate. This section introduces the different practices, both institutionalized and informal, employed within each institution to achieve this.

Coordination within the Commission

The two main fora identified by interviewees for coordination in the Commission during a trilogue process have already been introduced earlier in this dissertation. For internal coordination within a single policy area, the *jour fixe* meetings between the cabinets and their Directorat(s)-General play a central role. For coordination between policy areas, the Commission uses the weekly

meetings in the *Groupe des Relations Interinstitutionnelles* (GRI), likewise introduced in previous chapters and admirably described by (Panning, 2021). One interviewee explains how they seek ‘pre-approval’ from the GRI to move forward with specific compromise proposals in the open-ended trilogue:

[W]hen it’s the end of the negotiations, we go to [...] GRI ahead of the trilogue, because we know that [...] the negotiations will be around three points. And we explain the three points, and we already flag which option we could go with [...] In the GRI fiche,³³ you frame the flexibility that you are seeking. So, you are asking [...] the College of Commissioners to grant you that flexibility, and sometimes it’s disputed, and it’s heavily discussed, but that’s the way to play the game within the Commission. (Interview 11, COM cabinet)

The interviewee then adds that coordination often moves quickly and with tight deadlines:

[W]e negotiated the GRI fiche and the positioning [...] at the meeting of the heads of cabinet Monday and then [...] the negotiating position was approved by the College on Tuesday. And I think the trilogue was Wednesday evening. (ibid)

These meetings, going from the GRI to Heads of Cabinet to the College of Commissioners, are the central mechanism around which other types of coordination revolve. Interviewees offered fewer insights into the more ad hoc and everyday coordination processes, with one interviewee commenting merely that ‘obviously, internally we are discussing’ (Interview 29, COM cabinet). However, interviewees do express that the cabinets play a central role, both vertically between the Commissioner and the DG, and horizontally with the cabinets of the other Commissioners. Two cabinet members describe their role in vertical coordination (both upwards and downwards) as follows:

You are more directing ... your services towards the goal or the end result that your commissioner wants [...] guiding them with knowledge of what you need and by when. (Interview 11, COM cabinet)

[T]he next trilogue: we will prepare this with him just before, so the day before, the morning before. I mean we just find a slot of an hour or two to discuss with him and go through the briefing book. Of course, the DG is preparing the Director General and the unit in charge is preparing a whole briefing book. And very often we do this preparation with representative of the DG and the members in charge here. (Interview 45, COM cabinet)

The latter interviewee further notes that ahead of this briefing meeting, they will keep the Commissioner informally apprised of ongoing developments in politically salient cases, noting whether they have had any relevant meetings

³³ The French word *fiche* here refers to a concise briefing document for GRI meetings.

with actors from the other institutions. This is to give the Commissioner ‘a trend of what to expect’ (Interview 45, COM cabinet) in both the upcoming trilogue and in the upcoming internal meetings. He also notes that they hold similar informal briefing meetings ahead of *jour fixe* meetings with the DG. This vertical coordination is also deemed important in terms of knowing when it is necessary to escalate negotiations by involving higher-ups:

On top of that, there are all the contacts ... and that is of course an e-mail from the member in charge telling us, ‘Well, I’ve been in contact with this country and well, this did go very well or this didn’t go really well. So, we probably have to step up a little bit the of pressure. Maybe [Head of Cabinet], if you can talk to the ambassador, great, and if maybe the Commissioner could also talk to the Minister at that meeting next week.’ (Interview 45, COM cabinet)

In terms of horizontal coordination, the same interviewee notes that the ‘centre of gravity’ within each cabinet will be the member in charge of the file (*ibid*). Another describes how the GRI fiches also work to ensure that ‘all cabinets receive the same information’ (Interview 61, COM cabinet). At the DG level, one interviewee noted that there was a lot of work in writing the GRI fiches and sending them up through the system, but that this was less intense than the preparatory work ahead of the Interservice Consultation. On the other hand, there was an increased sensitivity to keeping the other DGs informed of developments in negotiations as they happened (Interview 48, COM official). Overall, the assessment offered by most interviewees is that the GRI framework is the backbone of coordination within the Commission over the course of a trilogue process.

Coordination within the EP

For the EP delegation, the need for debriefing is generally smaller than in the other two institutions since the shadow rapporteurs were present in the trilogue (or at least invited). However, the same three main fora used for preparing trilogue mandates as described in Chapter 6 are also used for debriefing and preparation between trilogues: shadow meetings at the technical and political levels, group meetings, and committee meetings.

Just as shadow meetings are the main forum for discussing the EP’s mandate ahead of trilogues, they remain important for coordination during the interinstitutional negotiations, both at the technical and political levels. Since all shadow rapporteurs are invited to participate in trilogue meetings, reporting their outcomes in shadow meetings is redundant. Shadow meetings take place at both the technical and political levels and follow a similar sorting logic to that described in Chapter 9:

We also have our shadow meetings alongside the technical meetings where we coordinate and summarize the technical meetings. But it's very rare that there are in-depth discussions, because in technical meetings everything that isn't political has been brushed off. (Interview 1, EP assistant)

While debriefing does not take up much time in shadow meetings, shadow rapporteurs are expected to debrief their own groups about developments in ongoing trilogue negotiations:

There is also often feedback from the trilogue negotiations to the political groups, where they report on where things are, and then you can also have the political dialogue in some internal group meetings about what the status is. (Interview 15, MEP)

Committee meetings, on the other hand, do not play a central role during the trilogue process. Shadow meetings are the preferred forum according to interviewees, perhaps because they are not public. This is similar to the mandating process, where one interviewee noted that 'There will be discussions in the committee about it, but that's all just for the gallery, really' (Interview 36, EP adviser).

Another reason why not much time is spent on debriefing in shadow meetings is that much of this is handled through written feedback notes and at the technical level. One interviewee noted how it was well received by the shadows when a rapporteur's assistant delivered structured feedback from ongoing negotiations, and that this feedback was then discussed with select interest organizations:

His assistant was very good at providing ongoing input from the negotiations, which were very lengthy. There was a whole schedule for when to discuss certain elements of [proposal]. And then we also often looked the other way, for example to stakeholders, organizations and so on, who wanted to know the status of X, Y, and Z in the negotiations. So, it was also very much through our stakeholders that we did spot checks of the content of the negotiations in the trilogue. (Interview 10, EP assistant)

While discussing ongoing legislation with lobbyists is described here as a kind of quality control, the same interviewee notes that they also had informal discussions at the technical level within the party group to settle disagreements which arose during negotiations:

It could also be that after the technical meeting at assistant level, you have to talk to people in [party group] to say 'Well okay [...] Something went wrong here and somebody suggested this and we suggested this, so can we meet in the middle? What do you say to that?' (Interview 10, EP assistant)

Relatedly, one interviewee specifically notes that the collaboration between MEPs' assistants and group advisers is important:

It means a lot to an APA that you have a good relationship with your adviser, because if, like me, you have to run a major negotiation, it's really nice to have someone who is super good at the negotiation part and who knows where the whole group stands ... on specific agendas. (Interview 25, EP assistant)

The reason given here is that the assistant finds group advisers to be more attuned to the preferences of the entire group than she is. This is in line with the notion that advisers represent the party group in addition to assisting the rapporteur. Generally, internal coordination in the EP is handled largely informally and at the technical level wherever possible:

If it's more technical or, or viewed as less political, then it's a question of informal discussion with my counterparts from the different groups to see what we're thinking of doing or, you know... often they're present in the same meeting. So, they've heard the same things we've heard. (Interview 59, EP adviser)

[Y]ou will try to clear as much as you can at APA level really. And there you take both the written but also the oral dialogue. So, you have some meetings and so on, right? You do that at the purely APA level. (Interview 25, EP assistant)

However, there is naturally ongoing coordination with the political level, where 'you check and you get feedback and you feed it back to your rapporteur, or shadow' (Interview 59, EP adviser). This feedback enables the political level to step in and informally coordinate positions and 'pre-cook'.

I did that, I reached out to some of the other shadows and said 'Listen, why don't we, why don't we try to land this? I know you're not really into it, but you have to give me something too, and then I'll give you this' and so on. So, I called them and talked to them bilaterally as well. (Interview 21, MEP and assistant)

However, it also works the other way, enabling shadows to informally 'pull the emergency brake' if they think negotiations are going the wrong way:

So, if there was something where I thought 'This is really critical that they're going down this road', you can just – kind of like an emergency brake – say 'Okay dear colleague, can we have a cup of coffee about this – I'm very worried about such and such'. (Interview 15, MEP)

In both quotes above, the bilateral approach is deemed effective by the interviewees because they enable frank conversations. In the first example, it enables the rapporteur to trade concessions with the shadows while in the second, it enabled the MEP in question to appeal to her 'dear colleague' and explain why she was worried.

Coordination in the Council

Keeping track of the preferences and sensitivities of the other 26 member states while negotiating with the European Parliament is no mean feat, but it is essential if the Presidency is to act as a credible negotiator. As illustrated in

Chapter 7, the institutionalized formats for Council negotiations, briefing, and debriefing with regard to trilogues are Coreper and the Council Working Parties.

[B]efore a political trilogue, in most cases, you would prepare a paper for Coreper... You might have a concrete text proposal for the issues you will discuss in the trilogue, and you ask member states to, to give you a mandate. You inform them what you want to do, they comment, they say what they think about it. And they grant you a mandate on the basis of which you go to the Parliament and negotiate. (Interview 19, Council attaché)

However, as mentioned by the same interviewee earlier in this chapter, there are no secrets in Coreper, and interviewees also reported that other formats are used. Among these are the so-called ‘confessionals’ (cf. Tallberg, 2006), bilateral meetings in which member states take turns meeting with the Presidency supported by the Council Secretariat to confidentially share their ‘red lines’ (Interview 51, Council secretariat). These meetings do not necessarily include all member states but are often by invitation for those who have particularly difficult positions on upcoming issues. Similarly, domestic concerns might dictate that an attaché ‘reads out a very long and principled instruction on the microphone’, and then says to the Presidency, either at the end of the meeting or over a cup of coffee afterwards, that ‘this is my real red line’ (Interview 54, Council secretariat). Getting this information is important to the Presidency for several reasons. First, it enables them to informally ask member states for more flexibility on difficult issues. Second, it makes it easier for them to know (approximately) how far they can go without risking losing the majority in the Council. Third, and relatedly, it enables them to identify which member states they will need to keep informed during the final trilogue, depending on the direction the meeting takes.

Another important feature in the Presidency’s preparation for trilogues is the Council secretariat, as introduced in Chapter 9. Many interviewees (3, 14, 19, 23, 35, 47) highlight how they are essential partners for the Presidency because they provide both administrative resources and process expertise from having worked with previous Presidencies: ‘They give you tricks and... yeah. So, this is on tactics, on strategy, but then content-wise with briefings. So, they’re very, very, very helpful’ (Interview 19, Council attaché). One attaché describes how, in cooperation with the Council secretariat, they would ‘draft a mandate, which is not actually the legal text, where you kind of summarize the open issues, [...] what you propose that it is done in negotiations. And this mandate is quite open. You don’t say everything you will do’ (Interview 35, Council attaché). This indicates that the Council secretariat is a close cooperation partner for the Presidency. As one Secretariat official puts it, ‘the Secretariat is the best friend of the Presidency. And being someone’s best friend

means telling them both good things and not so good things' (Interview 47, Council secretariat). The fact that the Council secretariat features so much more prominently in the interview material than the EP committee secretariats highlights the difference in the level of technocratic expertise negotiators perceive that their secretariats provide to them.

Finally, there is the coordination happening entirely internally to the Presidency. One interviewee mentioned 'working Sundays', where they 'had briefing with our DPR [Deputy Permanent Representative] and the relevant attaché, preparing not just for... also for Coreper, Council, and trilogues' (Interview 14, Council attaché). These are in addition to the briefings ahead of trilogues introduced in Chapter 9.

Summary of Internal Coordination

This section has demonstrated that considerable energy is spent by negotiators between trilogue meetings to keep their own houses in order by explaining where negotiations are going and asking for more flexibility to be applied in the upcoming trilogue. For the Commission, the GRI is the most important forum for coordination; in the EP, shadow meetings are used extensively at both the technical and political levels; and in the Council, most coordination is centred around Coreper and the working parties. However, the interviews also reveal that much happens between *these* meetings to make sure positions are adequately pre-cooked. Tellingly, one interviewee follows up a description of a successful trilogue negotiation with this assessment: 'But what was difficult, I would say, was our internal negotiation ahead of that' (Interview 11, COM cabinet).

11.3 Types of Informal Interinstitutional Meetings

While the previous section has demonstrated that it is an important and often complicated task for relais actors to keep their own institutions informed about the negotiation process and to convince them to provide more flexibility, interviewees often highlight that the primary informal work lies in inter-institutional relations. This section explores the different meeting formats, more or less institutionalized, which take place between trilogue meetings, as well as how they contribute to pre-cooking and trust-building. In doing so, it demonstrates both the challenges in delineating what constitutes a 'trilogue' (cf. Roederer-Rynning & Greenwood, 2015) and that it is useful to have a more fine-grained approach to categorizing different types of informal meetings. First, the interinstitutional technical meetings described in Chapter 9 are revisited, followed by a description of how the margins of meetings are used as an important negotiation space. This is followed by an introduction of the so-

called drafting sessions in which a restricted number of participants work to produce concrete text for compromise proposals. Finally, various ‘completely informal’ bi- and trilateral formats are described.

Interinstitutional Technical Meetings

Interinstitutional technical meetings (ITMs) were identified in Chapter 9 as the main format for trilogue negotiations at the technical level, and it was found that in many cases every article is discussed at the technical level before being brought up in a political trilogue. As with many things which happen in the context of trilogues, ITMs are informal in the sense that they are not foreseen in the treaties. In practice, they are also viewed by participants as slightly less formal than political trilogues, as there are fewer participants (particularly high-level ones), they are less ‘scripted’, and they can be arranged more flexibly. However, some interviewees find that the ITMs are also ‘formalized’ to some extent and that various formats are in use which might constitute a ‘technical meeting’:

The ITM is probably the most formalized version of it. The three institutions sit together in an interinstitutional technical meeting. But of course ... there are other meetings as well to prepare a trilogue. You would have informal ITMs, you would have drafting sessions in smaller circles, depending on... the situation in the negotiating team in Parliament, for example... So, we’ve struggled a little bit with the limitation what should we count a technical meeting? (Interview 9, Council attaché)

Though the ITMs are viewed as less formal than trilogues, it is a common impression among interviewees that these, like the trilogues themselves, are also prepared to some extent, and that informal contacts are an essential part of this preparation. One interviewee notes how it helps him anticipate contentious issues and take the necessary steps in internal Council negotiations to accommodate this:

Technical meetings should be prepared to a certain extent. While you’re in the technical meeting, you understand the red lines of the Parliament, more or less. So, at the same time, you should be cautious and... understand whether you can still negotiate on the basis of the position, the General Approach, or you already have to ask member states to give you some more flexibility, so that you can ... negotiate better and more efficiently. (Interview 19, Council attaché)

The importance of preparation, both in ITMs and more informally, was illustrated quite well by a Commission official who described a recent trilogue process in which the second trilogue meeting had been unsuccessful. When I asked why, he explained that they had realized that the amount of time spent in ITMs had been insufficient, and that both institutions had been too

inflexible. As a result, they moved from ‘one full day and one half-day meeting per week to full-day meetings almost every day’ (Interview 48, COM official). This had been quite intense, but none of the institutions was willing to take the blame for not finishing by virtue of refusing to schedule additional ITMs. Additionally, he noted that ‘everybody realized they had to be more willing to compromise, and the EP in particular was willing to drop some of their many amendment proposals and show much more flexibility and willingness to speed up the process’ (Interview 48, COM official). The various formats for discussions *between* the institutions outside of ITMs and trilogues are elaborated in the following.

Margin of Meetings

In line with the discussion about *perceived* formality of both ITMs and political trilogues, several interviewees (2, 19, 23, 32, 56, 59) highlight the importance of negotiating in the margins of these meetings – that is, coming into or going out of a meeting, as well as during breaks (as described in the previous chapter). One interviewee affirms the importance of this practice by merely stating that ‘I think the key to a successful informal trilogue is the all the informal communication in the margins and informal negotiations’ (Interview 19, Council attaché). Other interviewees (2, 23) reflect on the Covid-19 closures, noting that they removed the possibility of meeting in the margins: ‘We couldn’t talk to anyone in cafeterias and corridors, and the margins of the plenaries, suddenly the flows of information were almost completely cut’ (Interview 2, COM Secretariat-General). Exchanging remarks in the margins of meetings allows for the clarification of points made during the meeting, but more importantly it allows negotiators to informally provide some context to explain what went wrong if a meeting is unsuccessful:

And if they then come to us, even after the meeting, we can say, ‘Well, it didn’t look very easy today, but do you think ... that there are possibilities? Is there any particular member states which you see may have an issue with it?’ You can have that kind of conversations too. (Interview 56, COM official).

Because the meeting is over, and the exchange is now bilateral, there is more room for open discussions on the way forward. Another interviewee adds that these exchanges happen fluidly: ‘We just speak with our colleagues and exchange on what may or may not be done in certain files and certain points. But often done in an informal way just to understand what may or may not be possible’ (Interview 59, EP adviser). However, these brief exchanges are complemented by lengthier bi- and trilateral meetings, as explored in the following.

Bi- and trilaterals

At the very informal end of the meeting spectrum are bi- and trilateral meetings in various constellations. These will often include at least one representative of a relais actor's team; the rapporteur, the Coreper ambassador, the Commissioner, or employees representing them. I call them 'very informal' for two primary reasons. First, these meetings do not have an 'institutionalized' name. Second, there are no rules governing who can participate, or where the meetings can take place. Often, it is inside one of the institutions, but the numerous cafés in the vicinity of the EU institutions are notoriously crowded with people wearing Council, Commission, and EP access cards on lanyards around their necks. Such bilateral meetings may be initiated if one institution is worried about how negotiations are developing:

Fortunately, the Parliament is very transparent, so we can always follow [...]. So, if we think something is going in a worrying direction then we simply set up informal meetings along the way with the relevant ... rapporteurs. (Interview 53, COM cabinet)

There is politics in any invitation, according to one interviewee working in an EP committee secretariat. He told me that he always counsels his rapporteurs to insist that bilateral meetings should be held on EP premises. He explains the logic: if the meeting is about demonstrating power, the rapporteur will already have lost by going, and if it is about substance, the Commissioner will come (Interview 43, EP secretariat). In a similarly Commission-critical vein, one EP interviewee explains how meeting informally, just her and the Presidency, was essential for reaching a deal:

When you meet one-on-one or two-and-two, right, then it's a bit more... I can say, 'Okay, so where we really need something, that's articles this and this'. We've also had a meeting where we only talked about one topic. And that was to have more time to really explain our position. More time than we probably would have had in a technical meeting ... And of course the Commission is not present. This [the Commission being present] is also sometimes a bit challenging for the conversation. (Interview 18, EP assistant)

First, the interviewee notes that the absence of both the other political groups and the Commission enables her to be frank about which issues are important and which can be traded in a package deal. This indicates both that monitoring of the rapporteur affects negotiation behavior and that the Commission is not (only) viewed as a neutral broker. Second, it allows a more thorough exchange of arguments for the negotiators' respective positions, according to the interviewee. This exchange helps the negotiators when they have to present the pre-cooked agreement to their own institutions. Even though another

interviewee indicates that it is possible to be more frank in bilateral meetings, it does not make her a completely free agent:

I've met with the other assistants, so it kind of also gives me a mandate, 'next time you meet the Presidency, these are the things you can put on the table', informally of course. It hasn't been approved by the political level yet, so it's with some reservations, but I can give them a hint of where ... where we're going. (Interview 24, EP assistant)

Here, the interviewee directly balances formality and informality. On one hand she indicates that she has 'kind of' a mandate from the political groups while acknowledging that it has not been approved – formally or informally – at the political level. These interactions require a trust between the negotiators that each has judged the political situation of their principals correctly. Interviewees highlight both the personality of the individual negotiators (e.g. Interviews 7, 40, 61) as well as trust in the professional pride of their counterparts (Interview 16, EP assistant), as it is generally viewed as a failure to renege on something that has been informally agreed upon. As mentioned earlier in this chapter, moving discussions into more informal and restricted formats is also a way to avoid leaks. When asked what to do in order to keep something secret, at least for a while, one interviewee replied: 'You say it informally, you say it off the record, you work with member states informally. You don't put it on paper' (Interview 19, Council attaché). Having fewer people hear a proposal limits the number of people who need to be trusted, but it does still require that a sufficient level of trust exists between the negotiators, whether it is at the technical or political level.

Finally, 'homework' can be assigned to one or more actors when negotiations reach an impasse. For instance, the Commission (or in some instances, the EP or Council secretariat) can be tasked with drafting new wording for a specific article ahead of the next meeting to bridge the gap between the positions of the co-legislators (Interview 48, COM official). The other prevalent type of homework can spring from both intra- and interinstitutional meetings and occurs when there is a disagreement between two actors from the same institution. In these cases, they may be asked directly to have a separate bilateral meeting to try to work out a compromise and then report back before the next meeting (Interview 32, EP adviser).

Drafting Sessions

Outside of the ITMs themselves, the most institutionalized format for pre-cooking compromises for an upcoming meeting is the so-called drafting sessions mentioned by several interviewees (9, 26, 37, 49, 55, 56) and alluded to without being named explicitly by many others. These drafting sessions are in

principle no different from ‘regular’ bi- or trilateral meetings but deserve specific mention because they are brought up so regularly, and because they seem to be specifically focused on producing draft compromises on particular provisions identified in advance. This could, for example, centre on issues sent down from the political level as identified in Chapter 9.

These drafting sessions vary in terms of participation. In one example, the Council was drafting, and the Commission was present to suggest ‘some possible concrete drafting, but also... warning that there was no possibility to make any significant change, because of course the Parliament would not accept it’ (Interview 37, COM official). Thus, the EP was left out, which is different from the scenario presented above in which an interviewee found that leaving out the Commission made it easier to discuss between the co-legislators. None of the interviewees refer to drafting meetings between just the Commission and the EP, though one does mention that the Commission helps with drafting:

[W]e always say, ‘That’s a proposal from the rapporteur, agreed with the Council and the Commission’. The Commission helps to draft [...] and there I’m saying ‘OK colleagues, we have just met with the Council, and just about two days ago, we sent a drafting proposal for Article 2. Let’s discuss.’ (Interview 40, EP adviser)

There is a subtle difference between the two scenarios: in the first, introduced in Interview 37, the Commission helps the Council draft compromises which may then be discussed with the EP, while in the second (Interview 40), all three institutions have discussed the draft before it is taken back to the EP for discussion. The same adviser noted that she ‘spoke a lot with the Commission officers that drafted the legislation’ because it provided her with ‘ideas on how to go through the negotiation and to draft new proposals for the politicians’ (Interview 40, EP adviser). This indicates that in her case the speaking and the drafting were two separate occasions. It cannot of course be categorically ruled out that drafting sessions between the rapporteur’s team and the Commission happen; they just do not figure in my data. Recall that the Commission must maintain a balance to avoid being viewed as partisan:

We in the Commission, we are always ... I mean, I believe that we are engaging with both parties equally. And we are very often blamed by each of the parties telling us, ‘Oh you are siding more with Parliament’, or ‘You are siding more with Council’. (Interview 11, COM cabinet)

Drafting sessions are viewed as an integral part of the negotiation process. One interviewee noted that in a recent case he had been working on, the ITMs had mostly been for show ‘since draft compromises had for most, if not all issues been reached in informal drafting sessions’ (Interview 55, COM official). His impression was that these sessions had been very open in terms of discussing

the red lines of the different political groups and member states. However, it is worth noting that there are some differences in how they were reported: the interviewee noted that they were reported to the relevant Council working party, but he did not know whether the other political groups in the EP were aware of these sessions. However, he mentioned that they were never explicitly referenced during ITMs.

Finally, it is important to emphasize that the term ‘drafting session’ was also used by some interviewees as a somewhat broader term than that introduced above. One interviewee refers to drafting sessions also happening during meetings when technical actors (mainly from the Commission) go into a separate room to draft a compromise while a different agenda point is being discussed. Furthermore, two interviewees (37, 49) note that drafting sessions are also used to flesh out the concrete wording of political agreements made in trilogues, as these will occasionally just be oral agreements (Interview 49, Council secretariat). The use of technical meetings after agreement is elaborated in Chapter 13.

11.4 Summary

This chapter has examined the purposes and practices of informal contacts which take place both within and across institutions between trilogue meetings. It was demonstrated that informal contacts are used to ‘pre-cook’ compromises which are then presented and agreed at the next trilogue meeting, sometimes smoothly, other times with some discussion. Second, it was found that these meetings also serve to build trust between the negotiators representing the three institutions, primarily at the technical level but also to some extent at the political level. This trust facilitates sharing of confidential information between negotiators, which in turn facilitates the crafting of compromises that are likely to be approved by both the EP and the Council. Similarly, interviewees emphasized the importance of being able to trust that their counterparts had their houses in order and would be able to ‘do what it takes’ to make a pre-cooked agreement work.

The second part of the chapter examined the informal practices used both within each institution and between institutions to brief and debrief from meetings and to pre-cook deals. It was found that different institutionalized formats play important roles in both intra- and interinstitutional negotiations, such as the shadow meetings in the EP, Coreper and working parties in the Council, the GRI framework in the Commission, and the interinstitutional technical meetings (ITMs). However, interviewees also noted that various bi- and trilateral fora were essential because they allowed for more frank discussions. Trilateral meetings between the rapporteur’s team, the Presidency, and the Commission are commonplace, and in these meetings, there are quite

open discussions about red lines, different options for 'landing zones', and the potential trading of concessions. A subset of these is the so-called 'drafting sessions' which take place both during the trilogue process and after a political agreement has been made. Here, the above-mentioned representatives (all three or any combination of two) meet to draft the concrete wording for a compromise proposal.

Chapter 12. The Final Trilogue

The last trilogue we had, it was from Friday evening till Sunday morning. No kidding. (interview 14, Council attaché)

In contemporary EU legislative politics, reaching a compromise in trilogues is arguably the most important milestone in the entire process. Even though trilogues are informal and all agreements reached in them are provisional pending adoption by the co-legislators, in the vast majority of cases adoption is mostly a formality. Indeed, the entire point of having trilogues is to enable a first-reading agreement by negotiating a compromise ahead of time, as was introduced in Chapter 2, and as described in previous studies (e.g. Brandsma, 2015; Rasmussen & Reh, 2013). These final trilogues have become almost mythical in Brussels, both because they are often the *de facto* conclusion of the legislative process and because the meetings are open-ended, frequently going on into the small hours of the morning. This gives them an air of mystique; one can imagine the exhausted negotiators battling out their differences in a war of attrition with last-minute drafting and horse-trading to get across the finish line. However, such images only spring to life because of the very opacity of these meetings, and they also have their critics, who argue that fatigue and opacity harm both the quality and legitimacy of compromises made in trilogues (e.g. Brandsma, 2019; Curtin & Leino, 2017; Rosén & Stie, 2022).

This chapter sheds light on these open-ended trilogues in four parts. First, it presents and analyses the interviewees' reflections about how they know that the next trilogue is likely to be the last and should thus be scheduled as open-ended. This section also briefly revisits the findings of previous chapters, particularly Chapter 11, to describe how the different steps in the trilogue process all come to an inflection point ahead of the open-ended trilogue. This includes a brief discussion of how 'pre-cooking' is also used ahead of the last trilogue, though this does not guarantee that the meeting itself is mostly for show or that reaching a provisional agreement will be easy or fast. Second, the different steps in open-ended trilogues are examined, particularly focusing on how they differ from a 'normal' trilogue and why they are so lengthy, often lasting all night. Interviewees highlight that there are more iterations of breaks and plenaries because both disagreements and surprises must be dealt with on the spot, and that this often leads to (frustratingly) long meetings. Third, the chapter explores how the mood changes in the room when a deal is within reach as well as the mix of relief and fatigue felt by participants once a provisional agreement has been made. Fourth and finally, the chapter offers

some critical perspectives on the use of these open-ended trilogues as presented by the interviewees, and the findings of the chapter are summarized.

12.1 Knowing When a Trilogue is (Probably) the Last

Once scheduled, it is fairly easy for participants to tell whether an agreement is foreseen: the agenda will indicate that the meeting is ‘open-ended’, meaning that the goal is to reach a provisional agreement, even if the meeting should last all night. However, it is not immediately clear how participants decide that a particular meeting should be the one in which they go for a deal. This section explores just that, drawing both on interviewees’ answers when asked this question directly and the insights from previous chapters. The first prerequisite for reaching a full agreement in a trilogue is that most articles have been ‘provisionally closed’ and coloured green in the four-column document (as identified in Chapter 9):

But it can be very easy, because if in the technical meetings you see that a lot of stuff is green and the orange things are not really fundamental, because you know the positions of the co-legislators. But still there is a little bit of haggling, you know, get a bit more, get a bit less, get a pet-point for me that is really important. (Interview 28, COM cabinet)

The quote above illustrates two important points. First, a few points are left for the political level, as identified in Chapter 9. Second, there is a ‘bit of haggling’ which takes place, indicating that the co-legislators trade concessions on the remaining points.

A Few Points Left

Even though most articles should be provisionally closed, there will often be several issues left open ahead of the last trilogue. These are often the most politically sensitive topics, and they are left open for two primary reasons: first, by virtue of being politically sensitive, any movement to bridge the gap between positions would need to happen at the political level.

So, it needs to be issues where really the previous discussions have shown that you have a significant difference, which you cannot bridge by endlessly talking at the technical level about it, where it's clear that an institution has to make a step – a significant step away from its original position. (Interview 60, EP secretariat)

Another interviewee shares a similar reflection, arguing that parties should try to close as much as possible before the meeting:

You prepare the agenda the week before and you know how many points are still open. And you ensure that, let's say, the real technical ones, even if they have been red, you still try to find a solution before the political trilogue. And to keep

always under the 10 points ... You will have more if it's really needed but you always try to keep it at best at 10 ... It depends on the size of the file. (Interview 55, COM official)

It is also important to note even the issues which are left open should be prepared at the technical level, and that the number of open issues depends on the size of the file. The second consideration for keeping several issues open is that this enables packaged deals by trading. Among these are often the 'numbers and deadlines' identified in Chapter 9 as good bargaining chips. One interviewee noted that issues for which technical-level discussions had not yielded a common position could also be used as bargaining chips: 'OK, we keep this item in exchange for other things that they want. Then you started doing the trading list' (Interview 27, two EP advisers). Another interviewee notes that leaving some points open for trading is also a strategic consideration:

This each team needs to identify on their own, and you will typically have a list of points where you say this is really important, and this is a bargaining chip. If you make it very smart, in the Council in the Parliament, when you write your opinion, your position, you foresee a few points that you can give up. But this is already very tactical, but ideally you do that, so you say, OK, this I can let go – at a very high price. (Interview 28, COM cabinet)

This speaks to the negotiator's dilemma (Lax & Sebenius, 1986b) introduced in Chapter 4, in which negotiators must balance showing their true preference, maximizing the chance of a compromise while risking exploitation by the other parties, with playing strategically, maximizing their own gains but risking negotiation breakdown. How do players know which of the positions left open are genuine concerns of their counterpart, and which are just 'bargaining chips'? And how can the negotiators adopt a cooperative negotiation strategy without risking the other two institutions exploiting it? This will be explored below in the section on *iterations*.

Differences are Manageable

While there should be at least a few open points to facilitate a package deal, several interviewees note that it is an important consideration that there should be agreement between the participants that their positions are not far apart, or at least close enough for compromise to be realistic. One interviewee summarizes this along two dimensions: 'There's a dimension of quality, which are the sort of key critical, difficult points. And there's an issue of quantity: it cannot be like too many, because then it's not manageable' (Interview 60, EP adviser). These two dimensions to some extent interact: however, many difficult points there are, the number of open points needs to be brought to a

manageable level. This hinges, of course, on the progress of the work at the technical level but is also to some degree socially constructed. One interviewee describes how the *ambition* to conclude a file is agreed between the co-legislators before scheduling an open-ended trilogue:

You only call a trilogue open-ended if the aim is to close the file ... And that, you decide in advance together, Council and Parliament: 'This will be an open-ended trilogue. The ambition is to close it.' So that is sort of a priori. It's not decided that you *will* close it, but there is an agreement that we will *try* to close it, and therefore we call it open-ended. (Interview 9, two Council attachés)

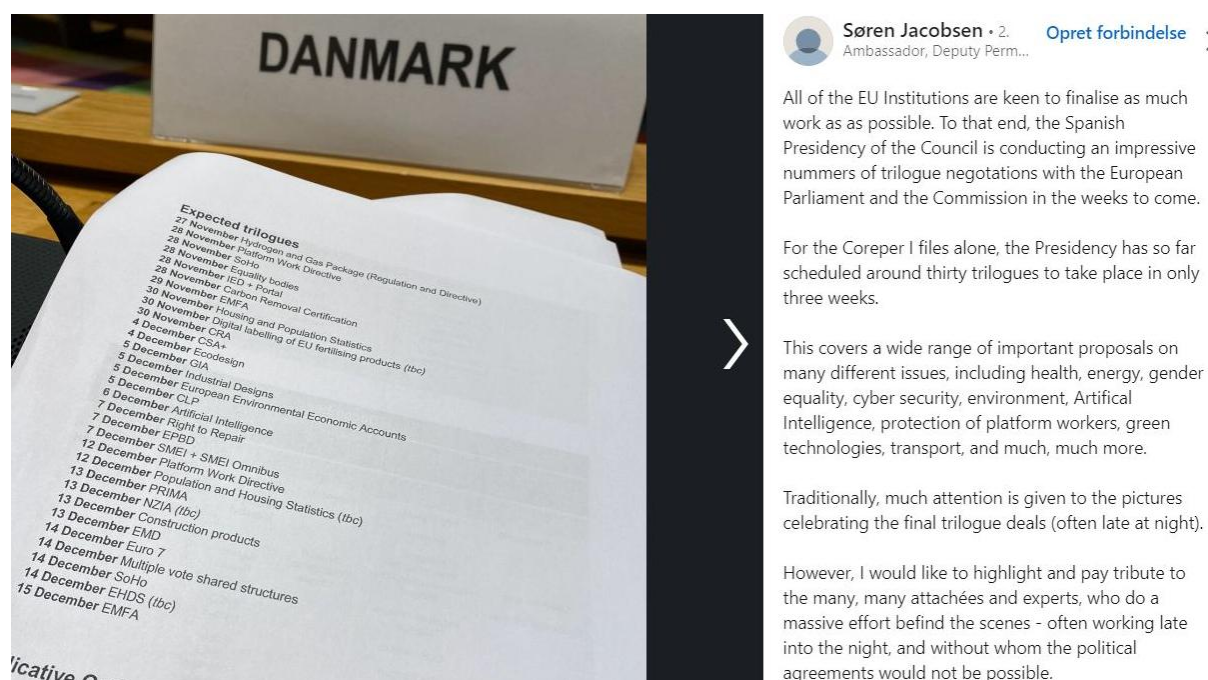
The fact that the Council and the EP take the decision to schedule an open-ended trilogue thus indicates that there must be a common belief that a deal is within reach. This belief can stem from the proportion of articles provisionally closed, reports from the technical level about progress on the remaining issues, and negotiators' calculations about their own and their counterparts' willingness to compromise.

In addition to aligning expectations, the agreement to *try* to reach an agreement also adds time pressure (as identified in Chapter 7) on the negotiators, at both the political and technical levels. At the technical level, the knowledge that an open-ended trilogue is foreseen also indicates that a deadline for provisionally closing non-controversial articles and preparing compromises on the remaining issues is foreseen. At the political level, there is the same pressure to prepare compromise proposals, and this pressure carries on into the meeting itself:

You need to align expectations before the meeting, because otherwise it's a waste of time ... so normally, without this being written anywhere, every institution knows this is a final trilogue. Or this is not a final trilogue. So, when you schedule a final trilogue with an open-ended ending hour, you create pressure. And it's generally a very good tool to say you close your file, because basically it's a promise of all people involved. It's a promise to the others, 'I stay here until we have a deal'. And of course, that's pressure. (Interview 60, EP secretariat)

Time pressure may also come from the outside. Interest groups and citizens may be eager to get certainty on the final shape of legislation which will affect their lives and businesses. However, it may also come from the relais actors themselves, either because they want to 'score a win' by making an agreement before their term ends, or because there are other tasks, perhaps even other trilogues, waiting. The picture below shows a quite intensive trilogue schedule for the end of the Spanish Presidency posted by the Danish Deputy Permanent Representative (DPR) on LinkedIn:

Figure 12.1: Trilogue Schedule, LinkedIn



Note: The text reproduced here shows only part of the [full post](#).

Apart from the gruelling number of trilogues, this also demonstrates that the other ambassadors are informed well in advance of foreseen trilogue meetings, even if they are still to be confirmed. Additionally, it is worth noting what the ambassador writes in the post. First, he writes that ‘all the EU institutions are keen to finalise as much work as possible’, directly indicating that they are working under time pressure. Second, the statement that ‘much attention is given to the pictures celebrating the final trilogue deals (often late at night)’ acknowledges that there are some reputational considerations involved in getting deals done. However, and interestingly, he adds a tribute to the ‘attachés and experts who do a massive effort behind the scenes’. Taken together, the elements of the post demonstrate that time pressure is particularly high at the end of a legislative cycle, and that it affects both the technical and the political levels.

Interviewees thus point to several factors which are used as indicators of when the final trilogue should be scheduled. However, some also point out that a trilogue process follows a certain logic, and that they ‘have to’ go through several steps before a compromise can be made (Interview 35, Council attaché). Here, one interviewee expresses dismay that a second trilogue had been a ‘disaster’, and was subsequently comforted by her boss, the ambassador:

But there was this general notion of my DPR that second trilogues are always like that, and that I shouldn't be discouraged [laughing]. So, it seems that, you know, there [laughing], it's kind of, you know, negotiation logic, that you, at the second

trilogue, it seems that you put your cards on the table, you see where you are, and it's always a disaster. (Interview 35, Council attaché)

Here, the referral to a 'negotiation logic' and that 'you put your cards on the table' in the second trilogue indicates that the process is to some extent ritualized. Negotiators must gradually approach each other over the course of the negotiation process, including in the run-up to the final trilogue.

Pre-cooking

The previous chapter found that 'pre-cooking' compromises is an important part of preparation for trilogue meetings. This was found to be the case both in terms of preparing the substance of the meeting (what could a compromise look like) and the approach to the meeting (what should be presented when and by whom). This leads to the impression that trilogue meetings are largely pre-cooked, and that if one is well prepared, it will play out as planned. Indeed, some interviewees indicate that even the last meeting is mostly a show since, ideally, everything has been agreed informally beforehand. Here, one interviewee describes how pre-cooking had saved an open-ended trilogue she had otherwise been worried would end without agreement because the ambassador was overworked and extremely tired:

But you see, it doesn't matter. I would say at the end of the day the, the concrete meeting doesn't matter. It matters so much what happens around the meeting. [...] That meeting itself is just... show off. What happens around, all these... informal discussions. Those are the ones that count. (Interview 35, Council attaché)

Despite the prevalence of this observation among the interviewees, it is an equally widespread observation that the meetings last for hours and hours, so clearly pre-cooking does not get one all the way. Part of the explanation for this may be that the remaining issues are considered 'high-level political', meaning that pre-cooking at the technical level is less effective in the final stages:

You do this several times, but in the last political trilogue, you can go from a trilogue to a trilogue without doing this [points at technical level in the PowerPoint presentation he has brought]. You can go from a trilogue to Coreper and then come back to a trilogue. You don't – because it's high-level political things – you don't need technical meetings; you're not going to draw anything else from those. (Interview 23, Council attaché)

Thus, the interviewee indicates that in the run-up to the final trilogue, the technical level has made as much progress as they can without involving the political level.

12.2 The Final Trilogue

The basic setup of going between plenary and breaks is the same in an open-ended trilogue as in an ordinary one. However, since the goal of an open-ended trilogue is to finalize all points, the option to postpone points falls away, and often it will be the most sensitive or controversial issues that are left. This section examines the different steps of an ‘open-ended’ trilogue, from the first exchange of pleasantries to the final compromise, particularly focusing on how interviewees describe them as different from other meetings, both in how they are conducted and how they are experienced.

There is no doubt among interviewees that open-ended trilogues are qualitatively different from other meetings. The quote below is an illustrative answer given by an interviewee when I asked him why the last trilogues are often so long:

Interview Excerpt 12.1: Why so Long?

Yeah well, one, it's a little bit of tradition [laughing]. It doesn't happen on all files. It happens on files where differences are very, very important differences, where there are delicate, controversial questions, politically sensitive questions, and when you have positions very far apart. So, it's just ... it takes ages to move. [...] For example, if you have figures, if you have to agree about a date, and you have... the Council has 2030 and the Parliament has 2040, you know that you will come to 2035, but it still takes ages to get there. Because it's just the process. Because you have to understand that this is a big machine [laughing]. It's so many, especially on the side of the Parliament, but also on the Council. The Parliament has to get so many different actors and political groups behind that it just takes time. So, the people are on the phone and, you know, then the Commission is trying to see what they can do, trying to be innovative and trying to ‘green’ a text and trying to come up with creative wordings, and it just takes time. And why don't you stop and go into another trilogue? Because it might be the last trilogue for the Presidency because then the Presidency will be over. And there is a momentum [laughing] which they don't want to miss. So, then there is this pressure of the end of the Presidency. That's, that's often ... that's often an element that, that really makes things last... very long. (Interview 19, Council attaché)

Here, several things are at play: first, the interviewee mentions (immediately) that the long meetings are somewhat of a tradition, indicating that there is more at play than the more ‘rational’ explanations he presents afterwards. Second, he argues that bargaining takes time, even in cases where the outcome is predictable – parties don't just go directly to splitting the difference. This is explicitly ascribed to the fact that there are many actors involved, and the differences are sensitive. Holding on to a position can be a bargaining tactic (Lax & Sebenius, 1986b), and it can also be seen as a display of mastering the diplomatic practice of ‘holding a bracket’, an ability Neumann (2005: 84) finds

that diplomats take pride in. Third, the Commission ‘trying to come up with creative wordings’ is seen as a source of both potential solutions and delays. Fourth, postponing is not an (attractive) option if the trilogue takes place at the end of a Presidency, or indeed at the end of a legislative cycle. Fifth and finally, the interviewee notes that the negotiations gain ‘momentum’, meaning that once negotiations start moving, they are more likely to keep moving. Each of these potential explanations will be explored throughout the chapter.

The open-ended trilogues also differ with regard to participation, as often there will be higher-level participation in a final trilogue. As identified in Chapter 7, the Commissioner is usually present at the first and last trilogue only (Interviews 15, 45, 54). Often, the Coreper ambassador or a high-ranking civil servant heads the Council delegation, but in some instances a minister will represent the Presidency. This is perceived as a good signal:

There were quite a lot of breakout meetings, so Parliament would... assess things internally. They would come back. They would present some things. There were ongoing contacts between the, the rapporteur and the DPR. The minister was there, and his presence was very important because MEPs are politicians, and the minister is a politician. (Interview 23, Council attaché)

Here, it is important to note that hierarchical levels between the institutions do not always translate completely, as identified in Chapter 7. However, it is also worth noting that a minister representing the Presidency is far from common, and that it will most often be either the relevant Coreper ambassador or a high-level civil servant. As such, ‘pulling rank’ may be seen as a way for the Presidency to indicate that a file is highly prioritized.

The First ‘Plenary’

The first step in any meeting is for the delegations to enter the room. The delegation of the institution hosting the meeting will likely already be there since the trilogue is usually preceded by a prep meeting. The meetings I observed were all hosted on EP premises, and in all three cases the Council and Commission delegations arrived within a few minutes of each other. They would then go to their seats, indicated by a name sign for the relais actors, and set up. Then, the relais actors would make a point of greeting each other and the Committee Chair, while other members of the delegations simply entered the room and sat down, perhaps making some small talk within their own delegation. Once the handshakes had taken place, the meeting would start with introductory remarks and the adoption of the agenda, as exemplified below:

Field Note Excerpt 12.1: Starting an Open-Ended Trilogue

The trilogue takes place in a small, rectangular room with grey walls. The EP and Council delegations sit opposite one another with the Council closest to the door, and the Commission sits at the end of the table. The participants have all taken their seats, and the meeting begins. First, the Committee Chair welcomes the delegations and introduces the Presidency representative. She then adds that ‘there will only be interpretation until midnight. I hope this can be an incentive’, which the participants laugh at. One rapporteur asks to add one point to the agenda, which is agreed. The Chair continues that she would ‘invite all to be constructive to find a landing zone’ and then gives the floor to the Presidency for opening remarks.

The Presidency representative starts by thanking the other institutions and adds that ‘it is our firm intention to have a conclusive trilogue, as we believe all the necessary components for an agreement are there’. He then thanks the technical teams and adds that failing to adopt this file in this legislative cycle would be a missed opportunity.

Then the Commissioner, sitting in front of an EU flag and an embossed EP logo on the wall, takes the floor and starts by saying, ‘You have made good progress without me in the room. I hope my presence doesn’t disturb you’, at which everybody laughs. She also thanks the technical teams and then adds: ‘I am confident we can deliver tonight. We’re all ready with our sleeves rolled up to achieve success.’

Finally, the two rapporteurs take the floor. The first: ‘I have nothing to add, I hope we are ready to conclude. Let’s finish before the interpreters go home.’ The other adds that ‘We are coming to the end’ before thanking the technical team and, addressing the Presidency: ‘We hope you find that our proposal is acceptable’. The Chair then suggests starting with the agenda, saying: ‘Let’s get the political issues on the table!’

Three things are particularly worth noticing in this excerpt: first, all five speakers reaffirm the aim to conclude negotiations at this meeting, the Commissioner even making a joke about her own presence. They express a need to be ‘constructive’, a ‘firm intention’ to conclude, the belief that they can ‘deliver tonight’, and that negotiations are ‘coming to an end’, all statements which build up expectations. Second, three of the four relais actors thank the technical teams for their work in preparing the meeting, indicating that they acknowledge the importance of their work. Third, two of the five participants make a joke as part of their opening remarks, which reflects that there is generally a positive atmosphere in the room.

Trading

Linking issues to achieve a balanced compromise is a well-known negotiation tactic, and previous studies have documented its prevalence in EU legislative politics (e.g. Conceição-Heldt, 2008; Farrell & Héritier, 2004; Kirpsza, 2023). Both interviews and observations in this study demonstrate that package deals are widely used and constitute an important strategy for reaching political

compromises. Almost half of the interviewees (30 of 62) mention *trading* issues as an important bargaining tool. As one interviewee explains:

The way we close the deal is via a package deal. So, the closing trilogue is all about one package. You're really exchanging things, so, okay I will give you this and you will give me this. But we don't have a deal until we have a deal on all of the points. So, this is all just preliminary deals. You have like eight preliminary deals during the trilogue, but you still need to wait for the most important, crucial thing, to have those previous deals. Nothing is agreed until everything is agreed, that's the way. (Interview 14, Council attaché)

The adage that 'nothing is agreed until everything is agreed' is brought up by interviewees from all three institutions (Interviews 14, 23, 28, 32), and the above quote illustrates the importance the interviewee ascribes to trading, as the final trilogue is *all about* trading, and it is *the* way to make deals. Trading is made less straightforward, though, by the fact that negotiators will sometimes 'put something into your compromise that you know won't survive in trilogue negotiations, but because then we know we have it to give up' (Interview 17, EP assistant). Thus, negotiators must also gauge which positions reflect true compromises and which are 'bargaining chips' (Interview 28, COM cabinet). Bundling of issues during negotiations does not necessarily follow a logical connection between the issues in terms of policy implications, but can sometimes be attributed directly to potential trades:

Field Note Excerpt 12.2: Trilogue, Package Deal

The Commission has just offered to work on the wording of an article to accommodate an EP concern while the next points are being discussed. The Committee Chair agrees and moves on to the next point, first giving the floor to one of the rapporteurs. The rapporteur mentions a concern with a specific point, announces that they are willing to show flexibility on another issue, and then asks: 'Can we address these two issues together?'

While the issue in the example ended up being postponed to later in the meeting because of a disagreement about the interpretation of an article, it highlights that the rapporteur tries to link two articles by offering flexibility on one issue before asking for concessions in another. This was done in the full trilogue room, i.e., under monitoring by the other political groups.

Breakout Rooms

When it comes to the overnight trilogue ... So, discussions were taking place between, between the institutions, but I think what took the longest was actually when we took breaks. (Interview 62, Council secretariat)

Another reason for the length of these meetings is the widespread use of breaks to have discussions both ‘behind the table’ within each institution and ‘across the table’ with the relais actors meeting separately to flesh out a compromise. These dynamics were described in Chapter 10, where it was also noted that breaks are a particularly widespread tool in open-ended trilogues. This section revisits the findings on breaks, focusing on how they are used differently in an open-ended trilogue.

You Cannot Postpone Anymore

In Chapter 9 it was found that thorny issues are often postponed to a subsequent trilogue to allow for further work to be done, primarily at the technical level, both within each institution (finding more flexibility) and across institutions (making new drafts). This was put concisely by an MEP when I asked her what they would do if negotiations were going in the wrong direction: ‘Can we come back to this in the next trilogue? That would typically be what you do’ (Interview 15, MEP). Since an open-ended trilogue is supposed to end with an agreement on all points, however, postponing is no longer an option. One interviewee describes this difference between intermediate trilogues and the final one as follows:

On this sort of second and third [trilogue], you probably try to rubberstamp agreements made in the technical meetings, which are less controversial. And then the last trilogue is where you ... finalize the deal. And that is often open-ended, meaning that that is where you probably need to do movement for real, and then you need to communicate, I mean if you change your mandate. (Interview 7, two Council attachés)

As postponing is no longer an option, and as the negotiators ‘need to do movement for real’, they now directly face the negotiator’s dilemma (Lax & Sebenius, 1986b) mentioned earlier in this chapter. Since negotiators have a strategic incentive to withhold their true preferences, compromises proposed by the other side may not be acceptable to their constituents on the first try. It may thus require several iterations for them to be convinced that the deal at hand is the best they are likely to get.

Iterations

Since it is no longer a viable option to postpone issues to a later meeting in an open-ended trilogue, negotiators must exchange concessions on the spot. Since all parties are faced with the negotiator’s dilemma (cf. above) and since they are all negotiating on behalf of non-unified principals,³⁴ reaching a

³⁴ The political groups in the EP, the member states in the Council, and the different DGs/Commissioners in the Commission. This was explored in Chapter 7

compromise is rarely just a question of putting all your cards on the table and seeing what overlaps. In the words of one MEP: ‘We never play with completely open cards [laughs]’ (Interview 15, MEP). Additionally, as there are usually several different issues on the table, there are many potential ways a package deal may be structured, and each potential package will be attractive to different parts of each negotiator’s constituency. One interviewee describes how playing with open cards too early can be detrimental:

[I]t’s very much a question of identifying what we prioritize, and tactically, you could say that Parliament has also been a learning process, because if you put all your points on the table at the very first meeting, it might be difficult – ‘Well, you want 800 things’ – then the negotiating position becomes difficult. (Interview 1, EP assistant)

While the above quote refers to the beginning of a trilogue process, the same logic applies to the open-ended trilogue where negotiations reach their climax. To accommodate these considerations, negotiators need to be able to test out different proposals, and the open-ended trilogue therefore typically goes back and forth between different formats in several iterations of the different types of meetings identified in Chapter 10: plenary, ‘huddle’, internal discussions, huddle again, and so on. Several interviewees (e.g. Interviews 21, 30, 33, 36) note that this back and forth plays an important role because it enables negotiators to incrementally move towards each other while simultaneously checking with their own institutions. One interviewee notes how the shadows need to remind the rapporteur not to give in too much in the face of Council opposition:

I mean they go there, and they get, you know, like ‘This is no, this is not ... This is, Germany will not agree to this, France will not agree that – we cannot give you this’, you know, I mean, ‘The Council will not approve it – take it or leave it – only this and, this and this and this’. So then of course, they feel the pressure and then they come and then they say, ‘Yes so I obtain this and this – this is the maximum we can get’. Then it was like ‘No way’, you know, ‘this is not enough!’ So then ... It is something we have to do because I mean, obviously, he loses a bit of kind of strength when he is talking to them in another room and when he gets the full opposition. (Interview 30, EP adviser)

This quote demonstrates several dynamics quite well. First, the interviewee notes how the Council will refer to a tied hands situation when trying to persuade the rapporteur to accept concessions. Second, she expresses sympathy for the rapporteur’s situation and notes that the shadows have to push the rapporteur to be more ambitious in the face of ‘full opposition’. As such, the need for several iterations in this example is explained by the shadows’ insistence on getting the rapporteur to push for more concessions. These iterations were also notable in Box 10.1 (Chapter 10), where an MEP noted that there is

some back and forth between the different meeting formats, starting with a plenary:

And then we try to push each other a little, and that might not get us very far. Then we go into a room and leave most people out there. And then we sit and have a real talk. Then we go out again. Then I talk to my shadows ... They say 'No, no, that's terrible' and 'He needs to move a lot more, otherwise we can't accept it', and so on. (Interview 21, MEP and assistant)

Here, as in the example above, one break was not enough to reach agreement because the shadows were not convinced that the proposed compromise was good enough. A similar dynamic may be found for the other two institutions. As demonstrated in Chapter 10, breaks are also used by the Presidency to reach out to other member states to probe whether a compromise proposal is acceptable or not.

Surprises

No matter how well prepared the final trilogue is, there is always a risk that things will not go as planned. Surprises and misunderstandings can cause delays in the meeting and cast into doubt whether it will be possible to reach agreement:

There are also some things that suddenly, like bombs in the middle of it all. So, you think, 'Fuck man, that's crazy. We hadn't really thought about it that much, but we actually really disagree on this point.' (Interview 21, MEP and assistant)

The 'bomb' in this particular case had caused the MEP, who was rapporteur for the file, to doubt whether it would be possible to reach an agreement, saying 'I think I was convinced at 4:00 in the morning' (ibid) that they were going to succeed. Other times, problems can arise when an oral agreement between the co-legislators has to be translated into writing. Here, one interviewee notes that the MEP and the ambassador had a clear mutual understanding:

[MEP] goes and talks to the ambassador only, goes and finds the ambassador and says, 'Well, we agreed that this is what it should look like, right?' And [the ambassador] says, 'Yes, yes, that's how it should look'. Fine, fine, fine, fine ... And then still, when we get the paper, it looks completely different. So, the ambassador has made an agreement with us that is not reflected in our agreement documents. Yes, it's a mess [laughing]. (Interview 24, EP assistant)

The interviewee here ascribed the problems to the fact that the Commission was drafting the compromise on the spot and deliberately interpreted the deal in a specific way, which was closer to their preferred position:

We're all in the big room together. And we have another round where the Commission explains why the agreement must look like this. In other words, why [issue in question] has to look the way *they* want it to look... And the Council

backs them up. [...] it kind of disintegrates there at some point, because he [ambassador] wants to negotiate. And then he says, 'Okay, but we can do it like this instead'. And then we say, 'No, no, we must have the agreement that we made in the other room'. Then he says, 'Okay, we can also do it this way', and then the Commission says, 'No, no, you can't'. It was around one or two o'clock. (Interview 24, EP assistant)

The two quotes above illustrate two different types of surprises: first, a surprise may spring from something that the political level had not thought much about turning out to be a source of major disagreement. In the second example, a deal had been made between the Council and EP, but the Commission was unhappy with it and proposed something closer to their preference, and which they knew that the Council would prefer, once the deal was about to be settled at the plenary table (according to the EP). Since the goal of an open-ended trilogue is to find an agreement, surprises also need to be handled immediately. Thus, when a surprise halts negotiations, it becomes a joint effort to find a solution that allows all parties to 'save face': 'in the end, the Commission colleagues [...] and also the Council then sort of helped stitch in something, that was more or less a face-saver for the Parliament' (Interview 28, COM cabinet).

Getting to the Deal

Even though recent examples of multi-day marathon meetings seem to stretch the limits, a trilogue meeting cannot go on forever. At some point, a deal must be made, or the meeting must be called off. The interviewees talk about temporal dynamics in the meeting in two distinct ways – in addition to noting that they are long and sometimes tiresome. The first is that negotiators report feeling, as the meeting progresses, that a sense of urgency or time pressure builds up. Everybody is interested in reaching an agreement in a timely manner so they can go home and sleep or move on to other tasks. The second way they address time is by noting that meetings gain their own momentum, as mentioned earlier in this chapter.

Time Pressure During the Meeting

Indeed, fatigue and the desire to go home and sleep can be a strong motivation to wrap things up. Several interviewees note that the length of meetings is in itself a contributing factor to reaching an agreement:

[I]t's always very, very long negotiations that last several hours ... well, most recently ... I heard about one such negotiation that didn't finish until 7:30 in the morning, right, and started in the afternoon of the day before... it must be a lot of coffee, I think? So, it's a last-minute thing, I think, and eventually someone gives in. (Interview 10, EP assistant)

With the remark about ‘a lot of coffee’, about negotiations being a ‘last-minute thing’, and that they are concluded when ‘someone gives in’, the interviewee signals that time is used as a tool in wearing down the other negotiators, getting them to accept a compromise. This may merely be due to fatigue, but sometimes the time pressure facing negotiators outside the individual meeting can lead them to accept compromises on smaller points to enable them to wrap up the meeting and move on to the next one:

I remember a former Presidency [...] wanted something [...] very, very hard and we didn't understand why. And then the ambassador came and said, ‘Listen, I don't really have time to do all of this, I mean, we really have other big fights to do. Let's... I accept it!’ OK, very funny. But this meant that the pressure on the person was so big to deliver that for him, it was not important, these small details because he had other big fish to fry. (Interview 28, COM cabinet)

Here, the ambassador explicitly refers to time as the reason for accepting a deal, acknowledging that they may not get all the concessions they otherwise may have been able to because they had ‘other big fish to fry’.

Momentum

Interviewees also describe another way in which the duration of a meeting matters. Once the meeting is underway and some progress is made, negotiations gain *momentum*. Theoretically, there is momentum at the beginning of a negotiation – otherwise there is little reason to sit down in the first place. However, ‘[t]he momentum of a negotiation might falter, even if the parties are serious about proceeding’ (Berridge, 2015). The same holds true for trilogues, as it was demonstrated above that an open-ended trilogue is not scheduled unless an agreement is within reach. Interviewees describe momentum as working in two ways over the course of a meeting. First, making initial progress makes it more believable for negotiators that a deal can be achieved – success breeds success. Second, it also introduces the feeling that, should negotiations be postponed to a later date, momentum will be lost, and progress may be slower. One interviewee put it as follows:

Then it really starts falling apart. And when you have come such a long way already, and you, for example, agreed three or four out of five [issues], then you know, if you leave this one open, then other things might start, other questions already preliminary agreed might start reopening next time. So, you really want to give it a try and push it through the final line. So that's why. But it's a bit of a folklore, a bit of a culture, I think [laughing]. (Interview 11, COM Secretariat-General)

In addition to noting the desire to make a compromise on all points lest things start ‘falling apart’ or ‘reopening’ before the next meeting, she notes that that

there is a component of ‘folklore’ to this way of doing things. This indicates that not only rational calculation but also culture and habit influence the decision to have these marathon meetings. The quote below demonstrates a similar point about momentum:

I think the parliamentarians, and particularly the rapporteurs, they very much want a deal. I mean, if they see that the deal is close, they will never risk to leave it for a month or two, [...] So on many instances, we had very, very difficult files, almost impossible deals to forge and still at the end we concluded them. Because if you sit together for 12 hours, then you know that... I mean who would walk away? There really needs to be a huge, huge misunderstanding to walk away. (Interview 57, Council ambassador)

Here, the ambassador emphasizes two different reasons for not wanting to walk away from the meeting. First, postponing introduces uncertainties. The political situation might change, and it may be necessary to negotiate with a different Presidency which may be more or less cooperative than the current one. Second, she argues that when the parties have already spent 12 hours negotiating a compromise, there is a reluctance to ‘walk away’, leaving all the progress behind. Another interviewee presents a similar view of momentum in negotiations:

I think because there is all this pressure that you want to finish and you say if you don't finish now, then there's another process again of restarting and reorganising and re ... you know. So, there's always ... no one wants to lose. (Interview 30, EP adviser)

In this quote, there are three focus points. First, there is a clear perception of both the pressure and the desire to finish. Second, she indicates that it feels like wasted work to fail to make an agreement, both in terms of structuring a compromise and organizing a new meeting. The logistics of scheduling a new trilogue will in itself likely delay agreement by at least a few weeks, as ‘it's not easy to find dates because, I mean, trilogues are really high-level’ (Interview 41, EP adviser). Third, it is viewed as a defeat if parties do not manage to reach an agreement, and ‘no one wants to lose’.

Take It or Leave It

Another way of getting to a final compromise is by presenting ‘take it or leave it’ offers, signalling an unwillingness to make any more concessions. One interviewee describes how, after a productive start to the meeting, everything fell apart as the Presidency reneged on a compromise, they thought they had agreed (as introduced above), and presented them with a different and much less appealing ‘take it or leave it’ offer:

Interview Excerpt 12.2: Take It or Leave It

Interviewer (WE)

Now, I know the end of this story. You end up with a deal. So, at some point, order is restored to this chaos?

Interviewee

It's because [rapporteur] says, 'Can we have five minutes with Parliament outside?' And he says, 'Yes, you get five minutes until...', so he looks at the clock and says, 'It's five minutes, and otherwise we're leaving', right? [laughing] ... So, we go out, take five minutes alone in EP, and then we get out our backup solution that we've prepared before ... And then we agree that the backup solution is better than not getting an agreement ... And when the five minutes are up, we come in and we say, 'Now it's your turn to take it or leave it'.

Interviewer

That's a lot to do in five minutes at the crack of dawn...

Interviewee

Yeah, it was good that we had prepared it in advance, because otherwise we wouldn't have come up with it ... there in the thick of it ... But I don't know. They spend, they spend 5-10 minutes looking at it and then they say 'Yeah, it's a deal'. And that was the end of the story [laughing]. (Interview 24, EP assistant)

Three important observations emerge from this exchange. First, the ambassador presents an ultimatum and puts the rapporteur under time pressure under threat of leaving the negotiations. Second, the negotiations move from one type of break (huddle) into another (EP internal discussion) before the EP delegation presents a different ultimatum to the Presidency. Third, the interviewee notes that their preparation of different 'backup solutions' was what enabled them to come up with a counterproposal in such a short amount of time.

Walk the Line

Sometimes, as in the example above, a fallback option has been prepared, and negotiators can be fairly certain that the compromise made will have the backing of their institution. However, this is not always the case. The following quote illustrates how negotiators can also stake some political capital on making a compromise deal. Here, an MEP describes how his counterpart had taken such a risk at 4:00 in the morning:

He walks the line, because at some point at four in the morning or something, they had gone to bed, the people he was supposed to call. And he hadn't been given a higher mandate. And he took a chance and said, 'Well, I can't...', he couldn't get their opinion on it. So, he said, 'Let's make the deal, then I'll put my head on the block, and then I'll have to call them when they wake up and say,

take it or leave it' ... He was worried about that too. (Interview 21, MEP and assistant)

The quote above as well as the previous description of exchanges of ultimatums are both examples of trilogues which had quite clear iterations of back-and-forth proposals by the co-legislators, ending up with somebody walking the line and taking a deal. Sometimes, however, the process may be a bit more chaotic:

They will also, of course, be running around in the corridor talking. The DPR is talking to the rapporteur, Commission is talking to Parliament, Commission is talking to Council. The Commission is trying to bridge the gap, and that will to a large extent happen in the corridors, or during a pause. So, you don't have a complete overview of what's going on... you will have people standing in the corner talking there, you will have people standing in the corner talking there. And then at some point, you realize that 'Ah, there is an agreement'. Then you reconvene the trilogue. (Interview 9, two Council attachés)

In this excerpt, several things are happening at the same time, in different constellations and in different corners and corridors adjacent to the main negotiation. The main point here is that nobody seems to have 'a complete overview of what's going on'. When the breakouts have progressed enough that an agreement has materialized, they 'reconvene the trilogue', indicating that they need to come back to the plenary table and formalize the agreement.

12.3 We have a deal!

Once the relais actors have made a proposal for a package deal, they go back to their individual delegations to present it. Certain adjustments may be needed to bring the last political group on board, or to make sure there is a qualified majority in the Council, but at some point, it will become apparent that a deal has been made. This section introduces the interviewees' descriptions of this moment, the feeling of relief mingled with fatigue, the handshaking and selfie-taking. It then introduces the next steps immediately taken in terms of debriefing and points forward to Chapter 13, which analyses why a 'provisional agreement' may require further work at the technical level. In one of the open-ended trilogues I observed, the final minutes of the meeting passed as follows:

Field Note Excerpt 12.3: We Have a Deal!

It is almost 2 in the morning. The Presidency has just offered a compromise package which grants the EP concessions on one article in exchange for accepting the Council's position on another. Additionally, they have proposed to 'split the difference' between the EP and the Council's preference for a threshold, admitting that this approach is 'not very scientific'. The rapporteurs and the shadows are huddling together in a corner of the room, discussing the proposal. One EP adviser has unplugged his laptop. After a few minutes, the Committee Chair takes the floor and notes that 'We are almost there', and that the EP just wants to be reassured on the wording. One rapporteur adds that they are indeed very close and suggests that they could put the text on the screen. He notes that if they can 'conclude on this then we have a deal' since the other outstanding issue can be clarified at the technical level. A few minutes pass in silence as the text is screen-shared from a secretary's computer. Next to me, a person I do not know suggests under her breath to 'add some constructive ambiguity and get the deal closed'. They are discussing the last sentence of the article, and the Commissioner notes that they are already happy with it. In the end, one rapporteur takes the floor and says 'John³⁵ wants to go to bed, so let's move. After a long discussion we conclude with the original proposal of the Council and conclude the package'. As the EP has accepted the Council's proposal on the last point, the deal is done, and everybody claps. The Committee Chair takes the floor and says, 'Congratulations everybody and have a good remainder of the night'. Before leaving, however, a few pictures are taken to be used in social media posts celebrating the deal.

This excerpt illustrates three important points. First, the Presidency suggests splitting the difference, admitting that it is 'unscientific'. This indicates that negotiations have moved beyond the point where new suggestions will be introduced. Second, the rapporteur's suggestion to send a point to 'be clarified at the technical level' demonstrates that the provisional agreement is not a truly complete or final text. This, along with the concept of 'constructive ambiguity', will be elaborated in Chapter 13. Third, the joke at John's expense, the applause, and the fact that the negotiators end with a group picture demonstrate that spirits are high even though it is late at night.

Naturally, most interviewees also reflected on the final stretches of open-ended trilogues they had attended, and I made a point of asking what happens to the atmosphere in the room once it becomes clear that a compromise has been reached. Interviewees note a range of emotions, including happiness and relief, but also fatigue and disappointment. The two quotes below demonstrate this quite well:

So, normally trilogues end with a picture of the rapporteur and shadows and everybody congratulating each other. Some are saying, 'Well, you know, this is

³⁵ Pseudonym. 'John' is a Member of the Commission's legal service team who spoke on several points throughout the meeting.

not what we wanted. It's a pity that we didn't manage to blah blah blah.' So, at 5:00 in the morning everybody wants to go to bed. No big celebrations there. (Interview 23, Council attaché)

I think we were just happy. I mean, it was a real relief. That moment where everyone applauds. I mean, that's something I've seen on Twitter, right? Those videos from trilogues where everyone is clapping. It was just... well, it's incredible how happy you could get over something that's just your job, right? Everyone was hugging each other and so on. It was very much like that [laughing]. It was also like you had played a football match, right? (Interview 24, EP adviser)

The first quote highlights that there are of course congratulations all around, but that these were mingled with disappointment and fatigue, given that the meeting ended at 5:00 in the morning. The second quote, interestingly, highlights that the moment of reaching a deal was something about which he had formed expectations from seeing social media videos of other trilogue negotiations. This is followed up by a comparison to a football match: after spending a long time as opponents, everybody is happy that they have reached an agreement as the final whistle blows. One MEP compares the final stretch of a trilogue to the climax of a play:

The real prima donnas, they enjoy those points where, in the deliverance of a role, as an actor, where everything is open, everything is chaos [...], it can also completely break down. I've experienced that twice [...] you can physically feel it contracting into something uncomfortable, but there's just that basic knowledge that we have to go through this. There will be deliverance. It's really very ... orgiastic, actually. And then, and when you're in that phase, you still insist that I won't be part of a deal unless we get [policy point], and then you forget everything else. This is what it's all about, and you just hold on. (Interview 34, MEP)

This is interesting for several reasons. First, the comparison of an open-ended trilogue to a play leans into the commonly used metaphor that trilogues are to some extent staged, here extended even to the parts that are 'chaos' and 'uncomfortable'. Second, by comparing herself to a prima donna, noting that she can 'physically feel' the discomfort, and noting that it is something they 'have to go through' to reach a 'deliverance', it clearly indicates that this is perceived as more than a rational exchange of concessions to reach a compromise that everybody can live with. It is also a physical experience.

In addition to the immediate reactions in the room, a few other short-term steps are taken when a provisional agreement has been made. Once the handshakes and the social media posts are done, it is common for the teams of the EP political groups to send a quick debrief to their party group constituents before going home to sleep. I have not observed directly whether this is also

the case for the Presidency and the Commission, but a similar practice likely exists. Additionally, several interviewees note that there is a little bit of informal debriefing at the technical level once the dust has settled:

I got an email from, from the Presidency the next day with, you know, 'Thanks for the co-operation. Here were the pictures we took together' and so on, right? And we've agreed to have coffee when it's over? Because we're both really curious about what happened behind the scenes on the other side, right? It's so strange when you've worked so closely together for so long that suddenly, on the last, the most important night, you're sitting 10 metres apart, not talking to each other and barely making eye contact? So, we've planned a debrief. (Interview 24, EP adviser)

Apart from the social media posts, press releases, debriefing e-mails, and perhaps a well-earned day of sleeping in, there are some additional steps before the act can be finally adopted by the EP plenary and the Council of Ministers. The text needs to be finalized, meaning a check by legal services/lawyer-linguists of the legal quality of the drafting as well as translation into the 24 official EU languages. However, several interviewees also indicate that when a provisional agreement is made in a political trilogue, there is often no concrete text on smaller or larger parts of the proposal, and that these parts are drafted at the technical level in a round of interinstitutional technical meetings which take place after the agreement. The practices of these meetings as well as the reasons for pushing decisions beyond the last trilogue are explored in the next chapter, which also serves as an analytical epilogue.

12.4 A Critical Perspective on Open-ended Trilogues

While it is, of course, a success to reach agreement on a legislative file, several interviewees do express dissatisfaction with these open-ended trilogues. These criticisms hinge mostly on the length of the meetings. As identified above, scheduling an open-ended trilogue creates an expectation that negotiators will make a dedicated effort to reach an agreement, and once the meeting is underway, it was argued that the meeting's *momentum* makes it unappealing to leave the table and thus postpone an agreement. Meetings therefore often become lengthy, which one interviewee does not find to be conducive to 'good lawmaking':

[T]here's also the notion that if you force people to sit in the room until they're done, then often they will, they will finish because they will have to sit there until they're done... But, this is again very much a personal reflection, but I don't think it's good lawmaking [...] And also, just by nature of time, if you have a trilogue that lasts over 24 hours, which I've had [...] at some point everyone is so tired that you wonder 'Are people really giving the best of ourselves there?' (Interview 59, EP adviser)

This interviewee specifically mentions that scheduling an open-ended trilogue ‘forces’ people to finish negotiations, and that nobody has the stamina to negotiate for 24 hours at a time. Other interviewees add that fatigue can also be used strategically, to wear down the opposing party by sticking to a line until they are tired enough to cave in and go home:

I think it’s a negotiation technique that you really have to [long pause] see how far your competitor can go [...]. I have seen Parliament losing a point because it was a trilogue ... I don’t know when it was, early hours of the morning, and the negotiator from Parliament was destroyed, I mean, she was completely, she was just exhausted. And she let it go because she was exhausted. (Interview 11, COM cabinet)

Another interviewee made a similar observation but added that she thought this was foolish: ‘Come on, aren’t we in the end trying to legislate for the common good? As a citizen, this legislation will also affect me’ (Interview 51, Council secretariat). This is echoed by one Commission official who additionally notes that there is an element of self-presentation in doing these marathon negotiations: ‘They want to appear as if they did a real war and they are like heroes. And also because ... tiredness is an element of pressure when you need to get to an agreement’ (Interview 31, COM official). Indeed, the notion that negotiators in trilogues are working overtime is a prevalent feature of their social media communication regarding trilogues, as exemplified below:

Box 12.1: Presentation of Trilogues as Marathon Debates

‘2 days in 1 is the new normal during a presidency. After 9 hours in #coreper during the day (without seeing the daylight), the mystifying ceremony of the #trilogue starts at nightfall, until ...’

(Alexandre Brecx, Coreper II Spokesperson for the Belgian Presidency, Tweet, 06-03-2024)

‘Semi-marathon, marathon or ultramarathon?’

The #AIAct finish line is at hand 🏁 [checkered flag emoji]

No compromising on the EU general interest 🇪🇺 [EU flag emoji]

Stay tuned — and awake ☕ [coffee emoji] — for a possible deal later today... or tonight!’ (Thierry Breton, former EU Commissioner, Tweet 06-12-2023)

‘Good morning. Great news. We did it! We have an agreement on the whole pact on migration and asylum. We have been negotiating in trilogues for two days and two nights in the final negotiations, and now we are there. Now we have agreed on a comprehensive pact on migration and asylum with better protection of our external borders, more solidarity and more protection of the vulnerable and the asylum seekers, based on our European values. I’m so proud today. We did it!’ (Ylva Johansson, former EU Commissioner, Tweet 20-12-2023)

The first example paints the negotiators' effort as two working days in one and presents trilogues as a 'mystifying ceremony', indicating that it is for a select few with the necessary stamina. The second quote by former Commissioner Breton foresees that the AI Act trilogue will be comparable to an ultramarathon, painting himself as somebody who has exceptional (negotiation) stamina and is working overtime for the 'EU general interest'. Finally, the third quote is a bit more understated but does mention that they have been negotiating for 'two days and two nights', and that former Commissioner Johansson is 'so proud'. All three examples indicate that being able to last through these meetings is an achievement to be celebrated. This is evaluated more critically at the technical level. One EP administrator summarizes it nicely: 'As administrator, you want to do a good job and then go home at 5:30 [PM]. But first, do a good job. With trilogues, of course 5:30 is out the window' (Interview 43, EP secretariat).

12.5 Summary

This chapter has analysed how a trilogue process is concluded in a so-called 'open-ended' trilogue in which the relais actors negotiate a package deal on all the remaining issues. First, the chapter examined how negotiators can tell when to schedule an open-ended trilogue and go for a deal. Most articles should be provisionally closed and thus coloured green in the four-column document, while a few should remain open to facilitate trading concessions in the creation of the final compromise. At the same time, there is also a socially constructed component to this decision: negotiators must believe that their positions are sufficiently close for a compromise to be realistic. To substantiate this, potential deals are explored and pre-cooked ahead of the last trilogue, similar to what was described in Chapter 11. However, the second part of the chapter found that even the best-prepared compromises may require modification during the meeting. This happens either because negotiators initially do not make sufficient concessions to make win-sets overlap, or because last-minute surprises pop up, revealing unintended consequences or fundamental disagreements. The chapter also revealed that once an open-ended trilogue is scheduled, there is a great reluctance to walk away from negotiations and postpone controversial issues, as that would signal 'giving up'.

Taken together, the sheer number of open issues coupled with tactical considerations and potential for surprises leads to the open-ended trilogues often containing several iterations of breakout sessions in different constellations, as explored in Chapter 10. This is also part of the explanation for why meetings are often so long, though some interviewees also note that there is an element of theatrics at play here. Once a compromise has been reached, the trilogue plenary is reconvened and the compromise package is presented. Then, people

applaud, pictures are taken, and the negotiators send out a quick debrief to their constituents before heading home to sleep, feeling both relieved and tired.

However, the analysis also found some critical perspectives. First, ‘provisional agreements’ often do not include concrete wording on all points, which means that substantial work takes place at the technical level. This is unpacked in Chapter 13. Furthermore, some interviewees expressed dissatisfaction with the length of these meetings, both because attrition was argued to be used as a negotiation tactic, and because interviewees doubted whether people were performing their best after 24 hours of non-stop negotiations.

Chapter 13. After the Deal

Now, more and more you announce that you have a political agreement on a file, but with lots of open technical, well, *so-called* technical issues that... would be dealt after that meeting, you know. (interview 38, EP adviser)

When the handshakes are done, pictures have been posted on social media, and a press release has been published, the institutions have come to a ‘provisional agreement’. It is provisional for several reasons, most obvious among them that the act cannot enter into force until it has been formally adopted by the EP plenary and the Council of Ministers and published in the Official Journal of the EU. Second, there is a well-known process known as ‘finalization’ which takes place after the provisional agreement has been made. This process involves checking the legal quality of the drafting (Guggeis, 2014) and translation into all the official languages of the EU (Robinson, 2014). However, interviewees indicate that substantial negotiations sometimes take place at the technical level even after a provisional agreement has been reached on a file. This is puzzling and raises at least two questions: first, why do the parties push negotiations to the technical level after claiming success, running the risk of having to backpedal if their employees are unsuccessful? Second, how does the technical level handle these meetings, and what do they think of them?

It is important to note that substantive technical-level negotiations after the last political trilogue do not happen on every file. Whether they do seems to depend both on the nature of the file and on the context in which it reaches provisional agreement. Specifically, my interviews mostly took place towards the end of a legislative cycle, which meant an increased pressure on negotiators to conclude as much as possible before elections (cf. Chapter 7). This is described quite clearly by an EP adviser: ‘the Commission and the Parliament both want things done because they don't know what the future holds and the perception is that it's better to conclude [...] before things might change considerably’ (Interview 59, EP adviser). While the pressure to push negotiations past the provisional agreement may be particularly high towards the end of the legislative mandate, the basic dynamic may be found at any time. Thus, it is relevant to examine how and why it happens.

The rest of the chapter is structured in four main parts. First, the surprising amount of post-deal negotiations is discussed in light of previous studies of trilogues, and a potential theoretical explanation is introduced. Second, interviewees’ experiences with pushing negotiations beyond the last trilogue are presented, demonstrating that this process is more than just ‘finalization’.

Third, the potential explanations for this phenomenon are explored with reference to the interview material. Finally, the findings of the chapter are summarized. It is worth noting that this chapter deals with findings on a topic which was not part of the original interview guide. Thus, not all interviewees talked about this part of negotiations, and the findings should be viewed as exploratory, opening avenues for further research.

13.1 It's Surprising, but it Shouldn't Be

I had not planned to spend much time in the interviews on what happens after a deal is struck in a final trilogue, partly because it is such a rare occurrence for provisional agreements reached in trilogues not to be formally adopted by the EP and the Council (Brandsma, Dionigi, et al., 2021) and partly because this part of the process has thus far not received much attention in the trilogue literature. For instance, Haag (2022: 339) writes: 'As all files in the dataset were adopted by both institutions at first reading, the final texts correspond to the first reading positions of the EP and thus the trilogue compromise'. The 'trilogue compromise' is taken to correspond directly to the approved text. Brandsma (2015: 303) similarly notes that 'When a set of amendments is negotiated successfully, the rapporteur formally tables it in the EP's plenary, which rubberstamps it', also painting a straight line from the last trilogue to formal adoption. Roederer-Rynning & Greenwood (2015: 1154) note that 'each political trilogue is followed by a new round of technical meetings: their objective is "to agree on what we agreed the night before"', though it is unclear whether they find that this happens after the last trilogue as well. Overall, studies of trilogues often seem to stop at the open-ended trilogue, implicitly assuming that what happens between then and adoption is of little importance.

However, there are some potential explanations for this tendency to continue negotiations after reaching agreement if we broaden our view to other areas of the EU and international organization literature as well as the literature on incomplete contracts. The phrase 'constructive ambiguity' was mentioned in the previous chapter, and it is indeed an oft-heard phrase in EU politics. According to Jegen & Mérand (2014: 182), while it 'has become a received wisdom among Europeanists' and studied by such esteemed names as Henry Kissinger and Stanley Hoffman (e.g. 1995), constructive ambiguity remains understudied. It can be defined as 'the deliberate use of imprecise language in the drafting of an agreement on a sensitive issue' (Berridge et al., 2003: 51), though, as will be explored later in this chapter, it may also entail a complete lack of concrete drafting in a provisional trilogue agreement. Additionally, Zahariadis (2008: 515), in a study of EU policy-making, argues that 'ambiguity is an integral part of the policy-making process'.

A similar argument is made in the literature on incomplete contracts, which takes its starting point in the fact that ‘when drawing up a contract, it is often impracticable for the parties to specify all the relevant contingencies’ (Hart & Moore, 1988). Though this concept originates in economics and is focused on business contracts, a similar logic may be at play in legislative negotiations: each additional detail specified is an additional opportunity to disagree. Epstein & O’Halloran (1999) describe the additional work as the ‘transaction costs’ of foreseeing additional contingencies: ‘When significant transaction costs exist, on the other hand, and individuals are boundedly rational, contracts will in general be incomplete; that is, they will have missing provisions and ambiguous clauses’ (Epstein & O’Halloran, 1999: 37). They add that a number of factors can cause this incompleteness. For the purposes of this chapter, the most important one is ‘negotiation costs, arising from the fact that haggling over difficult clauses may be more costly than it is worth’ (ibid).

It is important to note, however, that the primary application of incomplete contracts in politics is in specifying that *adopted* legislation is often incomplete, leaving discretion to the (street-level) bureaucrats who implement and enact it. This may well also be the case for EU legislation, but the argument here is that the same dynamic is at play in the interval between the (incomplete) provisional agreement and final adoption: the technical level can more easily bear the negotiation cost of haggling over the remaining difficult clauses. However, to make this claim it is necessary to demonstrate that what happens is more than just ‘finalization’ of the political text, which is what the next section will do.

13.2 Just Finalization or Real Negotiation?

Even though it was not initially part of the interview guide, many of the interviews touched on the topic of what happens in the time between when a provisional agreement is reached and when it is formally adopted by the EP and the Council, respectively. This naturally led into a discussion of the steps leading from provisional agreement to formal adoption. Some interviewees note that they go over the text again at the technical level to make sure the whole text is consistent with what was agreed. In the words of one interviewee, once they had reached an agreement, ‘I think we’re at the point where we’re all like, whatever. So, it’s just polishing things so that it’s consistent with what was agreed’ (Interview 24, EP assistant). Normally, the formal finalization of a legislative file after a political agreement has been reached is carried out by the institutions’ legal services and lawyer-linguists. It is worth noting here that lawyer-linguists are also seen as exercising some discretion in this work:

They [lawyer-linguists] take a vital decisions as well. Of course, they take decisions as well, but they are part of the process and if they feel... I I've had a couple of times that... if there is a major problem for them [...] they come back. (Interview 40, EP adviser)

However, the quote also demonstrates that the lawyer-linguists will refer back to the negotiators if they have a problem, either because they do not understand or because they disagree about what an agreement is supposed to mean. The quote below demonstrates the usual steps in a finalization procedure from the perspective of an EP lawyer-linguist:

Interview Excerpt 13.1: Finalization

After agreement has been reached in the last political trilogue, it is our job to sit and – then it goes over to us. This is called finalization, where there is a series of meetings between us and lawyer-linguists from the Council [...]. We then sit and review the text afterwards. First, if we are the '*chef de fiches*', we are the ones with the main responsibility, we start by reviewing the political, the political text. You know that they have those four column documents [...] Then we have a meeting with the people I mentioned to you before, where we sit and go through it all, and then it goes out to the member states, who then have the opportunity to comment. And then we have a meeting where we look again at what corrections have been made. At the same time, all the language versions are made, [...] there are also typically people who notice something because they go through it thoroughly, [...] and it goes back and forth 2-3 times and then there is what is called an experts meeting, where there is a representative from all countries, and we are also present, and then they go through it again if they have any questions and ensure... and then the text is agreed on, there, that is the final text. (Interview 39, EP lawyer-linguist)

This quote demonstrates two things: first, there seems to be an institutionalized procedure which guides this process, and he uses words such as 'review', 'corrections', and 'notice' to describe what they do to the text, indicating that this is not a negotiation. Second, the people involved in finalization are lawyer-linguists and experts, i.e., a different set of people from those who negotiated the agreement in trilogues. However, several interviewees indicate that for some files, the Presidency's attachés and experts, the Commission's policy officers, and EP assistants and group advisers play an active role at this stage (e.g., Interviews 37, 39), indicating that they are referring to something qualitatively different from finalization. The continued involvement of the advisers, assistants, attachés, and policy officers indicates that more is happening between provisional agreement and formal adoption than legal finalization and translation of the texts. Indeed, one interviewee notes that there may be some political details which are 'forgotten' during the open-ended trilogue, but that there is some willingness to accommodate these after the provisional agreement has been made:

No one wants to risk the agreement ... But [...] I got an email today with suggestions from the Commission, because there were some things we forgot in the middle of the night, right? ... that maybe should be different or would make more sense if it was different. [...] of course it's political whether we say OK to it, but if there's a willingness to close it, then I think there's also a willingness to adjust what the Commission wants to have adjusted. (Interview 24, EP assistant)

It is particularly worth noting that the interviewee couples their willingness to make the adjustments the Commission requested to the fact that everybody had already showed flexibility during the trilogue negotiations. Thus, while *finalization* is primarily viewed as a purely technical exercise, negotiations on *substance* continue after the final trilogue in the same constellations as the interinstitutional technical meetings (ITMs) did during trilogues:

[I]t's an ITM setup. We don't call it ITM anymore because the trilogues have finished. [...] In this particular case as we had quite a number of proposals, we couldn't finalize all the drafting before the political trilogue. [...] there were a couple of provisions which we had to revisit... after the trilogue. And then it's up for us to interpret it together what we think our mandate is and... how to best formulate it. (Interview 56, two COM officials)

Indeed, several interviewees emphasize that more substantial negotiations take place after a provisional agreement has been made (e.g., Interviews 37, 38, 39, 48), and that this type of work has taken a more prominent role over time:

[R]elated to the issue of technical versus political [...] in the last years [...] more and more you announce that you have a political agreement on a file but with lots of open technical, well, so-called technical issues that... would be dealt with after that meeting, [...] there are sometimes vast parts of the text that [...] look] Like an outline of what the agreement would look like ... And now it's part of the final deal. (Interview 38, EP adviser)

Here, the notion that 'vast parts of the text' are left unfinished during the open-ended trilogue clearly indicates that a great deal of substantial work is left to the technical level. Even though finalization takes place primarily between the legal services of the institutions, it may contain sensitive discussions and thus overlap to some extent with the ongoing technical meetings. Here, one interviewee describes the situation immediately after an agreement was reached on a controversial proposal:

[T]he situation now is not that clear. Of course, people celebrate because there is an overall agreement, but now it's time to translate this agreement into concrete words in the articles and in the recitals. And that's a sensitive task that needs to be done now, together with the legal service of the Council and the Commission colleagues in our legal service. (Interview 37, COM official)

Here, it is clearly indicated that the overall agreement does not contain ‘concrete words’ for all the articles, and that this work is perceived as both sensitive and urgent. He continues by noting that *political* work remains after a political agreement has been reached because the final text and the agreement may not be completely the same:

When the topic is very complex, the fact that there is a political agreement does not mean at all that the process is ... finished. And in this case we are not in a technical phase, we are in a very political situation, and every country will be monitoring closely what is written in the final text compared to the agreement, because maybe the understanding of the agreement is not the same for all the actors, and it could be details, but this could be also significant aspects of the of the file and that's where the risk ... remains real at the moment. (Interview 37, COM official)

Though the interviewee assessed that there was a risk of negotiations breaking down during the post-agreement technical work, they did find an agreement in the end. Having heard many interviewees mention how negotiations sometimes continue after the last trilogue, I wanted to make sure I had understood it correctly:

Interviewee:

[T]hey then send a letter to the relevant committee and the relevant committee then also votes.

This is the text that you can refer back to.

Interviewer (WE)

So this – it's really a step between the political agreement and then the finali-?

Interviewee

Finalization. Yes. That's what it is. (Interview 39, EP lawyer-linguist)

This cements the point that this ‘technical’ work which takes place after a political agreement is viewed by practitioners as empirically different from the legal finalization of a text which is well-known, institutionalized, and uncontroversial. As such, it becomes relevant to ask what may cause the relais actors to push substantial negotiations beyond the last trilogue.

13.3 Why Push Beyond the Last Trilogue?

When a provisional agreement is made in trilogues, it is often accompanied by press releases from both the Council and the European Parliament as well as by social media posts from all three relais actors, either in a personal capacity (rapporteur and Commissioner), or via the Permanent Representation’s official Twitter account, as exemplified below:

Figure 13.1: AI Act. DEAL! DEAL! DEAL!

España en la UE 🇪🇺 @EspanaenUE · 8. dec. 2023
#TRILOGUE | DEAL! DEAL! DEAL! @EUCouncil and @Europarl_EN have reached a provisional agreement on the artificial intelligence act #AIAct

The regulation aims to ensure that **AI** systems placed and used in the EU are safe and respect fundamental rights and european values.



Here, the Spanish Permanent Representation announced via Twitter on 8 December 2023 that a provisional agreement had been reached on the AI Act (España en la UE, 2023). As the post starts with three exclamations of ‘DEAL!’ in capital letters and many of the participants are giving a ‘thumbs up’, it clearly signals excitement with the outcome. However, as was noted in Chapter 2, it took several technical meetings to settle the details before it could eventually be adopted by the EP and the Council three and five months later, respectively. It is mostly safe to celebrate at this stage, because it is a rare occurrence that agreements reached in trilogues are not formally adopted by the co-legislators. Indeed, the very fact that such a large portion of new EU legislation is adopted at first reading testifies to this fact. In the words of one Commission official: ‘It’s very rare, but it does happen... I only know one case’ (Interview 11, COM Secretariat-General). A recent example of ratification failure is the Platform Work Directive, for which the Belgian Presidency’s failure to secure a qualified majority in Coreper on February 16th, 2024, prompted them to publish a Tweet with the following text:

The final compromise text on the Platform Work Directive was put forward for endorsement by Ambassadors at Coreper. Unfortunately, the necessary QMV [Qualified Majority Vote] wasn’t found. We believe that this directive, aiming to be an important step forward for this workforce, has come a long way. We’ll now consider the next steps.

Though the Platform Work Directive has since been adopted, it is still worth noting that this ratification failure was viewed negatively and as extraordinary

enough to require a public statement. But even though ratification failure is rare, why do the relais actors conclude incomplete agreements and celebrate before crossing the finish line? Is there more to it than a wish to avoid ‘negotiation costs’ and claim victory before handing the baton to other negotiators?

Time Pressure

One reason for pushing substantial negotiations to after the last trilogue is the ‘political pressure’ to finalize negotiations before the end of either a Presidency (Interview 49) or the legislative cycle: ‘I would say that overall, the general political pressure is higher now that we are entering into the final phase of this cycle’ (Interview 19, Council attaché). As mentioned in the beginning of this chapter, the specific timing of the fieldwork probably made this rush to finalize legislation more salient to interviewees and as such made it a ‘most likely’ time to observe these dynamics. However, it is not necessarily a phenomenon which is unique to the end-of-mandate period. As alluded to previously in this chapter, some interviewees also noted that *momentum* in the political discussions could mean that *political* agreement was found faster than the technical level could prepare drafting: ‘sometimes you really need to see the momentum also. [...] if you realize that we are working fast and something is happening, you need to follow the path’ (Interview 41, EP adviser). This left the technical team with a lot of work to be completed afterwards:

It was really fast. Because once we reached the deal, you have to clean the text at technical. And it took us like two weeks from 8 [AM] to 8 PM [...] It was only with the lawyer, the technical team of the Presidency, Commission, and us. So, we sit in a room for two weeks, you know? Every day from 8 to 8, to clean... Because sometimes, okay, you agree on political stuff, but then you have to check everything, and [exhales deeply] yeah... (Interview 41, EP adviser)

In addition to the direct connection between the speed of the political process and the amount of technical work, two points are worth noting. First, she mentions that the legal service are present in these meetings, and she uses the same terminology of ‘cleaning’ the text as the lawyer-linguist quoted above. Second, the double reference to the length of the meetings and the sigh at the end of the quote suggest that the interviewee was not happy with how the process had been structured.

Constructive Ambiguity, or Squaring the Circle

It is true in trilogues, as in much else, that the devil is in the details. One reason why these details may require additional negotiation at the technical level is that an oral political agreement may be more ambiguous/less certain than one which is based on a written draft. One interviewee notes that reducing this

uncertainty is an important part of the secretariats' and the technical-level negotiators' job throughout the process:

And this is a good thing for them to check with each other because ... if they think they've agreed, but they haven't agreed, this is perceived as something very, very bad during the trilogue meetings or at the end. And sometimes they could really get stuck on why there is a disagreement on a certain point. So, if it can be cleaned before, if the Secretariat catches that there's not really certainty. (Interview 50, Council secretariat)

The above quote highlights that this ambiguity may sometimes be accidental because the institutions had different perceptions of what was agreed. He furthermore indicates that it is 'very bad' if such 'accidental' ambiguity is not discovered and corrected before a political agreement is made. However, this ambiguity is sometimes used purposefully by negotiators to make an agreement possible by making it vague enough that all institutions can read into it something they can accept. This is the 'constructive ambiguity' discussed earlier in this chapter. In both my observations and by an interviewee, this has been referred to as one of the ways to 'square the circle' (Interview 31, COM official). One lawyer-linguist puts it as follows: 'Obviously, if we all agree that ambiguity is necessary and that's why we agreed, then it's a different situation. I can't have an ambiguity that is because we just wrote it sloppily' (Interview 39, EP lawyer-linguist). An interviewee from the Council secretariat offered a similar appraisal, arguing that sometimes they will have to leave wording in the agreement that is of a sub-standard legal drafting quality because it was a fragile compromise. In that sense, 'a political consideration came before a legal one' (Interview 51, Council secretariat).

Ambiguity is not only found in the (lack of) concrete wording of political compromises. In Chapter 9 it was argued that there is some ambiguity in the divide between technical and political issues. This may be exploited by the political level to claim that a compromise has been reached while pushing semi-political discussions 'down' to the technical level. This puts pressure on the technical-level negotiators who are expected to find a deal without having to bring in the political level again, because, as one interviewee plainly noted, 'nobody wanted to reopen the file' (Interview 48, COM official). Pushing discussions down sometimes puts the technical-level negotiators in an awkward position, arguing whether or not a post-agreement alteration goes beyond what was agreed:

But in my case, sometimes one institution would make an argument and say that they want to, I don't know, rephrase a sentence. And another one would be, 'No, this would change the substance, and it wouldn't be agreed by the member states or by the MEPs'. So obviously, I mean, you also debate on whether this is really a substantial change or if it's just nice rephrasing. (Interview 62, Council secretariat)

Another interviewee also notes that there are some technical meetings after a political agreement has been made, to flesh out the details. He argues that the risk of negative surprises in these meetings depends on the quality of the political agreement:

We write such a political agreement, and it has to be implemented in the text. But we write down what we agreed. And some of the things we also write concrete formulations for. We do that for some of the things. But we don't have everything under control... so there are also a couple of technical meetings afterwards and depending on how well we've done the work at the political meeting, the fewer bombs there are in the technical part, but there are still some bombs in the technical part. (Interview 21, MEP and assistant)

The main point here is twofold. On one hand, the political agreement is so comprehensive that the political level does not have everything under control, meaning that they do not have the necessary overview (and time) to draft concrete text on all proposals. On the other hand, he acknowledges that the devil is in the details, and that there will inevitably be some 'bombs' in the subsequent technical work. Another interviewee presents a technical-level view of the same situation, indicating that it can be problematic not to have specific wording on the compromises made in trilogues:

We've been there for 11 hours. So, you know, it's quite difficult to be creative at that hour ... And even when you get an agreement ... [...] all the things that are lingering here, you have to be extremely careful to pick them up and to coordinate, so that you leave that meeting with everything very clear ... even on the nitty-gritty technical stuff, because the following day or the day after that, you have to come back to your colleagues and explain, 'Look, this is the provisional agreement on this and that', and you don't want to have loose ends or things that are undefined because when you go to the Parliament they say, 'Oh this is not what I meant'. (Interview 23, Council attaché)

He shows a clear preference for gaining clarity on all points on the spot because it will be his job to follow up with his counterparts in the EP in the days following the provisional agreement. At the political level, one Coreper ambassador notes that the use of constructive ambiguity is a matter of trusting the Commission and the technical level to be able to stay within the 'landing zone'. However, he adds that, in his view, this post-trilogue clarification of details should mostly happen via the recitals of the act in question:

I mean, the recitals ... If you understand, okay the understanding is this and that, okay, then we can just clarify this in a recital. So, this is one thing and then ... really for the articles it's better to be as clear as possible in the trilogue. Not to leave it too much open. (Interview 52, Council ambassador)

This quote demonstrates that, while the text should be 'as clear as possible', the political-level actors acknowledge that sometimes it is necessary to clarify certain details afterwards – and this they are often willing to delegate to the technical level.

Complexity and Unpredictability?

Some files are more complex than others, and particularly for complex and controversial files, several interviewees (37, 49, 55) note that it can be difficult to know what the political agreement might look like, and thus also difficult to prepare draft wording for all potential compromises. One interviewee told me about a recent file he had worked on which had been both complex and controversial. Because there had been significant doubts about how a political agreement would look, and indeed whether it would even be possible to reach one, it had been impossible to draft concrete wording for large parts of the file before a political agreement was found:

So ... not knowing what the political agreement would be, it was not possible to work on legal aspects because the legal service can advise on a situation on possibilities, but they will not do a full process of analysis – they cannot do a full analysis, in case they go there, or in case they go there. It's so complex that they can work on some big ideas, but they will only work deeply on the files now that there is an agreement. (Interview 37, COM official)

He then compared it to work on a previous, much less complex file: 'in my previous experience with the [other directive], when there was a political agreement, it was very clear. So, it was... a more automatic work of translation into legal text' (Interview 37, Commission official). A similar experience was reported by a Commission official who noted with a certain pride that they had *not* had to continue negotiations after the final trilogue:

[I]n certain files the last point of the trilogue, they say that they have reached an agreement and there is half of the text missing. In ours, the political agreement... because of the fact that we prepared the options, we were just able to insert the option that was found. And so, the entire text was agreed as it was and there was no need to change the substance or to add new substance. (Interview 55, COM official)

The quotes above indicate that both the level of controversy and the complexity of a legislative proposal can contribute to pushing work beyond the last trilogue. If a file is complex, it is not feasible to prepare concrete drafting

proposals for all possible package deals ahead of the meeting. If a file is very controversial, a deal must be struck whenever possible, which may mean unexpected last-minute compromises and perhaps also the use of constructive ambiguity to ‘square the circle’ and reach agreement.

13.4 Frustration at the Technical Level

As has been demonstrated above, a large proportion of the interviewees mention the technical work which takes place after reaching a provisional agreement. Out of these, a subset explicitly express frustration with this procedure, arguing that deals are closed too quickly because people want to go home, and this leaves a large amount of work unfinished. Some blame the Presidency for having too much focus on the number of files closed, while others report that Covid-19 closures added extraordinary time pressure. A good example of this frustration comes from an interviewee who is unhappy about having to discuss sensitive political issues at the technical level after a deal because it was concluded prematurely, and the political level was reluctant to reopen negotiations:

Interview Excerpt 13.2: Concluded Too Soon

Apparently, someone looked at someone's screen and said, ‘Aha, that looks good’. But no shadows have ever seen any text. And the Presidency just stood up and said, ‘Yeah, we made it. We have a deal.’ Clapping. So, the whole room is clapping. Then they filmed already ... The Commissioner stands up, ‘Yeah, amazing. We have a deal, blah, blah, blah.’ Closing remarks already. And we are sitting on our side like, ‘We were supposed to see text’. And one of our rapporteurs said ... ‘I want text. I want to see it. I want to go out with you for half an hour. Then we check this text. And after this, we can agree to that.’ That was what he wanted. That did not happen. Because ... they were already celebrating, and then they were like, ‘Yeah, what the fuck’. And then the next week we got the text. And it was exactly the opposite of what Parliament understood as the deal. [...] And we had to renegotiate this part afterwards on the technical level, because, again, for reasons like, ‘Oh, we have to close everything, and we have to celebrate’. And they didn't want to have another trilogue. So [...] We had to renegotiate this super important political point on a purely technical level without our bosses on the other side. (Interview 42, EP assistant)

Here, two points are particularly important. First, according to the interviewee there was an effort to ‘check this text’ before agreeing, but it was ignored because people were already celebrating. Second, the ambiguity in the oral agreement turned out to be a problem because the two institutions had different understandings of what it meant. In this case, the interviewee blames the Presidency for forcing a deal through because they wanted to claim credit for making it:

[I]f you wouldn't have this time pressure all the time, if you wouldn't put an agenda for a last trilogue forward that has 24 items. It is irresponsible from my point of view. They should have done one trilogue on the easy topics and then maybe one last one on the two main topics ... Something like that, whatever ... It wasn't the case because [Presidency] wanted to finish everything [before end of their term], of course. (Interview 42, EP assistant)

He then gave an example of another file which had had '13 additional technical meetings after their so-called last trilogue. That's just ... yeah, that's not, not good lawmaking, actually, because it's all about prestige then' (Interview 42, EP assistant). Here, he argues that the focus on gaining political prestige by closing deals is detrimental to the final product. In Chapter 7, it was argued that the Presidency was under higher time pressure, but that the potential reputational gain was greater for the rapporteur. Here, the argument seems rather to be that the importance of each individual file gets crowded out if the Presidency instead focuses on the number of files closed. This notion is supported explicitly by two other interviewees, one who says that reaching agreements (plural) is important for a Presidency's *bilan* [track record] (Interview 62, Council secretariat), and another describing it as follows: 'In a way, we've become too focused on, like closing the largest number of files, and we're a bit obsessed by that' (Interview 3, Council attaché). Another attaché opines that aiming for a large number of agreements is stupid because it increases the risk of ratification failure:

I think it's stupid [...] who will remember that you finished something, I mean. And then it can create a problem because what is very embarrassing, I mean, not reaching a deal. It's again reaching a false deal and then going back to Coreper and then losing, not getting the support for the deal that you reached, that is embarrassing. (Interview 58, Council attaché)

Similarly, one interviewee notes that while it is common knowledge that actors are not 'supposed' to change things after the political agreement has been reached, it must be done anyway if the provisional agreement is incomplete:

Since the final political agreement has been made, you're not supposed to make any substantial change within the text because this would not be legit. So, what happens is usually we present it as a finish-up, like a technical finish-up, you know, to like phrase some sentences, but that will not change the context or the substance of the text. But obviously you need to do it... (Interview 62, Council secretariat)

Here, the interviewee notes that while 'obviously you need to do it', making substantial changes after the last trilogue meeting is not legitimate since it lacks political backing. As such, she demonstrates some frustration with having to portray 'political' or substantial changes as a 'technical finish-up'.

Furthermore, as touched upon in Chapter 7 and again at the beginning of this chapter, the end of the legislative cycle means that there is time pressure on all actors to finish negotiations quickly in order to avoid carrying over too many unfinished files to the next legislature. Related to this, several interviewees mention challenges related to the Covid-19 closures. One example is that it exacerbated end-of-term time pressure:

An issue here was the fact that we had Covid. So of course, everything was delayed by approximately two years, and it was the French Presidency that insisted on bringing issues back, processes, back to normal, with person-to-person meetings etc., working groups, all that, which was a very good thing, because that sped up the process [...]. But of course, everything is delayed, significantly delayed, because of Covid, and hence we are now in a rush. That rush, of course, always occurs at the end of the mandate period to finalize things. But I have the impression that now it's more than most, if I put it that way, because of this particular feature of Covid. (Interview 7, two Council attachés)

This quote indicates that the rush always occurs but was made worse by the approximately two years of delay to the 'normal' legislative program caused by Covid-19. Being in a greater hurry would also increase concerns about cutting corners towards the end, for instance by pushing more work to the technical level.

Finally, however, it should be noted that other interviewees present a more relaxed view on the (alleged) decline in the quality of legal drafting due to time pressure:

In a 300-page legislation, there will be some commas that are not that important. Of course, the obligations are important, but is it really the end of the world if some parts of a recital are only drafted at 99% quality? (Interview 48, COM official)

[Y]ou just tend to not to insist as much on things that [...] in an ideal world you might want to improve but you just acknowledge that time is short and you have to accept something that you see as maybe suboptimal without being politically problematic. (Interview 59, EP adviser)

While some interviewees thus express frustration and others are less concerned, it is worth recalling Zahariadis (2008: 515) caution that too much ambiguity leaves the process open to domination by central actors: 'In the presence of time constraints and ambiguity, a relatively small group of skilled policy entrepreneurs are capable of dominating the process and steering decisions toward their favorite outcomes'. While it has been demonstrated that technical-level negotiators generally have preferences which are in line with their political principals and enjoy a great deal of trust and autonomy, the practice described above leaves them with the de facto responsibility of getting

a deal across the finish line. This frustration and the implicit and explicit calls for more control is theoretically interesting as they run counter to conventional expectations in principal-agent theory. There could be both normative (democratic legitimacy) and self-interest (avoiding blame in case of failure) explanations for this, but as these frustrations have not been collected systematically, it is up to future research to examine this.

13.5 Summary

This chapter explores the surprising finding mentioned by several interviewees that technical-level negotiations continue even after a provisional agreement is reached in trilogues. Employees representing the relais actors continue to meet in a setup similar to interinstitutional technical meetings (ITMs) to write the concrete text of the provisional agreement, which sometimes contains only broad strokes or has no wording on parts of the proposal. This process occurs simultaneously with, but is distinct from, the ‘finalization’ of the text, which happens before formal adoption and involves ensuring the text’s legal coherence, improving its ‘drafting quality’, and translating it into all official EU languages.

It was argued that these ongoing technical negotiations often result from time pressure, particularly at the end of a legislative mandate, the conclusion of a Presidency, or when there is either political momentum or a sense of urgency. Notably, several technical-level interviewees express frustration with this process. They highlight the heavy workload it imposes and the fact that sensitive political discussions are sometimes delegated to their level after a provisional agreement has been celebrated. This practice underscores the challenges of balancing political urgency with the workload and responsibilities of technical-level actors in EU legislative processes.

Chapter 14.

Discussion and Conclusion

The goal of this dissertation has been to further our understanding of how new EU legislation is negotiated in trilogues. Its specific focus was on the informal communication between the negotiators representing the Commission, the Council, and the European Parliament in these negotiations, as well as how they understand their own roles and practices. I conducted ethnographic observations in the European Parliament, including attending several trilogues and different internal meetings at the technical and political levels. Additionally, I interviewed trilogue participants from all three institutions at different levels and in different roles. Based on this, I have analytically reconstructed the steps in a ‘typical’ trilogue process alongside an ongoing commentary on the steps provided by participants.

The main contribution of this dissertation is a comprehensive examination of the trilogue process. Notably, I present first-hand accounts of trilogue meetings and shadow meetings in the EP, which, as far as I am aware, have thus far not been open to the public. Gaining this access and shedding light on the process thus constitutes a standalone contribution. This dissertation’s detailed account of the trilogue process includes nuanced perspectives on how the *relais* actors navigate their roles as intra-institutional brokers and as representatives towards the other institutions when negotiating in trilogues, as well as how they balance the need for both control and trust vis-à-vis their counterparts and their technical-level employees.

This final chapter proceeds in four main parts. First, the findings of the analyses are summarized. Second, these findings are discussed with regard to the dissertation’s theoretical expectations as well as with regard to the extant literature on trilogues. Third, the robustness of the findings is discussed, with particular focus on their internal and external generalizability. The fourth and final section presents the methodological, empirical, and theoretical contributions of the dissertation and presents some avenues for future research.

14.1 Summary of the Analyses

This section briefly summarizes the main findings of each of the analytical chapters, which were structured to follow a typical trilogue process. This starts with the internal negotiations to produce a negotiation mandate and ends with technical-level discussions to settle the final details after a provisional agreement has been reached in an ‘open-ended’ trilogue.

Chapter 6, *Building a Trilogue Mandate*, described the different procedures within each of the three EU institutions for producing a mandate for trilogue negotiations. The chapter has four key findings. First, it was found that the Commission's proposal functions as a de facto mandate in trilogues. Second, it was demonstrated that the Commission works in closer cooperation with the Council than with the EP during the mandating phase. Third, mandates may be approved at either the 'middle level' (Committee in EP, Coreper in Council) or at the highest political level (EP plenary or Council meeting, respectively). Interviewees indicate that politically salient cases are more often approved by the political level. Fourth, informal communication between institutions during the mandating phase serves to clarify the purpose of proposals, share positions, and build initial rapport among negotiators.

Chapter 7, *Compromise or Stand my Ground?* first analysed the different delegations, finding that there are important differences in both size and composition. Second, the pressure configuration framework was introduced and empirically probed. It was argued that each relais actor faces a different set of constraints with regard to monitoring, expectations of neutrality, time pressure, and potential reputational gains. These insights are important for two reasons. First, it may help explain why the Council and the EP operate differently in terms of bargaining strategies. Second, conceptualizing the Commission as a negotiator (though not a co-legislator) rather than a 'neutral broker' may prove fruitful in future research.

Chapter 8, *Clash of Cultures?* engaged critically with the idea of a 'culture of trilogues'. Two challenges for the development of a trilogue culture were identified. First, each trilogue process has a unique configuration of actors, making it difficult to transfer norms from one trilogue to the next. Second, negotiators are entangled in their own institutions' culture, which influences their approach to trilogues. However, the technical-level actors ensure some stability, and the carry-over of a thin culture based on standard operating procedures. Building on these findings, the chapter then analysed the informal contacts between negotiators leading up to the first trilogue meeting. Lastly, the first trilogue was found to be mostly an introductory meeting where positions are presented, negotiators shake hands, a meeting calendar is approved, and work is delegated to the technical level.

Chapter 9, *What is Technical and What is Political?* explored the distinction between technical and political issues in trilogues, focusing on the growing trend of delegation to the technical level. While delegation is inherent in political systems, it raises questions over transparency and accountability, particularly as technical actors often de facto decide which issues warrant political attention. However, these concerns were somewhat assuaged by the finding that sensitive topics are often 'reserved' by the political level, and that

the three institutions' technical-level actors monitor each other. The chapter then highlighted practices for sending issues up and down between levels, the collaboration between them, and the reliance on trust over strict control mechanisms. Finally, it was argued that delegation is necessary due to the legislative workload, and that the ambiguity over the technical-political distinction is useful as it increases negotiators' ability to reach compromises.

Chapter 10, *The Constructive Use of Breaks*, brought the analysis into the trilogue room, exploring the use of breaks during trilogue negotiations and highlighting their role in facilitating deal-making on sensitive issues. It found that breaks help overcome stalemates by reducing formality, enabling candid discussions, and allowing negotiators to draft compromises on the spot. Three types of breaks were identified: short breaks for quick discussions within each delegation, longer breaks for internal deliberations or drafting, and 'huddles' where the relais actors negotiate package deals. Most of the time in trilogues is in fact spent in these breakout formats, which provide flexibility and foster 'real negotiations' by removing participants from the 'formal' plenary setting and intra-institutional scrutiny.

Chapter 11, *What Happens Between Meetings?* explored 'the corridors of power', examining the purposes and practices of informal contact between negotiators in between trilogue meetings. It was found that these informal meetings are used to 'pre-cook' agreements ahead of the next trilogue, but also that they offer opportunities for negotiators to build trust, particularly at the technical level. These meetings take many forms, some more institutionalized than others. Intra-institutional formats include shadow meetings in the EP, Coreper and working parties in the Council, and the GRI framework in the Commission. The main interinstitutional forum is the interinstitutional technical meetings (ITMs), but more informal bi- and trilateral formats are also used, including the so-called drafting sessions where representatives of any two or all three institutions meet to draft concrete wording for compromise proposals.

Chapter 12, *The Final Trilogue*, analysed how trilogue processes are concluded in 'open-ended' trilogues where a package deal is negotiated on all remaining issues. Such meetings are scheduled only when most issues are preliminarily agreed and when negotiators believe their differences on the remaining issues are manageable. Though a compromise is often 'pre-cooked', the lengthy agendas, widespread use of breaks, negotiation tactics and theatrics, and mid-negotiation surprises often result in marathon meetings. It was found that, once convened, open-ended trilogue negotiations gain momentum because 'success breeds success' and because negotiators are reluctant to admit defeat by walking away from a negotiation which was supposed to result in an agreement. Finally, interviewees note that they feel happy, relieved, and

tired when a deal is reached. However, some express dissatisfaction with the current trend of marathon meetings, arguing that fatigue is used as a negotiation tactic, and that people do not perform at their best after having negotiated non-stop for hours.

Chapter 13, *After the Deal*, explored the surprising finding that negotiations continue at technical level even after a provisional agreement is reached in an open-ended trilogue. Technical-level representatives of the relais actors meet in a format resembling interinstitutional technical meetings (ITMs) to draft concrete text, as provisional agreements often lack detailed wording. This process runs parallel to text ‘finalization’, which ensures legal coherence, drafting quality, and translation into all EU languages. These technical negotiations often stem from time pressure, either because a Council Presidency or a legislative cycle is about to end, because there is political momentum, or because there is a sense of urgency. However, technical-level interviewees express frustration with the heavy workload and the delegation of sensitive political discussions to their level after provisional agreements have been celebrated.

While the interviewees often stressed that no two trilogue processes are alike, the analyses highlighted that there is some regularity in the way they are structured. It is particularly worth noting that the Commission plays an active role throughout the process, that negotiators often meet in even more informal settings to discuss sensitive topics or test potential compromises, and that a great deal of the substantive work on the file takes place at the technical level.

14.2 Revisiting the Theoretical Expectations

This section will revisit the theoretical expectations developed in Chapter 4. Recall that, given that this is an abductive study, these were not formulated as hypotheses but rather broad expectations guiding the empirical enquiry. As such, the aim of this section is not to test the theoretical expectations and assess whether they should be rejected, but rather to discuss how they can help us understand the findings, and whether this gives rise to new theoretical insights. There are twelve theoretical expectations in total. The first is based on the idea that formality is better viewed as a spectrum rather than a binary variable. The remaining expectations are derived from the three theoretical lenses of rational choice-based perspectives, sociological institutionalism, and diplomatic practice theory.

Formal and Informal Meetings

The point of departure for this dissertation was an interest in the concept of formality and the use of informal negotiations to reach political compromises. As such, and as trilogues are informal meetings, it is not surprising that (in)formality has played a central role in the empirical analyses. The first theoretical expectation was that *negotiators will view trilogues as less formal than EP plenaries and Council Meetings, but more formal than bilateral meetings in the context of negotiations*. This expectation contains two comparisons, which are based on two different conceptions of formality. First, trilogues were expected to be viewed differently from the two types of formal meetings because they *are* informal by definition, as they are not foreseen in the EU treaties. Second, they were expected to be viewed as more formal than the various bilateral formats used throughout negotiations because they were expected to score higher on several of the indicators identified by Kraut et al. (1990). Surprisingly, many interviewees viewed trilogues as *formal* meetings, even though they acknowledged that they were different from formal procedures.

Interviewees gave different explanations for this, including that trilogues are ‘scripted’ and ‘pre-cooked’, involve many participants, and that participants are ‘high-level’. Some also argued that ITMs are formal, while there was agreement that other types of contact between the institutions should be categorized as informal. Indeed, the distinction between formal and informal meetings was present throughout the analyses. It was demonstrated that informal communication between the relais actors starts during the intra-institutional phase of negotiations because negotiators find it valuable to exchange views in an informal setting before they meet formally. It was also demonstrated that trilogue meetings follow a certain script, with the first trilogue being a ‘handshake meeting’ used primarily to make introductions and present positions, while the final, ‘open-ended’ trilogue is a marathon meeting punctuated by frequent breaks. These breaks were described as a means of ‘puncturing’ the formality of a trilogue meeting, providing the fascinating insight that an informal format may be contained within an otherwise ‘formal’ meeting. Finally, the difference in the perceived formality between trilogues and ITMs was attributed to the former being more staged and involving higher-level actors. To make sense of the interviewees’ categorizations, the table below compares different types of meetings using the indicators of formality by Kraut et al. (1990) complemented by three additional items based on the interview material and Farrell & Héritier (2003).

Table 14.1: Formality of Different Meeting Formats

	Formal meeting	Trilogue 'plenary'	ITM	Bilateral
1) Scheduled in advance	+	+	+	(+)
2) Arranged participants	+	+	+	+
3) Participants in role	+	+	+	(+)
4) Preset agenda	+	+	+	Varies
5) One-way communication	+	+	(+)	-
6) Impoverished content	+	(+)	(-)	-
7) Formal language/speech	+	+	(-)	-
8) Official venue	+	+	(+)	(-)
9) Political level participation	+	+	-	-
10) Legally binding agreement	+	-	-	-

Note: Items 1-7 are based on Kraut et al. (1990). Items 8 and 9 are based on the empirical material. Item 10 is based on Farrell & H  ritier (2003).

When presented as such, it becomes clearer why interviewees were reluctant to categorize trilogues as informal: they resemble formal meeting formats (e.g. EP plenaries and Council meetings) on all but two points. First, it takes a formal meeting to produce a legally binding agreement, but provisional agreements reached in trilogues are *de facto* very close to binding. Second, I have only scored trilogues one point lower on the 'impoverished content' item, meaning that the scope for real negotiations is only slightly better in the trilogue plenary than in a formal meeting. This is based on the insight from many of the interviews that there are too many participants watching the negotiators for the atmosphere to be 'intimate' and for it to therefore be conducive to substantive, confidential talks.

Similarly, ITMs score high on several items, which helps explain why they are seen as formal by some participants. Though they are still meetings with a Chair and an order of speakers, interviewees indicate that they are more interactive, including in terms of who can speak, how substantial the negotiations are, and because there is less 'theatre' in terms of courtesy phrases. This, coupled with the fact that the political level is not present, makes them seem less formal than trilogues. Finally, the bilateral meeting formats which were invariably described by interviewees as informal feature participants in their

work roles and will often have arranged participants and be scheduled in advance. However, they differ from the rest in important ways: first, they may take place anywhere, including the margins of formal meetings, a small meeting room inside the EP, or even a café. Second, interviewees indicate that discussions here can be much more candid and direct since there is no audience.

Overall, the inclusion of a more fine-grained conceptualization of (in)formality has proven very useful in the analysis, as interviewees highlight that different types of meetings evoke different levels of formality. This insight helps explain why negotiators find restricted, informal meetings better suited to sensitive political discussions than trilogue meetings (or even ITMs), which are informal in a theoretical sense. This complements recent work done on informality as diplomatic practice, which often works bottom-up. For instance, (Eggeling & Versloot, 2024: 56) find that ‘calling something formal or informal has important political and legal implications’, implying that diplomats have the capacity to decide whether something is formal or not. By combining this with a top-down, theoretically informed distinction between formal and informal, it becomes clearer that what diplomats navigate as formal and informal may also cover differences *within* the informal realm, which vary instead on their degree of institutionalization. This theoretical contribution will be elaborated later in this chapter.

Rational Choice-based Expectations

The rational choice-based perspectives yielded four different theoretical expectations, each of which will be discussed in turn. The first expectation was that *negotiators will seek out information about the positions of their counterparts if they believe that this knowledge will help them better reach their own goals*. The analyses consistently found that information-seeking was an important purpose of the informal interactions between negotiators at all stages of the legislative process. This knowledge was found to be useful for at least two reasons. The first is to identify potential coalition partners, both within the negotiator’s own institution and within the other institutions. Second, interviewees highlighted that this knowledge was useful to identify cleavages within the other two institutions, which could be exploited in negotiations, either directly or to discredit the use of tied-hands strategies. Specifically, EP interviewees noted that it could be difficult to identify the positions of each member state since there are no public records of the Council’s preparatory meetings. Additionally, it was found that interest organizations are an important source of information for the EP, and that they sometimes proactively seek out information from them.

The second expectation related to the selection and control of negotiators: The EP is expected to expend considerable energy on rapporteur selection,

and all three institutions are expected to take steps to monitor their agents during the negotiation process. This expectation directly speaks to problems of *ex ante* selection and *ex post* control of the relais actors as agents acting on behalf of each institution as principals in trilogues (see e.g. Delreux & Laloux, 2018). In terms of selection, the findings were in line with expectations. In the Council and the Commission, there is no real selection of the relais actor, as representation follows the rotation of the Council Presidency and the portfolio of the Commissioners, respectively. For the EP, questions of competence between committees and selection of rapporteurs could both be contentious. Within-group rapporteur selection was found to reflect different considerations, including proven expertise with the subject matter, negotiation skills, or aiming for a somewhat even distribution of files between the MEPs. However, strategic considerations were also mentioned, including selecting a rapporteur who was not considered too close to the Council's position or to have a vested interest in the file.

Though the co-legislators must formally approve agreements made in trilogues, all three institutions were found to have very different procedures for monitoring their relais actors during the process. The most obvious difference is that every political group in the EP must be invited to participate in trilogues, while the Council Presidency is generally alone, and the Commission is most often represented by a single Directorate-General. This would suggest that the rapporteur is significantly more constrained than her counterparts. However, two findings counteract this impression. First, it was found that first-hand information from trilogues is an informational commodity which the shadow rapporteurs can exchange with the other member states, thus enabling them to indirectly monitor the Presidency. Second, it was found that during breaks in trilogue meetings, the Presidency will often call other member states to get their approval for suggested compromises, demonstrating that they are subject to some degree of control during the process.

Related to this expectation, it was also argued that the delegation chain in trilogues should be extended to include the technical-level employees negotiating on behalf of the relais actors in technical meetings. It was found that they negotiate substantially all those parts of a legislative file which are not identified as 'political'. Sometimes, they are even tasked with identifying which provisions require political attention. This raises potential worries about the technical level's ability to influence the process by exploiting their autonomy to introduce amendments which diverge from the preferences of their political principals. However, the analysis found no major evidence of goal conflicts between technical and political actors (with the notable exception of some conflicts between cabinets and DGs in the Commission), and that relations were, for the most part, based on mutual trust. This runs counter to the

prevailing logic in principal-agent theory, which assumes that agents will have different preferences than principals. Waterman & Meier (1998) argue that in cases where there is goal consensus, but the agent still has more information than the principal, the situation will resemble the ‘classic case of the politics/administration dichotomy’ (ibid: 191), in which the technical level will become true ‘technocrats’ hired primarily for their expertise. This does not fit comfortably with the observation that the technical level exercises an explicitly political role, both in terms of negotiating substance and in identifying which issues are technical and which are political. Instead, one might consider this particular relation in light of stewardship theory (e.g. Schillemans, 2013), considering the technical-level negotiators as *stewards* who are motivated to further the goals of their principals. In this conception, stewards are best left to bounded self-regulation within general guidelines, are intrinsically motivated, and should be incentivized with relation to self-realization rather than external monitoring.

The third and fourth expectations both pertain to negotiation dynamics and strategies in trilogues, so it makes sense to discuss these in tandem. The third expectation was that *negotiators in trilogues will have an interest in making concessions to reach a compromise while keeping their respective institutions informed of negotiation progress to minimize the risk of ratification failure*. In hindsight, this expectation was quite obvious, and the analyses focused rather on *how* these concessions were made and how intra-institutional information flows looked throughout the trilogue process. The Commission and the EP were found to have rather institutionalized channels of information in the *Groupe des Relations Interinstitutionnelles* (GRI) framework and shadow meetings, respectively. In the Council, the Presidency has some leeway in determining the level of detail in reporting to Coreper, though this was generally complemented by detailed reporting at the technical level.

The fourth expectation was that negotiators in trilogues will simultaneously try to gain as much flexibility as possible in their mandate and to convince their counterparts that their hands are tied. The analyses raised three points particularly relevant to these expectations. First, it was demonstrated that relais actors have an incentive to make concessions to the other institutions because there are reputational gains from successfully concluding legislative negotiations. Having a flexible mandate is thus advantageous for the relais actor for two reasons: it makes an agreement more likely, other things equal, and it increases their autonomy to shape the agreement to their preference. However, the relais actors face an often-difficult task in getting their positions to overlap, and the second point is that the analysis identified several different practices for reporting to their home institutions and ‘getting flexibility’.

Between meetings, several institutionalized, informal meetings are used to report progress within each institution, both superficially at the technical level and in more detail at the political level, and to update negotiation mandates. These are complemented by informal interinstitutional meetings between the relais actors to ‘pre-cook’ compromises to be presented during the next trilogue. However, the frequent use of breaks also mentioned above demonstrates that mandates are also changed *during* negotiations. Together, these three observations demonstrate that it is not straightforward whether the relais actors generally prefer to have a flexible mandate from the beginning. The third point relates specifically to the expectation that negotiators will use ‘tied hands’ arguments to gain concessions from their counterparts. This practice was indeed found, along with other negotiation tactics. One of these was intentionally ‘blurring’ red lines in the mandate, even towards the negotiator’s home institution. The second was to oversell the importance of concessions made during meetings in the hopes of getting a larger concession in return.

The above discussion demonstrates clearly that trilogue negotiations contain elements of both competitive and cooperative bargaining, both within and between institutions. This dissertation has focused mostly on interinstitutional dynamics (except for Chapter 6). It is relevant to consider whether the relais actors enter a cooperative bargaining style at some point during the trilogue process and whether this changes their role vis-à-vis their counterparts. In this view, their relationship changes from competitors representing three institutions to collaborators trying to bring their own institutions towards a common solution. Indeed, pushing details in the legislation to technical meetings after the final trilogue was identified as a tool used to avoid ratification failure.

Sociological Institutional Expectations

The sociological institutionalist perspective led to four different theoretical expectations. The first expectation was that negotiators take trilogues for granted as the procedure for reaching a legislative compromise and do not explicitly consider other options, e.g. following the formal procedure. Overall, this was found to be the case. Some interviewees are critical of, for instance, the workload, the conduct of open-ended trilogues, and the proportion of decisions delegated to the technical level, but only one interviewee fundamentally questioned the use of trilogues. It is important to add that most interviewees seem aware of the formal rules. As such, ‘taken for granted’ is perhaps an overstatement; but they do acknowledge that the present practice is not likely to change any time soon.

This ties into the second expectation, namely that trilogues have come to be governed by a body of rules, norms, and standard operating procedures,

some recognized by all participants and others contested. Indeed, previous studies have argued that trilogues have gone from being ‘simple technical devices’ (Roederer-Rynning & Greenwood, 2015: 1153) to ‘cultural constructs crystallizing different conceptions of institutional design’ (ibid). The analysis did not find that any formal rules govern interinstitutional relations in trilogues specifically. To some extent, this of course reflects that trilogues are an informal construct taking place in the shadow of formal rules in the ordinary legislative procedure (OLP). However, it was interesting to note that formal rules did in fact constrain each institution’s internal procedures in different ways. The EP in particular has quite specific rules regarding roles and participation in trilogues, while the *relais* actors are less (formally) constrained in the other two institutions. A lack of formal rules does not mean anarchy, however, as this may be compensated via norms and standard operating procedures. The analyses found that some standard operating procedures were in play, such as using four-column documents to keep track of amendments, taking turns hosting trilogue meetings, and having a clear split between technical and political meetings.

The question of norms is a bit trickier, as norms are best seen when they are broken or overstepped. The analysis in Chapter 8 found that the development of trilogue norms was challenged twofold: by the change of negotiators both between files and over the course of a trilogue, and by the fact that all trilogue negotiators are embedded in their home institutions, which have their own cultures and norms. It was also demonstrated that negotiators spend considerable time at the beginning of a trilogue process to agree upon the process and get to know each other. This was taken to indicate that there is no set of completely settled norms for structuring interactions in trilogues. However, the analyses did identify three norms regarding trilogue meetings which are seemingly recognized by all participants: first, the opening trilogue is mostly used to shake hands and plan the process. Second, the (potentially) last trilogue will be open-ended, meaning that it does not have a specified end time. Moreover, it is common in open-ended trilogues to use breaks in various constellations. Third, generally only the *relais* actors and the EP Committee Chair speak during trilogue ‘plenaries’, and the language used here is rather diplomatic. Overall, it was found that there are some standard operating procedures and norms, but that these leave room for variation between files, suiting a file’s specific characteristics and the personalities of the negotiators.

The third theoretical expectation was that when evaluating behaviour in trilogues, negotiators draw on experiences from negotiations within their own institutions. Thus, negotiators from different institutions and job positions will have different perceptions of what is appropriate behaviour in trilogues. Overall, there was not much in the data to suggest that this was the case.

Rather, it was found that negotiators were aware of differences between institutions and used their perceptions of these to evaluate the behaviour of other negotiators. Relatedly, there were some examples of negotiators from one institution holding specific prejudices or preconceived ideas about the other institutions. For instance, some Council interviewees found that their EP counterparts lack expertise and introduce too many amendment proposals. On the other hand, some EP interviewees found that Council (and Commission, to some extent) representatives seem to feel superior to their EP counterparts. With regard to negotiation style, some Commission interviewees found that the relations between the co-legislators were sometimes difficult because they view each other as competitors. Conversely, the co-legislators find the Commission simultaneously too focused on technical details and not neutral enough in its role as mediator.

Fourth and finally, exposure to trilogues was expected to be more intensive but less prolonged than exposure to the actors' own institutions. Thus, shared 'trilogue norms' are expected to become more salient over the course of the legislative work on a policy file. Here, the analysis demonstrated that informal exchanges between negotiators start early, with the explicit aim of networking and 'settling the process'. For instance, one interviewee had invited his counterparts to a four-hour lunch to exchange views and discuss how to approach the upcoming trilogues. Additionally, some interviewees noted that negotiators spend a lot of time together and get to know each other, particularly at the technical level – one interviewee reported having 26 hours of meetings on the same file in one week, and another reported having three to four full days of technical meetings during the final phases of negotiations. These informal interactions continue throughout the process, and one interviewee noted that he had scheduled an 'informal debrief' with his Council counterpart after the last trilogue to exchange impressions and tactics. They did this because it had been strange to sit opposite each other during the open-ended trilogue without talking, having prepared the entire compromise together. However, norms and informal relations are not the same, and there was no indication that, over the course of a trilogue process, negotiators became socialized into a different set of norms. Negotiators do get to know and (in most cases) trust their counterparts, and negotiations often become more direct and cooperative towards the end. But this may just as well reflect that each negotiator has an own interest in reaching a deal and reaping the reputational rewards of doing so. Furthermore, though interinstitutional negotiations may be intense in the final stretch of a trilogue, negotiators still spend most of their time in their own institutions, and even in trilogues (or ITMs), they explicitly represent this institution. In terms of role perceptions (cf. Egeberg, 1999), this means that a role as institutional representative is evoked.

Overall, this study has found that the use of trilogues is a strong norm taken for granted by most interviewees. Beyond that, however, findings are more mixed. While there are some regularities in trilogues, most of these could be categorized as practical arrangements or standard operating procedures rather than norms, though the boundary between them is somewhat blurry. The absence of strong, uniform trilogue norms was found to be explained in part by the change in participants from file to file as well as by the fact that any socialization into such norms would be tempered by negotiators' being embedded into existing norms within their own institutions.

Diplomatic Practice Expectations

The last theoretical lens was diplomatic practice, which led to three theoretical expectations. The first two different expectations will be discussed simultaneously, as they relate closely to one another. The first is that *a body of everyday practices exists in trilogue negotiations, and negotiators follow these scripts to display mastery of the process*. The second is that *failing to demonstrate mastery of negotiation practices may result in a negotiator being sidelined when negotiations are about to be finalized*. These two expectations are related insofar as the first is a prerequisite for the second. If no practices exist, it is not possible to display mastery of them.

The existence of everyday practices was hinted at in the previous section with the reference to standard operating procedures (four-column documents, taking turns hosting, technical/political split). Additionally, negotiators point out that there is some degree of 'scripting' or theatrics in the meetings, though the Council's style is perceived as more diplomatic and the EP's more direct. Furthermore, the use of breaks and of marathon meetings seems to be a common practice, though some interviewees criticize their use. Regarding the display of mastery of practices, several examples have cropped up throughout the analyses. First, one EP interviewee described how an adviser from a different group became a central collaborator in legislative negotiations because he had demonstrated vast experience on the topic (Interview 18, EP assistant). There are also examples of attachés holding their ambassadors in high regard because they are well attuned to the negotiation dynamics and because they are 'machines' in terms of negotiation stamina (Interview 35, Council attaché). One ambassador explained his own mastery of negotiation practices by saying that he could do the 'theatre' parts of a meeting (courtesy phrases etc.) without preparation from his staff (Interview 52, Council ambassador). Additionally, I observed during several different meetings that negotiators made jokes during negotiations, demonstrating that they are at ease in what might be viewed as a high-pressure situation.

Regarding the expectation that failing to display mastery of the relevant practices will get a negotiator sidelined, no definitive answer can be given based on this study, as there were only a few examples of such failings. One interviewee mentioned that he had seen the Committee Chair take over negotiations during a trilogue from a rapporteur who was clearly not up to the task (Interview 46, EP assistant). Another noted that a rapporteur had caused ‘riots’ with the shadows by being a ‘loose cannon’ and not taking enough heed of the shadows’ opinions (Interview 22, EP adviser). Finally, one interviewee noted that during a meeting, she had observed a civil servant from the Presidency shaking his head every time the rapporteurs spoke, which she had seen as a failure to ‘hide his personal, or the Council’s opinion’ (interview 44, EP assistant) about what was being said. These three examples differ in one important respect: two of them are internal to the EP, while the third is an EP interviewee commenting on the behaviour of a Council representative. As such, it is relevant to discuss *whom* these displays of practice mastery are aimed at. On one hand, the negotiator must signal to their own institution that they know what they are doing and can be trusted with interinstitutional negotiations. This is particularly relevant because, in the end, it is the negotiator’s own institution who can decide to sideline or even replace them. On the other hand, they also need to demonstrate to the other negotiators that they are a trustworthy negotiation partner, and that they have political backing for the compromises they make. If not, negotiations risk stalling, and they may face criticism and calls for replacement by their counterparts.

It is worth adding that many interviewees find trilogue negotiations to be a ‘people’s business’, and that it is absolutely necessary to be pleasant to work with. This does not relate directly to mastery of trilogue-specific negotiation practices, but to more general interpersonal skills. As such, displaying mastery may be said to be mostly about demonstrating oneself to be a trustworthy negotiation partner.

This relates to the final theoretical expectation, namely that a practice exists of informally sharing knowledge of one’s own and others’ positions, working as a mutual trust-building exercise between negotiators. This was clearly demonstrated to be the case. At the technical level, the relais actors’ teams would regularly meet in restricted formats between meetings to have open discussions about negotiations, including which member states and/or political groups have reservations. These meetings were used to ‘pre-cook’ agreements before trilogue meetings. At the political level, a similar dynamic was observed, but instead of taking place between meetings, these exchanges take place in breaks during trilogue meetings. Both these types of exchanges are very directly related to the work on a concrete file, and as such presuppose that a baseline level of trust is established between the negotiators in advance.

It was argued that this initial trust-building starts taking place in informal meetings as soon as relais actors are appointed. As such, these findings are in line with the notion that information-sharing is an enactment of trust (Versloot, 2022). Another important aspect of trust-building was the importance attached by interviewees to a trusting relationship between the technical and the political level. As technical-level actors spend significantly more time negotiating with one another than their political masters, they have more opportunities to both build and enact mutual trust, and these interpersonal relations are arguably just as important as those between the relais actors themselves.

Summary of Theoretical Discussion

This section has discussed the extent to which each theoretical expectation matched what was found in the empirical analyses. Each perspective provided different tools for understanding the trilogue process, the relais actors' behaviour in negotiations, and their perceptions of their own role(s), and in my assessment each of them has proven fruitful. The rational choice perspective was useful because it put *interests* at centre and helped sharpen focus on the cross-pressures, constraints, and relations which the negotiators navigate. Specifically, it was useful because the negotiators often described trilogues in rationalist terms. By contrast, the sociological institutionalist perspective was useful because it highlighted how negotiators from different institutions and holding different jobs may have different views of the process. It was also useful in helping to demonstrate the challenges for the development of a uniform trilogue culture. Despite their differences, working with these two perspectives as complements to one another has been unproblematic as they are both classic theories in the sense that they specify assumptions about individuals from which expectations about their behaviour can be derived.

Practice theory, on the other hand, is not an explanatory theory rooted in specific assumptions about individuals. Rather, it takes behaviour, namely everyday interactions, as its starting point, instructing researchers to 'start with practice' (e.g. Eggeling, 2021; Geertz, 1973). This discrepancy sometimes made it challenging to work with practice theory in conjunction with the other two perspectives. However, it was useful specifically *because* of this focus on everyday behaviour, which helped distinguish between practices and norms. Importantly, it helped illustrate how conforming to practice simultaneously helps negotiators display competence and institutionalizes the practice in question, which may at one point become a norm. Finally, another goal of abductive studies is to provide new reflections on existing theory. This will be elaborated below in the section on theoretical contributions.

14.3 Generalizability

This section discusses the generalizability of the findings of this dissertation. This will be done with respect to internal and external generalizability, as defined by Maxwell (1992) and introduced in Chapter 5. That is, I discuss whether the findings are applicable to trilogues across policy areas covered by the ordinary legislative procedure (internal) as well as to other contexts (external) – more specifically, to other EU decision-making procedures, and to bicameral systems at the national level.

Internal Generalizability

A central aim of this dissertation was to provide a detailed understanding of practices in the trilogue process. To do this, I interviewed participants who have worked in many different policy areas and observed meetings on several different files. Therefore, I believe that the internal generalizability of these findings is quite high. Most interviewees at all levels and in different roles emphasized that every trilogue process is unique: no two files are the same, different policy areas have different levels of salience and are handled by different sub-units within each institution, and the constellation of actors varies from case to case. Thus, it could probably also have been a fruitful approach to focus on a selection of different cases to tease out differences and similarities, as was done by Hoppe (2020). However, despite the assurances that each case is unique, the analyses did uncover some regularities which might reasonably be expected in any trilogue process. Among these are that informal contacts between the relais actors start during the mandating process, and that the first trilogue will mostly be occupied by procedural points, exchanges of pleasantries, and delegation of work to the technical level. Additionally, it can be expected that four-column documents are used to keep track of proposed amendments, and that the institutions will take turns hosting trilogue meetings. It may also be expected that the three relais actors are under different levels of monitoring by their own institutions, and that they will deliver progress reports throughout the process. Negotiators will often use more secluded and informal fora to progress the negotiation. These include informal coordination meetings ahead of trilogues to pre-cook compromises and frequent breaks during trilogue meetings. Finally, one might reasonably expect, though it is not *always* the case, that the final trilogue will last several hours, perhaps into the night.

External Generalizability

Trilogues are a specific type of informal yet very institutionalized negotiation within the EU, and as noted above, the main aim was to provide a thorough analysis of them. As such, external generalizability was not at the forefront of the project. However, some of the findings may prove relevant beyond trilogues.

Other EU Negotiations

When the EP, the Council, and the Commission interact, it is not always to negotiate new legislation under the OLP; but some of the dynamics observed here may be applicable to other types of negotiations. The closest example is found in the annual EU budget negotiations, where informal meetings (also called trilogues) between the three institutions are used to prepare meetings of a conciliation committee (EPRS, 2024). As these procedures are broadly similar, many of the dissertation's findings are expected to be applicable here. However, two key differences are worth noting. First, annual budgetary negotiations are repeated, and it is expected that more actors will be recurrent here than in trilogues under the OLP. Furthermore, they happen in the shadow of the multiannual budget, which means that they are usually not very salient (Buonanno & Nugent, 2021: 310). As such, one might expect that the trilogues used in annual budgets are institutionalized to an even higher degree than those under the OLP.

Moving away from legislation, one could expect similar negotiation dynamics regarding the ratification of EU trade agreements. As trade agreements are an exclusive EU competence, they are negotiated by the Commission on behalf of the member states and subsequently signed and ratified by the Council with the EP's consent. While the Council is involved in all steps, the EP is formally relegated to merely providing consent at the final stage. However, previous studies have shown that the EP has managed to leverage this veto power to gain informal involvement throughout the process (Bardou, 2024; Servent, 2014). As such, one might expect that informal trilateral coordination takes place between the three institutions during these negotiations. One important difference here, however, is that the EU side only constitutes one half of negotiations on a trade agreement. As such, the institutions could, to some extent, be conceptualized as a collective principal for the Commission's negotiation team, who represents the EU vis-à-vis the third country (or bloc) in question.

Bicameral Systems at the National Level

As noted in Chapter 5, a common comparison made in studies of trilogues is to other bicameral systems (e.g. Costello & Thomson, 2011; Kreppel, 2018; Rasmussen, 2011; Roederer-Rynning, 2019). The EU system can be categorized as *strong bicameralism*, as the EP and the Council are formally of equal standing, and since their dissimilar composition means that congruence between positions is not given (Brandsma & roederer-Rynning, 2022). This is notable as even with formal equality, the Council is usually more successful in negotiations than the EP (Costello & Thomson, 2013), meaning that something in either the institutional setup, the preference configuration, or the negotiation process must explain the difference. Should similar differences be observed in other systems with strong bicameralism, some of the same dynamics identified in this dissertation might be worth exploring: are similar patterns of interaction observed between the two chambers? Does one chamber face more internal division, or do institutional rules and norms place more constraints on their representatives in bicameral negotiations? Do technical-level staff play an important role in settling the details after a political agreement has been made?

14.4 Contributions and Further Research

This section discusses the main contributions made by this dissertation and outlines some potential avenues for further research. I argue that this dissertation makes six contributions: one methodological, two empirical, and three theoretical. First, I discuss how the combination of ethnographic observations in one institution and interviews across institutions proved fruitful in the study of interinstitutional negotiations. Second, I discuss how this dissertation's detailed description of both the trilogue meetings themselves and the web of informal communication in which they are enmeshed contribute to our understanding of the EU legislative process. Third, I discuss the theoretical contributions made by 1) treating the Commission as a *de facto* negotiator rather than a mediator, 2) specifying that when conceptualizing trilogues as a two-level game, it is not a symmetrical game as each negotiator faces different pressure configurations, and 3) the finding that while trilogues are *de jure* informal, they are viewed as very formalized by negotiators. As such, the dissertation argues that (in)formality should be treated as a continuum rather than a binary concept. Finally, this section points towards areas for further research.

Methodological Contribution: Interinstitutional Ethnography?

The combination of ethnographic observation, semi-structured interviews, and different types of documentary material is neither novel nor unique. However, ethnographic work in the EU has thus far mainly been focused on one institution at a time (e.g. the Council: Adler-Nissen & Eggeling, 2022; the EP: Busby, 2013; the Commission: Mérand, 2021; Ross, 1995). I argue that applying these methods to the informal aspects of EU legislative decision-making, which is *interinstitutional*, constitutes a methodological contribution. The dissertation demonstrates that access to the ‘Brussels bubble’ as a field via one institution can allow the researcher a level of immersion into this bubble, which provides benefits beyond descriptions of the institution in question. In my case, being in Brussels for an extended period of time helped me ask more qualified questions to interviewees from all three institutions, using the correct terminology and up-to-date references. My direct exposure to everyday interactions in the European Parliament also sensitized me to the often-unspoken differences between the institutions, helping me observe these in practice. Beyond the study of EU politics, this approach could prove fruitful for scholars wishing to approach fields to which access is doubtful. This could, for instance, be applied in ethnographic studies of political parties, where access to one party could be complemented by in-depth interviews with representatives of other parties to highlight similarities and differences in their organization, practices, and role perceptions.

Empirical Contributions: Describing the Trilogue Process

This dissertation’s application of ethnographic methods to the trilogue process has yielded two empirical contributions. First, it offers a comprehensive description of the trilogue process today based on participant observations from trilogue meetings and different preparatory meetings and a large body of interviews. This description sheds light on several interesting features, including the frequent use of breaks during trilogues, the extensive informal ‘pre-cooking’ of compromises before meetings, and a detailed analysis of how negotiators use ‘four-column documents’ in practice. The findings are generally compatible with previous studies of the trilogue process, but the level of detail furthers our understanding of how trilogues are conducted in practice. For instance, previous research finds that the EP, particularly rapporteurs, are targets of heavy lobbying efforts by interest organizations (e.g. Greenwood & Roederer-Rynning, 2021; Marshall, 2012). This is confirmed in this dissertation, but it is also demonstrated that the rapporteurs and their teams sometimes actively solicit the input of interest groups, both to lean on their policy expertise and to pre-empt accusations of taking a one-sided perspective.

Additionally, the dissertation corroborates previous findings that the technical level plays an important role in the trilogue process (e.g. Hoppe, 2020; Roederer-Rynning & Greenwood, 2015) but adds the surprising detail that substantive technical-level negotiations continue after a provisional agreement has been reached in trilogues.

The second empirical contribution consists in documenting the extent of informal coordination both within and between the institutions throughout a trilogue process. It was demonstrated that there are both institutionalized and completely ad hoc interactions at all stages, from the moment a legislative proposal is submitted (often even before that) through when an agreement has been made. For instance, the practice of ‘speed dating’ between the Coreper ambassadors representing incoming Presidencies and the EP’s Committee Chairs constitutes an institutionalized setting. Moreover, it was demonstrated that the other two institutions will often reach out informally as soon as they have a somewhat clear indication of who will be the rapporteur representing the EP on a given file. Additionally, several informal meeting formats were described, including drafting sessions, interinstitutional technical meetings (ITMs), prep meetings, and shadow meetings, each of which serves as a means to prepare compromises to be discussed in trilogues.

Theoretical Contributions

The Commission often has an awkward role in studies of co-decision. While many do acknowledge that they have certain interests (e.g. Panning, 2021), they are mostly cast in the role of a neutral broker which cannot really exercise power (e.g. Costello & Thomson, 2013; Farrell & Héritier, 2004). Throughout this dissertation, interviewees have ascribed the Commission a much more active role. The Commission was found to view its original proposals as *de facto* negotiation mandates, to hold the pen on drafting compromises, and to be just as involved in informal coordination as the co-legislators. As such, the Commission is found to be much more than a neutral broker. Perhaps just as importantly, the fact that trilogues are informal and happen before the first reading has at least two consequences. First, the Commission can threaten to withdraw the proposal if negotiations run counter to their preferences. Second, the lack of formal rules means that there is more leeway for the Commission’s representatives to shape their own role in trilogue negotiations. This dissertation has analytically treated the Commission’s representative on an equal footing with the co-legislators: as a negotiator trying to find a compromise along with two other *relais* actors while, to the greatest extent possible, staying within the remit of their mandate. As such, I argue that future studies should consider the Commission’s role in the OLP carefully and take them seriously beyond the agenda-setting phase. This could be done either by treating them as

analytically equal to the co-legislators or by theorizing specifically how the Commission may use its expertise and de facto veto power to influence negotiations.

Relatedly, this dissertation has shown that viewing trilogues as a two-level game with three players is fruitful. Additionally, it has reconfirmed the usefulness of working with the relations between relais actors and their institutions in a principal-agent framework. The contribution here is twofold. First, the dissertation contributes to the study of EU legislation by developing and empirically probing the pressure configuration framework, showing that negotiators in trilogues face similar constraints but to different degrees. The four pressures identified were *monitoring*, *neutrality*, *time*, and *reputation*. This framework could prove useful in future case studies of EU legislative processes aiming to explain either surprising outcomes or why negotiations sometimes grind to a halt only to suddenly get unblocked. Second, and perhaps just as importantly, the delegation from each institution to a relais actor is not the last link in the delegation chain, as the dissertation demonstrated that technical-level actors carry out a substantial portion of negotiations. Here, it was argued that more attention needs to be devoted to this delegation than has hitherto been the case, and a preliminary argument was made for the promise of examining it using stewardship theory.

The third theoretical contribution relates to the concepts of informality and institutionalization. As discussed above, this dissertation has demonstrated quite clearly that there is not complete congruence between the theoretical definition of trilogues as informal negotiations and the way they are viewed by practitioners – i.e., as *very* formal. As such, it is worthwhile to distinguish between an experience-distant and an experience-near conception of informality (Schaffer, 2016). The experience-distant conception of trilogues as informal because they are not part of the formal OLP, and because provisional agreements must be formally adopted by the co-legislators, is still important. The argument here is that it should be complemented by an experience-near conception of formality, and that such a conception is clearly not based (solely) on whether a meeting is formal in the sense that it can produce legally binding agreements. Instead, several parameters were considered when interviewees described some meetings as more formal than others. A non-exhaustive list includes 1) the hierarchical level of participants, 2) the *number* of participants, 3) whether the meeting is pre-planned and has an agenda, and 4) whether interactions are moderated by a Chair. Several other considerations such as venue, dress code, etc. could also be relevant, but these four seem consistently important in judging the formality of a meeting.

These findings are to a large extent in line with the dimensions of formality proposed by Kraut et al. (1990). For instance, a trilogue is viewed as ‘formal’

because it involves the hierarchy, is pre-planned and has an agenda, there are many participants acting in their official roles, and exchanges are moderated by the Committee Chair or the Presidency's relais actor. The same applies to some extent to ITMs, but it seems that they are viewed as slightly less formal because the political level is not present and there are fewer participants. By contrast, most interviewees agree that drafting sessions and coffee meetings to 'pre-cook' agreements are informal, though participants still meet in an official capacity to discuss legislation.

To avoid confusion between the two conceptions of informality, it might be useful to analytically term the experience-near categorizations of different types of meetings as more or less formal with reference to their degree of institutionalization, inspired by the work of Roederer-Rynning & Greenwood (2015). They argue that trilogues and ITMs 'form a rather coherent, well delineated and ritualized sequence of meetings' (ibid: 1153), while the various informal bi- and trilateral meetings are 'important and, to an increasing extent, ritualized' (ibid: 1156). As such, this dissertation argues that the degree of *institutionalization* of the meetings which take place during a trilogue process to some extent overlaps with how *formal* they are perceived to be by participants. Consequently, in everyday usage 'formal' and 'informal' are not fixed categories but will vary from case to case and over time, particularly with regard to the meetings that take place at the technical level.

Further Research

This dissertation has mainly sought to contribute to the literature on EU legislative decision-making, specifically to the ongoing debates about the institutionalization and developing culture of trilogues and, by extension, their implications for the transparency and legitimacy of EU decision-making. While I believe that this dissertation makes a valuable contribution to this field, it also leaves some questions unanswered and raises new ones. Like any ethnographic study, this dissertation has presented a 'partial view' (Clifford, 1986), based on both my positionality as a researcher and the specific people, meetings, and interactions I was able to observe. As the ethnographic fieldwork was situated in the EP and at the end of a legislative period, an obvious suggestion for further studies would be to conduct ethnographic fieldwork focusing on trilogues in either the Council or the Commission, or to do it in a different phase of the legislative cycle. Additionally, this dissertation raises several potential explanations for the drivers of such phenomena as the level at which a mandate is approved, how much is delegated to the technical level, and how much work is left until after a provisional agreement has been reached. However, it lacks the proper leverage to offer causal explanations of these

phenomena, and these could be better answered using other designs, e.g. comparative case studies or process-tracing.

The dissertation also raises some broader perspectives. First, more empirical work is needed to unpack the relationship between the technical level and the political level in trilogues. Chapter 9 found that the technical level plays a key role both in preparing compromises ahead of trilogues and in determining which issues warrant political attention. Chapter 13 found that substantial work takes place at the technical level after a deal has been made in trilogues. While these are relevant findings, they also showcase that it is worthwhile to examine these phenomena more systematically. With regard to the latter, it is for instance an open question whether this always happens or is limited to the end of a Council Presidency or an EP mandate.

Another empirical phenomenon which remains understudied is how compromises reached in trilogues are communicated to the constituents within each of the three institutions. It would be relevant to study the internal procedures of each institution to determine who gets information when. Do briefings come out on the same night (or morning) as a deal has been struck, and if so, who produces and sends them, and what do they contain? How do relais actors manage flows of information to minimize potential misunderstandings and conflicts about what was agreed? Seeing as ratification failures are so rare, issues that may arise in this phase are clearly handled successfully in most cases, but we still do not know exactly how this unfolds. This becomes particularly relevant in situations where the relais actors must communicate that a deal has been made but that the details are still being worked out.

There is also a potential avenue for further research within an already vibrant discussion in the trilogue scholarship. An underlying current in much of the literature is the discussion of efficiency, often as opposed to transparency. This dissertation has looked at how disagreements (sometimes even deadlocks) are handled within trilogues, paving the way for early agreements. But it has not addressed the fact that trilogues also remove formal deadlines and most of the ways in which legislative proposals ‘fail’ entirely. The following quote illustrates how blocked proposals can stay blocked for a long time:

You have also this, this situation that you can have trilogues that are blocked for ... I had that two times for two years – for two years! Because it's impossible, there are some issues with the position from the Council, the Parliament, and/or the Commission. Sometimes the Commission is so displeased with what the Parliament or the Council are going to do, that they start really to block as well, ‘If you go that way, we withdraw the proposal’, which is a very big thing if that would happen. I think it has happened once in the whole history of the Parliament, at least being a co-legislator. Not many times, but maybe two or three. (Interview 27, two EP advisers)

Since the rare occurrence of the Commission withdrawing a proposal is the only way a proposal will formally ‘fail’, two relevant questions for future research arise: first, under which circumstances can proposals which have been blocked for a long time be restarted, as happened with the Women on Boards directive, which was finished in 2022 after having been blocked for a decade (European Parliament, 2024a)? Second, it would be relevant to examine whether the existence of a ‘frozen’ proposal prevents the EU from making decisions in that area, or whether there are workarounds.

Another point related to time is the finding that the Council Presidency is often under more time pressure than the other two negotiators. Combined with the idea ‘the party that negotiates at haste is often at a disadvantage’ (Raiffa, 1982: 16), this raises the question of whether this has a measurable effect on their willingness to close. For instance, it would be relevant to measure whether more deals are reached as a Presidency ends, and whether deals reached at such a time tend to favour the EP’s position more than deals made, e.g., at the beginning of a Presidency.

While the shadow of the formal procedure was prominent throughout this dissertation, given that provisional agreements reached in trilogues must be formally approved by both co-legislators, another ‘shadow’ was largely absent, namely that of the European Council. Though the European Council is specifically prohibited from exercising legislative functions, all legislative decision-making takes place in the ‘shadow of the hierarchy’, as the heads of state are the political masters of the Council of Ministers and, to some extent, also the MEPs. One interviewee notes that the European Council may intervene if legislation gets stuck:

It's maybe often also in cases where you can see that in trilogues not much is happening, and you can't really move forward. It will often be brought up at Coreper to kind of see okay how can we get the process to continue and get over the blockage that's there. And then in some cases, if there is something that is completely – what can I say... stuck, and where you really can't see any way out, then it can be brought up to the head of state level. (Interview 13, COM Secretariat-General)

Previous studies have demonstrated how the heads of state and government (i.e., their capital-based bureaucracies) are becoming more and more involved both crisis management (e.g. Beach & Smeets, 2020) and everyday decision-making, which was usually the remit of the Council of Ministers (e.g. Puetter, 2014a). However, we have little knowledge of how and under what circumstances the European Council gets involved once legislation enters the inter-institutional stage in trilogues.

The final words of this dissertation are both a call for more research and a call for reflection. Over the past 30 years, trilogues have ‘triumphed’ (Hoppe,

2020: 18) as *the* way new legislation is negotiated in the EU. As *de jure* informal meetings, trilogues are not underpinned by formal rules governing the interactions between negotiators. Therefore, their success in producing viable compromises depends on the willingness of negotiators to adhere to institutionalized norms and cooperate in good faith. More importantly, perhaps, it hinges on negotiators' willingness to trust each other and their ability to credibly commit to an agreement without the risk of ratification failure being too high.

The latest EP election saw further erosion of the centrist majority, and Eurosceptic parties won a larger share of the vote than ever. Traditionally, these parties have been sidelined in trilogues. At the time of writing, a similar situation is playing out in the Council. France and Germany are politically paralyzed, and several member states have Eurosceptic parties in government which have traditionally been shunned from EU cooperation. This increased fragmentation may prove challenging for an informal decision-making system which hinges on trust and sincere cooperation in informal fora. Trilogues are already criticized for lacking in transparency and often defended because they are seen as an efficient tool to make compromises. If the limits of informality are reached and trilogues cease to be efficient, the EU risks being left both opaque and incapable of producing decisions.

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Appendix A: List of Studies Included in the Literature Review

1. Andlovic & Lehmann (2014)
2. Bauerschmidt (2021)
3. Berthier (2016)
4. Bicchi & Arregui (2023)
5. Bodson (2021)
6. Brandsma (2015)
7. Brandsma (2019)
8. Brandsma et al. (2021)
9. Brandsma & Hoppe (2021)
10. Bray (2014)
11. Bressanelli & Chelotti (2016)
12. Bressanelli et al. (2015)
13. Broniecki (2019)
14. Burns (2013)
15. Burns et al. (2013)
16. Bürgin (2019)
17. Christiansen & Neuhold (2013)
18. Ciacchi (2024)
19. Coremans (2020)
20. Costello (2022)
21. Costello & Thomson (2010)
22. Costello & Thomson (2011)
23. Costello & Thomson (2013)
24. Cross & Hermansson (2017)
25. Curtin & Leino (2017)
26. de Ruiter (2013)
27. de Ruiter & Neuhold (2012)
28. de Ruiter & Neuhold (2021)
29. Dionigi & Koop (2019)
30. Dobbels & Neuhold (2013)
31. Dyrhaug (2014)
32. Farrell & Héritier (2003)
33. Farrell & Héritier (2004)
34. Farrell & Héritier (2007)
35. Finke & Dannwolf (2013)
36. Greenwood & Roederer-Rynning (2015)
37. Greenwood & Roederer-Rynning (2019a)
38. Greenwood & Roederer-Rynning (2019b)
39. Greenwood & Roederer-Rynning (2021)
40. Hansen (2014)
41. Héritier & Reh (2012)
42. Hillebrandt & Leino-Sandberg (2021)
43. Hix (2002)
44. Hoppe (2020)
45. Hoppe (2023)
46. Huber & Shackleton (2013)
47. Hurka & Kaeding (2012)
48. Häge & Kaeding (2007)
49. Häge & Naurin (2013)
50. Häge & Ringe (2019)
51. Häge & Ringe (2020)
52. Häge & Toshkov (2011)
53. Haag (2022)
54. Jensen & Martinsen (2015)
55. Judge & Earnshaw (2011)
56. Kaeding (2004)
57. Kaeding (2005)
58. Kirpsza (2018)
59. Kirpsza (2019)
60. Kirpsza (2021)
61. Kirpsza (2023)
62. Kirpsza (2024)
63. Kreppel (2018)
64. Laloux (2020)
65. Laloux (2021)
66. Laloux (2024)
67. Laloux & Delreux (2018)
68. Laloux & Delreux (2021)
69. Laloux & Panning (2021)
70. Leino (2017)
71. Leino-Sandberg (2023)
72. Lord (2013)
73. Mühlböck & Rittberger (2015)
74. O'Keeffe et al. (2016)
75. Obholzer et al. (2019)
76. Panning (2021)
77. Pegan (2017)
78. Pennetreau & Laloux (2021)
79. Perarnaud (2022)
80. Rasmussen (2011)
81. Rasmussen & Reh (2013)

- 82.** Rebasti (2021)
- 83.** Reh (2014)
- 84.** Reh et al. (2011)
- 85.** Ripoll Servent (2011)
- 86.** Ripoll Servent (2012)
- 87.** Ripoll Servent (2019)
- 88.** Ripoll Servent & Panning (2019b)
- 89.** Ripoll Servent & Panning (2019a)
- 90.** Roederer-Rynning (2019)
- 91.** Roederer-Rynning & Greenwood (2015)
- 92.** Roederer-Rynning & Greenwood (2017)
- 93.** Roederer-Rynning & Greenwood (2021)
- 94.** Rosén & Stie (2022)
- 95.** Ruiter (2022)
- 96.** Schädler & Brandsma (2021)
- 97.** Shackleton & Raunio (2003)
- 98.** Steinecke (2022)
- 99.** Toshkov & Rasmussen (2012)
- 100.** Yurttagül (2021)

Appendix B: Interview Topic Guide

Interview guide - Trilogues		
Theme	Section	Interview Questions
Briefing	Briefing	Confidentiality, anonymity, timeframe, briefing on the purpose of interview etc.
Background information	What is the interviewee's experience with trilogues?	What experience do you have working with trilogues from this position and previous positions? Probes: [if experience with more than one] how similar have the processes been?
Work practices and trilogue preparation	What does trilogue work entail? Introduction to trilogues, preparation for them, and important contacts in own/other institutions	How do you prepare for a trilogue negotiation? Probes: How important a part of your job would you gage trilogues to be? How come? Who are your closest cooperation partners in [own institution] How is the work split between you and [partners in own institution] Who usually takes the initiative to schedule a trilogue meeting? Who are your closest cooperation partners in [other institutions]? Why is [person] important for your work?
Trilogue meetings	Description of a trilogue meeting.	How would you describe the process of a "typical" trilogue meeting? Probes: Who participates, who leads the meeting etc.? How do you know if a trilogue meeting has been successful? What steps are taken to ensure a positive atmosphere in the meetings? Who can speak, who speaks most? Do some actors speak with more weight than others during meetings? What happens in breaks during meetings? Who typically calls them?

		Is anyone particularly easy/difficult to work with during trilogues? What makes it so?
Technical and political	How do negotiators distinguish between technical and political issues	<p>Not all issues are decided at political level. How do you decide which issues are technical and which are political?</p> <p>Probes:</p> <p>Are your subordinates able to tell which issues require political attention. How do they know? (and vice versa)</p> <p>Does it ever happen that issues that were thought to be technical suddenly become political? How?</p>
Between meetings	(How) is informal communication used to “link” one meeting to the next?	<p>After a trilogue meeting, what do you do in terms of follow-up and preparation for the next meeting?</p> <p>Probes</p> <p>Apart from the meetings themselves, which activities do you see as part of “the trilogue process”</p> <p>How do you usually handle disagreements or unresolved issues between meetings?</p> <p>Do you have any examples of (un)successful attempts at resolving an issue between meetings?</p> <p>How would you characterize the relationship that develops between negotiators during a trilogue process?</p>
Anything else?	Open-ended question: Have I missed anything?	Before we end, I want to ask you if you have come to think of any other things that might be relevant to know in connection to my research, or if you can recommend others who might be relevant to talk to?

Appendix C: Examples of Invitation E-mails

Appendix C1: Council Invitation E-mail

Dear [title and name]

I am writing to you to invite you for an interview about your work on trilogues during the [country] Presidency. My name is William Egendal, and I am currently pursuing a PhD at the Department of Political Science at Aarhus University in Denmark. I am reaching out to you specifically because I see that you [specific details about what the potential interviewee has worked with].

The focus of my PhD is the trilogue negotiation *process*, specifically on the roles of and relations between different key actors. In that respect, the role of attachés in negotiations at technical level should not be underestimated. I know that you lead busy lives, particularly during the past six months where an impressive number of files were negotiated. However, I hope your calendar is a little bit lighter now and that you will consider sharing your experiences with me.

The interview itself is expected to last around 30-45 minutes and will be anonymous. Your answers will be used in my thesis only in an anonymized way, i.e. without reference to your nationality or to specific files. Attached you will find a short note outlining the purpose of the project. I will be based in Brussels until February 21st, and until then I am flexible in terms of time and place.

I look forward to hearing from you. Please do not hesitate to reach out if you have any questions, or to set a date for an interview. I hope that it is okay if I follow up in two weeks' time in case I have not heard from you.

Best regards,
William Egendal

Appendix C2: MEP Invitation E-mail

Dear [title and name],

My name is William Egendal, and I am a PhD student at the Department of Political Science at Aarhus University. I am currently working on a research project on trilogue negotiations and the informal communication within and between the EU institutions in this context. In that regard, I noted that [specific details about what the potential interviewee has worked with].

As trilogue negotiations are held behind closed doors, in-depth qualitative interviews are one of the best opportunities we as researchers have to understand how you approach trilogues in practice, as well as the considerations that lay behind these approaches. I would therefore like to invite you to participate in an interview about your experiences with trilogue negotiations. The interview will be used in my PhD dissertation in anonymized form, and it is expected to take approximately 30-45 minutes of your time.

Your contribution will of course significantly strengthen the empirical quality my thesis. Additionally, it will also be relevant for me to interview assistants and advisers, as their insights and perspectives are also crucial to create a nuanced picture of the decision-making processes regarding trilogues, as well as the distinction between technical and political negotiations.

Attached, you will find a short description of the project. If you have any questions, or to arrange an interview, please contact me at this email or by phone/WhatsApp [my number]. I hope it's okay if I contact you again in 14 days to follow up. As I am currently based in Brussels, the interview can take place pretty much wherever and whenever it suits you.

Best regards,
William Egendal

Appendix C3: Commissioner Invitation E-mail

Dear Commissioner [last name],

My name is William Egendal, and I am currently doing a PhD on trilogue negotiations at the Aarhus University Department of Political Science in Denmark. In that regard, I am inviting the Commissioner to participate in a short interview about his experiences with these, particularly focusing on managing relations with the Council and EP, and the distinction between political and technical negotiations.

Though the project does not focus on a specific policy area but rather the process of conducting trilogue negotiations, I note that you have [example of recent trilogues, ongoing or completed], and I would be very interested to hear about your experience with conducting these and other trilogue processes.

I have already conducted interviews with MEPs, assistants, policy advisers, attachés from previous Council presidencies, members of Commissioners' cabinets and from the Secretariat-General of both the Commission and the Council, but an interview with a commissioner would add an important political-level perspective, thus significantly improving the empirical quality of my thesis, and ultimately our understanding of trilogues. Should the Commissioner be unavailable, I would also be happy to talk to the Cabinet member(s) working on [policy file]. I expect that the interview will take about 30-40 minutes, and your answers will only be used in an anonymized form in my thesis.

Attached, you will find a short note explaining the overall purpose of the project. I look forward to hearing from you, and I hope it is ok that I follow up in two weeks' time in case I have not.

Best regards,
William Egendal

Appendix D: Interview Invitation Project Description

Informal Communication and Trilogue Negotiations

William Egendal, PhD Student, Aarhus University

Trilogues have come to be a central element in the EU legislative process, to the degree that almost all legislation is now passed at first or early second reading. However, they have also been criticized in recent years for lacking transparency and adding to the EU's perceived democratic deficit (Novak & Hillebrandt, 2020). In my PhD project, I study the role informal communication plays in the EU legislative process, focusing particularly on the conduct of trilogue negotiations.

As trilogues have become so central, they have naturally received some scholarly attention in recent years (Laloux, 2020). However, perhaps due to their opacity, our knowledge of how they are carried out in practice and what grants influence in trilogues remains limited. Reading the literature, you get the impression that outcomes are often determined by the configuration of interests between the negotiators (Haag, 2021), or that a particular culture exists within the framework of these negotiations (Roederer-Rynning & Greenwood, 2015).

In recent years, we have also seen in-depth accounts of the work taking place at the highest levels of EU policy making. Based on his tenure as speechwriter to European Council President Herman van Rompuy, Luuk van Middelaar (2020) details how individual politicians played pivotal roles in EU crisis management in recent years. Similarly, Mérand (2021) spent considerable time over four years following up-close the work of Commissioner Pierre Moscovici, exploring the struggles and tensions of being a political commissioner in a political commission.

While illuminating, these accounts leave largely unspoken the everyday interactions between politicians and officials at the lower levels in the legislative process, and the influence of these interactions on the final political outcomes. I aim to study this by answering the following research question:

*How does informal communication between negotiators affect the process and outcomes of EU trilogue negotiations?*¹

In answering the research question above I wish to provide a more in-depth and nuanced view of the role played by the politicians, diplomats and civil servants who participate in EU legislative negotiations. To do this, I will employ a combination of interviews and an ethnographic approach in which I follow the work of different negotiators, ideally both before, during and after

¹ This is a preliminary research question and may change slightly over the course of the PhD.

meetings. This combination will enable me to 1) get a better understanding of the negotiator's own understanding of their role and work, and 2) to avoid misinterpretations of the observations collected during field work. Since this methodology is very time consuming and resource intense, I have chosen to restrict my focus to the phenomenon of trilogues rather than the full spectrum of EU legislative negotiations.

The research question is formulated in rather wide terms, reflecting the fact that I wish to approach the study in an abductive manner. This means that I do not work to confirm or disconfirm a set of hypotheses, but rather to work in a back-and-forth process between interpreting observations and relating them to existing research.

References

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Appendix E: List of Interviewees

Interview #	Institution	Role	Date	Duration
1	EP	Assistant	03-07-2023	00:52:26
2	COM	Official, Secretariat-General	03-07-2023	00:44:57
3	Council	Attaché	04-07-2023	00:50:00
4	EP	Assistant	04-07-2023	00:36:16
5	Council	Official, Council Secretariat	04-07-2023	00:50:00
6	COM	Cabinet	05-07-2023	00:44:50
7	Council	2x attachés	05-07-2023	00:55:10
8	EP	Assistant	06-07-2023	00:45:00
9	Council	Attaché	06-07-2023	01:03:32
10	EP	Assistant	07-07-2023	00:37:10
11	COM	Cabinet	10-07-2023	00:49:49
12	COM	Official, Secretariat-General	11-07-2023	00:45:00
13	COM	Official, Secretariat-General	14-07-2023	00:40:32
14	Council	Attaché	14-07-2023	00:53:32
15	EP	MEP	09-10-2023	00:38:06
16	EP	Assistant	24-10-2023	01:00:00
17	EP	Assistant	26-10-2023	01:09:14
18	EP	Assistant	03-11-2023	00:46:46
19	Council	Attaché	03-11-2023	01:05:26
20	EP	MEP	08-11-2023	00:46:10
21	EP	MEP + assistant	08-11-2023	00:45:48
22	EP	Group Adviser	09-11-2023	01:40:00
23	Council	Attaché	21-11-2023	01:18:15
24	EP	Assistant	22-11-2023	00:58:10
25	EP	Assistant	22-11-2023	00:47:43
26	COM	Official, Directorat-General	28-11-2023	01:06:33
27	EP	2x Group adviser	30-11-2023	01:01:35
28	COM	Cabinet	01-12-2023	1:03:19
29	COM	Cabinet	05-12-2023	00:50:47
30	EP	Group Adviser	05-12-2023	00:29:37
31	COM	Official, Directorat-General	07-12-2023	00:23:52

32	EP	Group Adviser	13-12-2023	01:30:00
33	EP	Assistant	14-12-2023	00:45:48
34	EP	MEP	15-12-2023	00:48:40
35	Council	Attaché	18-12-2023	01:11:08
36	EP	Group Adviser	21-12-2023	01:02:56
37	COM	Official, Directorate-General	05-01-2024	00:29:46
38	EP	Group Adviser	10-01-2024	01:04:32
39	EP	Lawyer-linguist	11-01-2024	01:24:21
40	EP	Group Adviser	11-01-2024	01:11:14
41	EP	Group Adviser	12-01-2024	00:37:50
42	EP	Assistant	12-01-2024	00:43:08
43	EP	Committee Secretariat	17-01-2024	00:45:00
44	EP	Assistant	22-01-2024	00:30:09
45	COM	Cabinet	24-01-2024	00:44:05
46	EP	Assistant	25-01-2024	00:48:42
47	Council	Official, Council Secretariat	26-01-2024	01:00:00
48	COM	Official, Directorate-General	31-01-2024	00:55:00
49	Council	Official, Council Secretariat	01-02-2024	00:45:00
50	Council	Official, Council Secretariat	01-02-2024	01:02:32
51	Council	Official, Council Secretariat	01-02-2024	01:00:00
52	Council	Ambassador	05-02-2024	00:59:19
53	COM	Cabinet	05-02-2024	00:40:50
54	Council	2x Official, Council Secretariat	07-02-2024	00:50:00
55	COM	Official, Directorate-General	12-02-2024	01:01:50
56	COM	2x Official, Directorate-General	15-02-2024	00:56:20
57	Council	Ambassador	19-02-2024	01:03:25
58	Council	Attaché	20-02-2024	00:39:10
59	EP	Group Adviser	05-03-2024	00:54:54
60	EP	Official, Committee Secretariat	08-03-2024	00:54:04
61	COM	Cabinet	09-04-2024	01:05:00
62	Council	Official, Council Secretariat	15-04-2024	00:52:55

Appendix F: Transcription Guide

Transcription	Examples
The interviewer (William Egendal) will be called “WE”	
The interviewees will be called IP [interview person], or IP_# in case of interviews with more than one IP	IP, IP_1, IP_2 etc.
Direct speech is attributed to the speaker by indicating the name, then followed by a single line break	WE First, I would like to hear about your professional background
Change lines when a new person speaks, double line break	WE First, I would like to hear about your professional background” IP I have been working as an APA for 9 years
Ignore “eehs” and interpret them as pauses, which are shown with ... If a pause is unusually long, note how long. You can exercise discretion in determining what is unusual.	WE “How do you usually prepare for a trilogue meeting?” IP “Usually, I reach out to ... the other political groups”
If the interviewer (William) says “yes”, “no”, “oh” or otherwise expresses that he is paying attention while IP is responding, you can ignore these.	
Use [] to indicate things happening in the interview	[laughing]
If there is something that is inarticulate to the extent that you cannot understand it, you write: [INARTICULATE]	
When you have finished transcribing, please proof-read and listen to the interview again to check your transcription	

When you have finished transcribing a file, please add _Finished at the end of the transcript file name.

Appendix G: Field Note Templates

Appendix G1: Field Note Template, meetings

[Title and date of meeting]	
Timeline	
Actors	Note the number, role, rank, equipment, position in room, dress if relevant
Actions	Note the participants' body language, facial expressions, tone of voice, "vibe", and the order of speakers
Words	Note the arguments, acknowledgements, open disagreements, order of speakers

Appendix G2: Field Note Template, Everyday Interactions

[Date] ['title' of the day]		
Jottings Quick notes scribbled either in my notebook or directly here are kept in this cell, even if they are accompanied by fleshed out notes below.		
Observation This cell contains only direct observations made in the field, aimed to be kept as descriptive and neutral as possible	Reflection This cell contains reflections on the subtext of the observed, what it reminded me of or, if applicable how it made me feel	Analysis This cell contains preliminary thoughts about which theoretical perspectives could be used to explain the observed

Appendix H: Code List

The coding list below is the final code list used for the full coding of the interview material.

Code list, Interviews

Name	Description	Files	Refs
Bargaining	Deductive. IP talks about how negotiations are conducted, how positions are traded, or how a compromise is reached. Subcodes are inductive and added at various times in the process.	59	632
Constraints	Inductive, added during first round of coding. IP talks about constraints they face during negotiations	39	81
Cross-pressures	Inductive, added during first round of coding. IP talks about the need to balance different considerations during negotiations	36	90
Deadlock	Inductive, added during first round of coding. IP talks about when negotiations get stuck.	14	18
Deliberation	Inductive, added during first round of coding. IP describes a deliberative bargaining style emerging during negotiations	19	30
Flexibility	Inductive, added during first round of coding. IP talks about either the need to show flexibility in negotiations or ways to enable it.	35	64
Institutions' bargaining styles	Inductive, added during first round of coding. Talks about bargaining style of one of the three institutions, either by itself or in comparison with that of others.	13	15
Knowing others' positions	Inductive, added during first round of coding. IP talks about how knowing the positions of other actors can be helpful in negotiations	35	83
Negotiation tactics	Inductive, added during first round of coding. IP talks about specific tactics used during negotiations. Subcodes added in various stages of the coding.	39	94
Signals	Inductive, added during first round of coding. IP talks about how different types of behaviour can send (intended or not) signals to the counterpart(s)	23	31
Sources of power or weakness	Inductive, added during first round of coding. IP discusses factors which can either strengthen or weaken your negotiation position	28	57
Trading	Inductive, added during first round of coding. IP mentions trading issues as a way to reach a political agreement	30	57
Choreography of Meetings	Deductive. IP talks about procedural aspects of the meetings, such as speaking order, layout, participants, etc.	58	733
Four Column Documents	Inductive, added during first round of coding. IP talks about the use of four-column documents in relation to trilogues	21	32
ITMs	Inductive, added during first round of coding. IP talks about ITM's - Interinstitutional Technical meetings - or "technical trilogues"	33	89

Scheduling	Inductive, added during first round of coding. IP talks about issues with scheduling of trilogue meetings	38	105
Trilogues	Deductive - the project is about trilogues. IP talks about trilogue meetings (political level)	57	501
Breaks	Inductive, added during first round of coding. IP talks about breaks during political trilogues	38	103
First trilogue	Inductive, added during first round of coding. IP talks about the specifics of the first trilogue meeting on a new proposal	18	25
Iterations	Inductive, added during first round of coding. IP talks about going over the same topic several times	18	27
Open-ended	Inductive, added during first round of coding. IP talks about "open-ended" trilogues	43	105
Participants	Inductive, added during first round of coding. IP talks about which participants might be present in a trilogue meeting	35	77
Political agreement	Inductive, added during first round of coding. IP talks about how agreements reached in trilogue are provisional	27	56
Problems with trilogues	Inductive, added during full coding of material. IP talks about problems with trilogues in general.	12	24
Recitals and articles	Inductive, added during full coding of material. IP talks about negotiating recitals and articles, similarities, differences, and exchanges	7	10
Surprises	Inductive, added during first round of coding. IP talks about surprises during trilogues and/or how to avoid them	14	21
Covid	Inductive, added during first round of coding. IP talks about experience during covid-19 lockdowns	7	14
'Formal'	Inductive, from first round of coding. IP describes something as formal which is de jure informal.	23	35
Individual Differences	Inductive, added during first round of coding. Descriptions of how individual-level attributes affect negotiations	32	64
Informal Communication	Deductive. IP talks about how they communicate outside, or in the margin of, formal meetings.	55	417
How IC	Inductive, added during first round of coding. IP talks about different ways of communicating informally in the context of EU legislative negotiations.	44	118
When IC	Inductive, added during first round of coding. IP talks about when during the legislative process informal communication takes place	31	41
Why IC	Inductive, added during first round of coding. IP talks about different reasons for communicating informally in the context of EU Legislative negotiations	53	242
Information seeking	Inductive, added during first round of coding. IP talks about using informal communication to seek information relevant for ongoing negotiations	29	55
Limits of IC	Inductive, added during first round of coding. IP talks about the limits of informal communication in legislative negotiations	6	6

Networking	Inductive, added during first round of coding. IP talks about informal communication as a way to network with other negotiators	38	70
Pre-cooking	Inductive, added during first round of coding. IP talks about using informal communication channels to "pre-cook" a deal for the formal meeting, i.e., test out different compromise proposals.	37	87
Interinstitutional relations	Deductive. IP talks about relations between the EU institutions in the context of legislative negotiations	59	620
COM neutrality	Inductive, added during first round of coding. IP talks about whether the Commission lives up to its expected role of honest broker, a neutral mediator between the EP and the Council	42	125
COM-Council Relations	Deductive. IP talks about the relations between the Commission and the Council of Ministers.	22	45
COM-EP relations	Deductive. IP talks about the relations between the Commission and the European Parliament.	29	72
Council-EP relations	Deductive. IP talks about the relations between the Council of ministers and the European Parliament.	29	63
Differences between areas	Inductive, added during first round of coding. IP talks about differences in approach to trilogues between policy areas	21	36
Getting to know each other	Inductive, added during first round of coding. IP talks about how (whether) negotiators get to know each other over the course negotiations	23	46
Hierarchy	Inductive, added during first round of coding. IP talks about the role of hierarchy in interinstitutional negotiations	19	26
Initial level of conflict	Inductive, added during first round of coding. IP talks about how the initial level of disagreement between the institutions affects negotiation dynamics	16	23
Institutional differences	Inductive, added during first round of coding. IP talks about how differences between the institutions affect inter-institutional relations	32	63
Resources	Inductive, added during first round of coding. IP talks about resource differences between the institutions	37	76
Turf	Inductive, added during first round of coding. IP talks about "turf" battles in the context of interinstitutional negotiations	7	11
Intra-institutional dynamics	Inductive, added during first round of coding. IP talks about the internal dynamics of one of the three institutions	59	649
COM	Inductive, added during first round of coding. IP talks about the internal workings of the Commission	25	85
Council	Inductive, added during first round of coding. IP talks about the internal workings of the Council	29	180
Actors' roles	Inductive, added during first round of coding. IP talks about the role of different actors in the Council's internal procedures	5	9
Attaché	Inductive, added during first round of coding. IP talks about the role of attachés in the internal Council procedures	8	13

Coreper I vs II	Inductive, added during first round of coding. IP talks about differences in procedures between Coreper I and II formations	7	9
Council Secretariat	Inductive, added during first round of coding. IP talks about the role of the Council Secretariat	14	38
Presidency Preparation	Inductive, added during first round of coding. IP talks about preparations for taking over the Council Presidency	17	60
Resources	Inductive, added during first round of coding. IP talks about the resources of different actors in the Council system	9	15
EP	Inductive, added during first round of coding. IP talks about the internal workings of the European Parliament	43	376
Amendments	Inductive, added during first round of coding. IP talks about amendment proposals in the internal EP negotiations	15	30
APAs	Inductive, added during first round of coding. IP talks about the role of Accredited Parliamentary Assistants in the EP	15	29
Competence questions	Inductive, added during first round of coding. IP talks about the process of settling competence questions ahead of internal EP negotiations	12	22
Different actors	Inductive, added during first round of coding. IP talks about different EP actors involved in legislative negotiations	27	51
EP self-understanding	Inductive, added during first round of coding. IP talks about how the EP sees itself relative to the other institutions	5	5
Finding a majority	Inductive, added during first round of coding. IP talks about the need to (and steps taken to) find a majority internally in the EP	25	51
Group meetings	Inductive, added during first round of coding. IP talks about group meetings in the EP political groups	9	16
Lobbyists	Inductive, added during first round of coding. IP talks about contact with lobbyists	18	41
National considerations	Inductive, added during first round of coding. IP talks about how national considerations influence internal EP negotiations	15	36
Shadow meetings	Inductive, added during first round of coding. IP talks about shadow meetings, meeting between the "shadow rapporteurs" representing each political group in negotiations on a legislative file	22	56
Intro, meta, outro policy examples	Deductive. IP introduces themselves, makes a meta consideration, comes with final reflections, or is debriefed	54	189
Jokes	Inductive, added during first round of coding. IP or WE makes a joke or IP talks about the use of jokes in negotiations	17	23
Leaks	Inductive, added during first round of coding. IP talks about leaks of material during negotiations	5	10
Norms	Inductive, added during first round of coding. IP talks about norms concerning the different steps of the negotiation process	40	79

Secretariats	Inductive, added during first round of coding. IP talks about the role of secretariats in the negotiation process	31	75
Technical or Political	Deductive. IP talks about the distinction between technical and political negotiations.	59	410
Complexity	Inductive, added during first round of coding. IP talks about the influence of complexity in determining whether a question is technical or political	25	43
ITMS after trilogue deal	Inductive, added during first round of coding. IP talks about how there are often interinstitutional technical meetings after a political agreement has been reached in trilogues	17	41
Level of disagreement or controversy	Inductive, added during first round of coding. IP talks about how the level of disagreement and/or political controversy of a file influences whether it will be handled at technical or political level	29	60
Relations between technical and political actors	Inductive, added during first round of coding. IP talks about the relations between actors at technical and political level	45	107
Theatre or show metaphors	Inductive, added during first round of coding. IP uses a metaphor from theatre or show to describe negotiations	18	30
Time	Deductive. IP speaks about time, either in the context of a single meeting or in the context of the negotiation process as a whole.	55	408
End of mandate or PCY	Inductive, added during first round of coding. IP talks about the time pressure experienced either at the end of a Council Presidency or at the end of the EP mandate	37	120
Momentum	Inductive, added during full coding of material. IP talks about momentum in negotiations	27	53
Sources of delays	Inductive, added during first round of coding. IP talks about how negotiations can get delayed	20	30
Synchronization	Inductive, added during full coding of material. IP talks about how negotiators can get synchronized during negotiations	5	5
Time pressure between meetings	Inductive, added during first round of coding. IP talks about how time pressure is applied/felt between meetings	38	78
Time pressure during meeting	Inductive, added during first round of coding. IP talks about how time pressure is applied/felt during meetings	34	64
Timing of negotiation	Inductive, added during full coding of material. IP talks about how the timing of a meeting/negotiating a specific issue matter for the negotiation process	15	20
Trilogues over time	Inductive, added during first round of coding. IP talks about how trilogues have developed over time	11	15
Window of Opportunity	Inductive, added during full coding of material. IP talks about how there can be a window of opportunity for moving on specific issues	4	6
Transparency	Deductive. IP talks about transparency in relation to trilogues	25	61
Negative	Inductive, added during first round of coding. IP talks about transparency in a negative way	7	11

Positive	Inductive, added during first round of coding. IP talks about transparency in a positive way	10	16
Trust	Deductive. IP talks about how trust either emerges, is maintained, or is important in negotiations.	33	82
Autonomy	Inductive, added during full coding of material. IP talks about how trust is linked to autonomy in negotiations.	16	22
Vulnerability	Inductive, added during full coding of material. IP talks about how trust is linked to vulnerability in negotiations	8	11
X Colourful anecdotes	Inductive. IP tells a colourful anecdote, which was amusing even if not strictly relevant	13	15
X Cool power quotes	Inductive. IP says something which would fit well as a direct quote to illustrate a point	45	107

Appendix I: Four-Column Document Excerpts



Conseil de
l'Union européenne

Bruxelles, le 23 février 2022
(OR. fr, en)

6487/22

**Dossier interinstitutionnel:
2018/0108(COD)**

LIMITE

**COPEN 60
JAI 231
CYBER 62
JAIEX 20
ENFOPOL 92
TELECOM 69
DATAPROTECT 47
EJUSTICE 27
MI 137
CODEC 197**

NOTE

Origine:	la présidence
Destinataire:	Comité des représentants permanents
N° doc. préc.:	8110/18 + ADD 1 + ADD 3
Objet:	Proposition de règlement relatif aux injonctions européennes de production et de conservation de preuves électroniques en matière pénale - tableau 4 colonnes

Les délégations trouveront en pièce jointe le tableau 4 colonnes relatif à la proposition de règlement mentionnée en objet.

6487/22

JAI.2

MCM/sl
LIMITE

1
FR/EN

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on European Production and Preservation Orders for electronic evidence in

criminal matters

2018/0108(COD)

DRAFT

The amendments made by the EP and the Council in the text of the proposal for a Directive compared to the Commission's proposal are marked as follows:

- the new text is marked in ***bold italics***;
- the deleted parts of the text are marked in ~~strikethrough~~.
- the parts amended following discussions at trilogues or technical meetings will be underlined.

Where full paragraphs of the Commission's proposal were not amended by the EP and the Council, they are not repeated in the columns reflecting their respective positions, but are marked with a diagonal line in the 4th column.

Parts provisionally agreed at the trilogue are going to be **marked in green**.

Parts provisionally agreed at the technical meetings and to be confirmed at the trilogue are going to be **marked in blue**.

Parts to be further discussed are going to be **marked in yellow**.

Footnotes are marked in **red**. Their numbering does not correspond to the respective original documents. Updating and renumbering must be done manually (**NO automatic update**).

Article 2(3)				
133	3. 'service provider' means any natural or legal person that provides one or more of the following categories of services:	3. 'service provider' means any natural or legal person that provides one or more of the following categories of services <i>and</i> , where it concerns personal data, acts as a data controller within the meaning of Regulation (EU) 2016/679;	3. 'service provider' means any natural or legal person that provides one or more of the following categories of services, with the exception of financial services referred to in Article 2(2)(b) of Directive 2006/123/EC;	3. 'service provider' means any natural or legal person that provides one or more of the following categories of services, with the exception of financial services referred to in Article 2(2)(b) of Directive 2006/123/EC [, and, where it concerns personal data, acts as a data controller within the meaning of Regulation (EU) 2016/679];
Article 2(3), point a				
134	a) electronic communications service as defined in Article 2(4) of [Directive establishing the European Electronic Communications Code];			
Article 2(3), point b				
135	b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council ¹⁹ for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;	b) information society services as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council ²³ for which the storage of data is a defining component of the service provided to the user, including social networks, online marketplaces facilitating transactions between their users, and other hosting service providers;	b) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and related privacy and proxy services;	<i>Provisional agreement 2nd trilogue 18/03/2021:</i> b) internet domain name and IP numbering services such as IP address providers, domain name registries, domain name registrars and domain name related privacy and proxy services;

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ANNEXE

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		<i>establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;</i>		
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Article 2(6)				
141	6. 'electronic evidence' means evidence stored in electronic form by or on behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, access data, transactional data and content data;	6. 'electronic information' means <i>subscriber data, traffic data, or content data lawfully</i> stored by a service provider at the time of the issuing of a <i>European Production or Preservation order, that is requested for the purpose of serving as evidence during the investigation, prosecution and court proceedings relating to a criminal offence in a Member State, in accordance with national law;</i>	6. 'electronic evidence' means evidence stored in electronic form by or on behalf of a service provider at the time of receipt of a production or preservation order certificate, consisting in stored subscriber data, access data, transactional data and content data;	Rapporteur proposal 24/03/2021: 6. 'electronic information' means subscriber data, traffic data, or content data stored in accordance with applicable EU and national law by or on behalf of a service provider at the time of the issuing of a European Production or Preservation order, that is requested for the purpose of serving as evidence during the investigation, prosecution and court proceedings relating to a criminal offence in a Member State, in accordance with national law; + changes to recital 19

Article 2(7)				
142	7. 'subscriber data' means any data pertaining to:	7. 'subscriber data' means any data, <i>collected in the normal course of business, pertaining to the provided name, date of birth, postal or geographic address, billing and payment data, telephone number, or email address identifying the subscriber or customer as well as the type of service provided and the duration of the contract with the service provider, which is strictly necessary for the sole purpose of</i>	7. 'subscriber data' means any data pertaining to:	Provisional agreement 3rd trilogue 20/05/2021: subscriber data' means any data held by a service provider relating to the subscription to the services, pertaining to

English Summary

The aim of this dissertation is to further our understanding of how new EU legislation is negotiated in so-called trilogue meetings. It is based on comprehensive interview material as well as ethnographic fieldwork in the ‘EU bubble’ in Brussels.

Trilogues are informal meetings in which representatives of the European Commission, the Council of the European Union, and the European Parliament meet to negotiate a compromise on a legislative proposal before the formal first reading. This paves the way for so-called early agreements, which arguably enhance the efficiency of EU legislative decision-making. Though the use of trilogues is ubiquitous in contemporary EU policymaking, we know very little about how these negotiations unfold in practice. This is in part because they are informal and not publicly accessible. This perhaps also explains why trilogues have a reputation for being conducive to shady deals struck in corridors and backrooms far from the public eye and democratic accountability. As this dissertation will demonstrate, this image is not completely accurate, though there is a grain of truth to it.

Research on trilogues has demonstrated that over the past 30 years trilogues have become the standard way of negotiating new legislation in the EU. Scholars have also examined questions regarding power distribution among legislators, both within and between institutions, and raised criticisms of the lack of transparency this informalization of the legislative process has entailed. However, existing studies leave several questions unanswered: what strategies do negotiators use to balance the competing concerns of defending a mandate, reaching a compromise, and perhaps also pursuing their own political preferences? How are trilogue meetings conducted in practice? And how do the different negotiators perceive their own roles and those of their counterparts? To answer these questions, the following research question guides the dissertation:

How are EU trilogue negotiations conducted in practice, and how do central actors view their own role(s) in them?

Theoretically, this dissertation starts with a discussion of the concept of formality, first introducing a definition of formal and informal institutions. This is complemented by a more detailed conceptualization of informal communication, which is used to gauge the perceived formality of different interactions between negotiators. To explain the conduct of trilogue negotiations, the dissertation draws on three schools of thought: first, a rational choice-based approach, conceptualizing trilogues as a two-level game and the relationship

between the EU institutions and their representatives as a principal-agent relation. Second, sociological institutionalism is used to explain how norms guide behaviour in trilogues as well as how negotiators from different institutions may have different perceptions of what constitutes appropriate negotiation behaviour. Third, the dissertation draws on diplomatic practice theory to explain how everyday interactions both shape negotiators' expectations about trilogues and enable them to demonstrate that they know what they are doing.

To study these interactions in trilogues, the dissertation draws on more than sixty interviews with negotiators in all three institutions. At the political level, this includes MEPs, Coreper ambassadors, and members of Commissioners' cabinets. At the technical level, it includes MEP assistants, advisers in the EP's political groups, members of EP committee secretariats, attachés working for the Presidency, officials in the General Secretariat of the Council, and officials from line DGs in the Commission as well as the Commission's General Secretariat. This broad interview coverage is complemented by ethnographic fieldwork carried out in the European Parliament, including participation in several trilogue meetings and various preparatory meetings.

The analysis is structured to follow a trilogue process from start to finish. Conceptually, it distinguishes between trilogues as a specific type of meeting and the trilogue *process* as the wider web of informal meetings which happen in relation to these. First, the different procedures for producing a mandate are explored, followed by an analysis of the cross-pressures facing each negotiator ahead of the first trilogue. Then, the negotiation culture of trilogues is analysed, focusing on the norms and standard operating procedures guiding behaviour in negotiations up to and including the first trilogue. Next, the distinction between technical and political issues is analysed. The analysis then turns to various practices used within and between trilogue meetings. The widespread use of breaks during meetings is described and analysed, followed by an inquiry into the various informal interactions used to prepare compromises which will be made during trilogues. Finally, the analysis describes the marathon 'open-ended' trilogues in which 'provisional agreements' are made. This is complemented by an analytical epilogue which describes the surprising amount of negotiation which takes place after a deal has been made in the 'final' trilogue.

The main contribution of this dissertation is arguably its detailed empirical insights into the trilogue process, based on novel data sources. However, the final chapter of the dissertation also provides some suggestions for theoretical refinement in the study of EU legislative negotiations. First, the dissertation argues that it is warranted and analytically fruitful to treat the Commission as a *de facto* negotiator in trilogues rather than merely an honest broker. Second, and related, the dissertation introduces the *pressure configuration*

framework, which builds on the logic of two-level games and offers a promising means of specifying the different cross-pressures facing the negotiator representing each institution in trilogues. Finally, the dissertation shows that trilogues, while informal by definition, are not *perceived* as informal by the negotiators. Rather, they are perceived as formal meetings which are an institutionalized part of the legislative procedure. As such, the dissertation argues that more attention should be devoted to the ways in which negotiators make sense of and navigate formality *within* the realm of informal negotiations.

Dansk resumé

Formålet med denne afhandling er at fremme vores forståelse af, hvordan ny EU-lovgivning forhandles på såkaldte trilogramøder. Den er baseret på omfattende interviewmateriale samt etnografisk feltarbejde i 'EU-boblen' i Bruxelles.

Triloger er uformelle møder, hvor repræsentanter for Europa-Kommissionen, Rådet for Den Europæiske Union og Europa-Parlamentet mødes for at forhandle et kompromis om et lovforslag inden den formelle førstebehandling af det. Dette baner vejen for såkaldte tidlige aftaler, hvormed lovforslaget kan vedtages uden en anden- og tredjebehandling. Selvom brugen af triloger er udbredt i moderne EU-politik, ved vi meget lidt om, hvordan disse forhandlinger forløber i praksis. Det skyldes til dels, at de er uformelle og ikke offentligt tilgængelige. Det forklarer måske også, hvorfor triloger har ry for at føre til lyssky aftaler, der indgås i korridorer og baglokaler langt fra offentlighedens søgelys og demokratisk ansvarlighed. Som denne afhandling vil vise, er dette billede ikke helt korrekt, selv om der er et gran af sandhed i det.

Forskning i triloger har vist, at de i løbet af de sidste 30 år er blevet den gængse måde at forhandle ny EU-lovgivning på. Forskere har også undersøgt spørgsmål om magtfordelingen blandt lovgiverne, både inden for og mellem institutionerne, og rejst kritik af den manglende gennemsigtighed, som denne *uformalisering* af lovgivningsprocessen har medført. De eksisterende studier efterlader dog flere ubesvarede spørgsmål: Hvilke strategier bruger forhandlerne til at afbalancere de konkurrerende hensyn mellem at forsvare et mandat, opnå et kompromis og måske endda forfølge deres egne politiske præferencer? Hvordan foregår trilogramøder i praksis? Og hvordan opfatter de forskellige forhandlere deres egne og deres modparters roller? For at besvare disse spørgsmål er følgende forskningsspørgsmål styrende for afhandlingen:

Hvordan foregår EU-trilogforhandlinger i praksis, og hvordan ser centrale aktører på deres egen rolle(r) i dem?

Teoretisk set starter denne afhandling med en diskussion af begrebet formalitet, hvor der først introduceres en definition af formelle og uformelle institutioner. Dette suppleres med en mere detaljeret konceptualisering af uformel kommunikation, som bruges til at måle den opfattede formalitet af forskellige interaktioner mellem forhandlere. For at forklare hvordan trilogramforhandlinger foregår, trækker afhandlingen på tre skoler: For det første en *rational choice*-baseret tilgang, der konceptualiserer triloger som et *two-level game*, og forholdet mellem EU-institutionerne og deres repræsentanter som en *principal-agent-relation*. For det andet bruges sociologisk institutionalisme til at

forklare, hvordan normer vejleder forhandlernes adfærd i triloger, samt hvordan forhandlere fra forskellige institutioner kan have forskellige opfattelser af, hvad der udgør passende forhandlingsadfærd. For det tredje trækker afhandlingen på diplomatisk praksisteori for at forklare, hvordan hverdagsinteraktioner både former forhandlernes forventninger til triloger og gør dem i stand til at vise, at de ved, hvad de laver.

For at kunne undersøge disse interaktioner i trilogforhandlinger bygger afhandlingen på mere end 60 interviews med forhandlere i alle tre institutioner. På det politiske niveau omfatter dette medlemmer af Europa-Parlamentet, Coreper-ambassadører, der repræsenterer formandskabet for Ministerrådet i triloger, og medlemmer af kommissærernes kabinetter. På det tekniske niveau vil det sige MEP-assistenten, rådgivere i EP's politiske grupper, medlemmer af udvalgssekretariater i EP, attachéer, der arbejder for Rådets formandskab, embedsmænd i Rådets Generalsekretariat samt embedsmænd fra Generaldirektorater i Kommissionen såvel som Kommissionens Generalsekretariat. Denne brede interviewdækning suppleres af etnografisk feltarbejde udført i Europa-Parlamentet, herunder deltagelse i flere trilogmøder og forskellige forberedende møder.

Analysen er struktureret, så den følger en trilogproces fra start til slut. Konceptuelt skelnes der mellem triloger som en specifik type møde og trilogprocessen som det bredere net af uformelle møder, der finder sted i forbindelse med disse. Først undersøges de forskellige procedurer for udarbejdelse af et mandat, efterfulgt af en analyse af de krydspres, som hver forhandler står over for forud for det første trilogmøde. Derefter analyseres forhandlingskulturen i triloger med fokus på de normer og standardprocedurer, der vejleder om adfærd i forhandlinger op til og inklusive den første trilog. Dernæst analyseres sondringen mellem tekniske og politiske spørgsmål. Analysen drejer sig derefter om forskellige praksisser, der anvendes inden for og mellem trilogmøderne. Den udbredte brug af pauser under møderne beskrives og analyseres, efterfulgt af en undersøgelse af de forskellige uformelle interaktioner, der bruges til at forberede kompromiser, som vil blive indgået under trilogerne. Endelig beskriver analysen de maraton-triloger 'uden bagkant', hvor der indgås *foreløbige aftaler*. Dette suppleres af en analytisk epilog, som beskriver den overraskende mængde forhandlinger, der finder sted, efter der er indgået en aftale i den 'sidste' trilog.

Det vigtigste bidrag fra denne afhandling er formentlig dens detaljerede empiriske indsigt i trilogprocessen, baseret på nye datakilder. Afhandlingens sidste kapitel giver dog også nogle forslag til teoretisk videreudvikling i studiet af EU's lovgivningsforhandlinger. For det første argumenterer afhandlingen for, at det er berettiget og analytisk frugtbart at behandle Kommissionen som en de facto forhandler i triloger snarere end blot en upartisk mægler. For det

andet introducerer afhandlingen *preskonfiguration-rammeværket*, som bygger på logikken i two-level games og udgør et lovende redskab til at specificere de forskellige krydspres, som forhandlere kan stå over for i triloger. Endelig viser afhandlingen, at selv om triloger per definition er uformelle, *opfattes* de ikke som uformelle af forhandlerne. De opfattes snarere som formelle møder, der er en institutionaliseret del af lovgivningsproceduren. Som sådan argumenterer afhandlingen for, at der bør rettes mere opmærksomhed mod de måder, hvorpå forhandlerne forstår og navigerer formalitet inden for rammerne af uformelle forhandlinger.