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The Culture of Trilogues

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The Culture of Trilogues

Abstract

There is surprisingly little knowledge about the informal 'trilogues' that play a pivotal role in almost 90% of EU legislation. This article maps out previously uncharted practices and explores their role in constituting Parliament and Council as legislators. It proceeds by taking stock of the knowledge that actors in Parliament, Council, and Commission have acquired and use to make sense of, and act in, trilogues. Our findings qualify the widespread belief that trilogues have drawn Parliament into unfamiliar territory of diplomatic culture, at a cost to political efficacy and democratic functions. Trilogues today are underpinned by norms, standard operating procedures, and practices linking *formal* and *informal* institutions. They have imparted Parliament with a sharpened consciousness of its role and identity as a "normal" parliament, while leaving Council frustrated and less confident about its own role. Parliament has seen in norms of public accountability a means to develop leverage over Council.

KEYWORDS: inter-institutional relations; co-decision; early agreements; European Parliament; Council of the European Union.

Introduction

Co-decision has *de facto* become a single-reading legislative procedure. Whereas in the 5th (1999-2004) legislature, every other co-decision files was agreed in second-reading, in the 7th (2009-14) EP term, almost 90% of all legislative files under co-decision were adopted as first-reading agreements (European Parliament, 2013 and 2014a; Table 1). The critical element behind this phenomenon is the development of inter-institutional trilogue negotiations.

Trilogues have no reference in the EU treaties, but have developed in practice from the need of the two branches of the legislature, The Council of the European Union (Council of Ministers – CoM) and European Parliament (EP), to manage their interdependence (Shackleton and Raunio, 2003). Trilogues include features that are problematic from a democratic perspective, in that they are secluded and involve a restricted number of participants selected according to unclear criteria, and produce intermediary outcomes that have to be sanctioned by formal decision-making processes (Rasmussen and Reh 2013; Reh et al. 2013). Consequently, there has been growing attention in public as well as scholarly debate to the implications of trilogues for political contestation and the ability of EU institutions to avoid capture by special interests.

We seek to address two gaps in the literature. First, despite the pivotal role of trilogues in the legislative process of the EU, we still have a limited understanding of what trilogues are *in practice*. Our knowledge of trilogues is either based on stylized definitions or on outdated empirical knowledge, and which shapes the contemporary public discourse on trilogues. Second, in spite of an established focus on the normative dimension of trilogues, we know little

about the social processes underpinning trilogues. The primary focus of the extant literature, reviewed in the next section, has been on instrumental rationality and attendant power games, efficiency gains, and redistributive implications. Recent research has pointed to some limitations of this agenda while highlighting the role of socialization processes (Reh et al, 2013). This calls for further research through qualitative methods as a means of entry into the realms of norms.

Based on this diagnosis, we set out to analyze more systematically the set of practices constituting trilogues. We view trilogues as cultural constructs and are therefore interested in the social processes and understandings underpinning them as well as constituting the roles of EU legislators. We take our cue from cultural approaches considering instrumental rationality as a form of cultural action. On these premises, we map out various informal processes, which are often indiscriminately collapsed under the notion of trilogues and in doing so show how inter-institutional relations, and the actors involved in them, evolve as EU policy-makers embrace trilogues. Our objective is not just to provide an in-depth description of trilogues but also to highlight their role in constituting Parliament and Council as legislators.

Evolution of trilogues

Trilogues originally emerged as a means to facilitate the 'conciliation procedure' envisioned in the Maastricht Treaty, which obliged Council and Parliament to meet, subject to strict institutional requirements, in order to reach an agreement. Council soon learned the new realities of being a co-legislator, in that Parliament would veto any attempt by Council to reintroduce its common position, as it did in the Open Network Provision (ONP) Voice

Telephony Directive in 1994 (Shackleton, 2000). Council understood that legislative efficiency under co-decision required early inter-institutional confidence-building measures. Since the early days of co-decision trilogues have become *the* way of making EU laws under co-decision after the Amsterdam Treaty made it possible for EU legislation to be passed at first reading (Art. 251 TEC now Art. 294 TFEU), thereby extending their use beyond that of the conciliation procedure (Table 1).

Table 1 here

Barely had trilogues been “invented” before the first calls for reform were heard. Because the potential impact of executive discussions is most keenly felt in directly elected arenas, these discussions have been most prominent in the EP. In the first decade following the inception of trilogues, calls for reform materialized in non-binding guidelines which became increasingly detailed and specific over time (Héritier and Reh 2012). A first attempt to regulate the procedure took place in 2004 with the adoption of non-binding EP *Guidelines for First and Second Reading Agreements* (European Parliament 2004), though to little avail. Committees continued to display a patchwork of different practices, often leaving rapporteurs considerable freedom to make deals. This raised “serious concerns ... about the potential lack of transparency and democratic legitimacy inherent in the first reading negotiations, but also about the quality of the adopted legislation” (European Parliament 2008, quoted in Huber and Shackleton 2013, 1048). In 2007, a Working Party for Parliamentary Reform set up by the Conference of Presidents advocated a more detailed set of rules. These were adopted as the EP’s *Code of Conduct* in 2008 and annexed to the EP’s Rules of Procedure (RoP) in 2009 (European Parliament, 2008).

However, the code did little to ease the tide of criticism due to its lack of binding status. In 2011, the Constitutional Affairs Committee, at the request of the Conference of Presidents, drafted recommendations to give a legal status to the Code provisions. This new wave of reform led to the revision of Rule 70 of the RoP on “Interinstitutional negotiations in legislative procedures,” which incorporated key provisions of the Code into the Rules, and introduced the possibility to make the opening of trilogue negotiations conditional upon a mandate delivered by the EP’s Plenary (Rule 70a).

The 2011 revisions also involved specification of the composition of the EP negotiating team and their obligations for reporting back during the course of trilogue negotiations. The Chair or designated Vice-Chair nominee and the shadow Rapporteurs and/or political group co-ordinators (or designated alternative) of the lead committee became *de jure* members of the EP negotiating team besides the Rapporteur. Negotiators were required to report back to the Committee after each full Trilogue meeting, with opportunities to report back to their political group for the renewal of a mandate, whilst the political groups themselves also observe the trilogue negotiations directly. Where there is no scheduled meeting of the Committee to report back to, the Committee Chair is required to convene a meeting of the designated political coordinators within each committee.

Thus, despite trilogues providing a means for EU decision-makers to proceed with greater convenience and expediency, it is noteworthy that they have been subject to increasing degrees of formalization, with regulation leading to a binding status over time.

Three themes of research

Co-decision has been extensively scrutinized since its introduction in the Maastricht Treaty more than twenty years ago; but it is only in the last decade or so that observers, acknowledging the emergence and extension of trilogues to each and every phase of co-decision legislation, have brought the informal politics of co-decision to the analytic centre. Analyses of trilogues emerged at the turn of the millennium from the concern of observers to produce “a more realistic picture of co-decision” (Jacqué 2009, 183). They brought informal practices to the analytic center of co-decision research (Shackleton 2000) and conceptualized trilogues as a “new mechanism” devised by the two branches of the legislature to manage their interdependence (Shackleton and Raunio, 2003). These early accounts have structured the subsequent debate around three distinct though interrelated themes of research: the institutional variety of trilogues; their power-distributive implications; and finally their normative implications. The first of these showed that trilogues are institutionally different as a function of their location in co-decision: they are most formal in the conciliation phase, where “the context of negotiations is very clearly defined” and “Council is obliged to respond to (EP) amendments” (Shackleton and Raunio 2003, 177-8); least so in first reading, where neither Parliament nor Council have defined their positions and negotiations assume the character of a moving target. The second theme viewed Council as the main beneficiary of trilogues. By the early 2000s, Council had made it a priority to pass legislation as first-reading agreements (Shackleton and Raunio 2003, 174). This strategic imperative had led it to start sending officials to attend all EP deliberations on a permanent basis, which supplied the Council Presidency

with invaluable intelligence. Importantly, these “major changes” in Council were “not ... replicated in the Parliament” (Shackleton and Raunio 2003, 175). Quite the contrary, a new “legislative culture” developed in Parliament that valued pragmatism in interactions with Council and a sense of responsibility in the formulation of policy preferences. “Being more closely associated to the legislative process, the EP became more responsible and attentive to the effects of legislation and progressively abandoned its tribunicienne attitude to develop more realistic positions” (Jacqué 2009, 9). Finally, these early analyses highlighted the trade-off between efficiency and accountability and, crucially, showed how Parliament and Council tried to solve this dilemma differently. Paradoxically, Council, with arguably greater attachments to diplomatic habits than to accountability, was more adept than Parliament at securing internal democracy. There were indications—but little concrete evidence—that Council had developed elaborate mechanisms of internal coordination, which enabled the Presidency to better aggregate the positions of the national delegations. By contrast, Parliament presented a rather sorry picture, as the increasing role of core trilogue players in making informal deals undercut the ability of EP committees to aggregate internal preferences (Shackleton and Raunio 2003).

Of these three themes, the power implications of trilogues have received most systematic attention in recent analyses of trilogues; the normative implications are starting to be addressed more thoroughly; and surprisingly, we lack systematic empirical analyses of trilogues. The quest to pin down the distributional impact of co-decision has generated several institutional analyses exploring inter-institutional power shifts (Häge and Kaeding 2007; Costa, Dehousse, and Trakalova 2011; Costello and Thomson 2013; Burns 2013), as well as intra-institutional power

shifts (Yordanova 2009; Rasmussen 2011; Rasmussen and Reh 2013; Häge and Naurin 2013).

Analyses of discrete EU policy-making dossiers characterized by longstanding EP activism have tended to substantiate the thesis of a convergence of policy preferences between the two branches of the legislature, a phenomenon generally explained by the new strategic and cultural context of informal co-decision (Burns and Carter 2010; Ripoll Servent 2011; Rasmussen 2012).

In spite of this intense scholarly interest, however, key questions remain unsettled: the actual power of “core players” in Parliament remains debated, just like the respective interests and gains of Commission, Parliament, and Council in trilogue politics. The convergence of preferences between Parliament and Council might not be as close or automatic as it appears. Looking at an area long dominated by transgovernmental executive power (the Basel process and its institutionalization in the EU), Greenwood and Roederer-Rynning (2014, 14) have shown that Parliament “successfully introduced significant identifiable components into the final legislative package” showing its ability to “learn to act within its institutional mandate to make an impact upon the course of EU financial regulatory reform.” Finally, talk of a new legislative culture common to Parliament and Council should not obscure the fact that, as before, Parliament and Council are far from being “fully in agreement about how to handle codecision” and consequently we should be careful not “to overlook important differences of opinion about how such an expansion should take place” (Shackleton and Raunio 2003, 176). Reform efforts in Parliament (European Parliament 2008, 2011, and 2012) clearly show that the politics of informal co-decision dialectically intertwines a “pacification” of Parliament (Costa et al. 2011) and efforts by the legislators themselves to redress power shifts and lack of voice

opportunities (Héritier and Reh 2012). This, in turn, underpins a process of institutional evolution, which redefines the territory of informal politics in co-decision as well as its broader implications for effective and democratic governance in the EU.

The normative dimension of trilogues has become the most pressing item on the academic and political agenda. Indeed, discussions on trilogues have spilled over into the public debate, where normative concerns have featured prominently. A decade of institutional reform by EU institutions to make the decision-making process more transparent and visible have not succeeded in preventing broad public criticism as to the legitimacy of trilogues. Respected media regularly portray EU law-making as “infernally undemocratic” and “secret,” pointing to trilogues as the main culprit (EU Observer 2013 and 2014 and International New York Times 2014). Such criticisms are serious given the pivotal role of trilogues, which EU practitioners commonly view as indispensable and unavoidable: it would have to be invented if it did not exist. A serious attempt at evaluating the democratic implications of trilogues must combine a systematic analysis of what trilogues are and how they are embedded in the formal decision-making processes, as well as defining a set of evaluative standards that we can apply to such a complex decision-making system as the EU's. Work has begun on the latter part of the emerging research agenda (Stie 2013; Reh 2014). By contrast, there is relatively little progress on the former part of the agenda: our knowledge of trilogues as an informal institution is either based on stylized definitions or outdated empirical knowledge. This is the knowledge that shapes the broader public discourse on trilogues. An important task ahead is to analyze more

systematically the set of practices constituting trilogues and their relation, both theoretical and empirical, to formal rules.

The Culture of Trilogues

The instrumentalist perspective of the extant literature seems intuitively appealing: power is incontestably at stake in trilogues and it is easy to pin down specific individuals or groups of individuals and their interests; furthermore, trilogues have grown to encompass all phases of co-decision politics in spite of concerns about democratic implications. Most of the organizational and institutional changes brought about by trilogues seemed to relate to issues of efficiency in the Council, while concerns for broad democratic principles did not seem to have much impact on the actual organization and institutionalization of trilogues. In response to these arguments, however, we point out that trilogues are part and parcel of a broader reality, co-decision politics, the main purpose of which is to impart legitimacy to EU decision-making processes (Rittberger 2005; Rittberger and Schimmelfennig 2006); and furthermore, that rationalist explanations have shown their limits, and that scholars now turn to norms and socialization in order to shed additional light on trilogues (Neuhold 2007; Rasmussen, 2012; Reh et al. 2013; Ripoll Servent, 2014).

Building on these preliminary insights, we view trilogues as cultural constructs, conforming to local practices and understandings rather than abstract efficiency rules. Our point is not that norms and socialization matter—we assume they do. Nor is it to deny the role of efficiency—we acknowledge efficiency as one of the main forces shaping trilogues. Rather,

we see instrumental action as cultural action (Dobbin 1994), in line with a rich though eclectic intellectual tradition urging us to explore the social origins of instrumental rationality (Weber 1930; March and Olsen 1989; DiMaggio and Powell 1991). Drawing on this tradition, we define *culture* as shared conceptions of social reality. We are here referring more specifically to 'organizational culture', which has been defined as 'how things are done, and how they are meant to be done in the organization' (Kreps quoted in Lewis 2010, 656). Culture involves prescriptions of social role, or *norms*; norms are manifested in *standard operating procedures*--the organizational expression of norms; and eventually, they generate distinctive *practices* when they are internalized and adequately policed. We use the term *institutionalization* specifically to refer to the process whereby formal organization and technical procedure becomes infused with value (Selznick 1949). Through institutionalization, organizations (actors) are turned into institutions (cultural categories). Institutionalization makes interactions (and conflicts) more predictable and ritualistic, while at the same time constituting actors, with their interests and identities (Dobbin 1994, 134). Finally, culture is not static or deterministic. Shared conceptions of social reality are negotiated in cultural encounters; and in turn they are inflected in individual strategies, combining sometimes even quite deliberately aspects of the cultural "tool-kit" into individual strategies (Swidler 1986). Even so, "this kind of deliberate use of culture is highly institutionalized" (Dobbin, 1994, 132).

Thus, when we speak of trilogues as an institution, we mean that trilogues have moved away from being simple technical devices for managing the interdependence of the co-legislators to cultural constructs crystallizing different conceptions of institutional design. We

see in trilogues the unstable product of the encounter of, and permanent negotiations between, different “conceptions of institutional design” involving different evaluations of the proper place of informal and formal politics (Shackleton and Raunio 2003, 176). In these encounters, not only rival appropriate conceptions of institutional design affront each other; organizations (actors) are also turned into institutions (cultural categories).

Pursuing an essentially phenomenological approach (Dobbin 1994, 128), we take stock of the knowledge that actors involved in trilogues have acquired and that they ‘use to interpret experience and generate social behaviour’ (Spradley 1979). Our interpretation of trilogues is based on extensive field research. 34 interviews were conducted in 2014, in which the trilogue process formed the main focus of discussion. Given our focus on organizationally-embedded perceptions and roles, we conducted interviews in all three EU institutions: Commission, Council, and Parliament. Our aim was to reconstruct an in-depth narrative of trilogues free from prior theoretical hypotheses other than the basic epistemological assumptions stated above, and based on the perceptions of trilogue participants. We start by mapping out the various informal processes often lumped together under the notion of trilogues; we then explore how trilogues constitute Parliament and Council as legislators by pinpointing the development of distinctive norms and practices in both institutions.

Ritualized conflict

Trilogues can be understood as an onion-like construct encompassing three main layers of practices. At the core of this structure (layer I) are the full trilogues, also called *political*

trilogues; a second layer of meetings (layer II) consists of *technical trilogues* with a restricted number of technical staff of the EP, Council, and Commission; and yet a third layer of informal meetings (layer III) consists of *bilateral meetings* between the political and technical staff of the EP and the Council surrounding. These layers of inter-institutional relations take place in parallel, sometimes even simultaneously, with intra-institutional meetings where EP and Council delegations continue the legislative work with their respective bases (EP committee and group members; national delegations in the Council) (Figure 1).

Figure 1 here

Layer I and II form a rather coherent, well delineated, and ritualized sequence of meetings. This sequence normally opens up with an exploratory meeting at the technical or political level; thereafter begins an iterative process alternating (several) technical meetings and one political trilogue. The objective of the exploratory meeting is to identify salient themes to be addressed in the ensuing negotiations. Often, it involves a technical meeting where staff undertake a first comparative reading of the Parliament and Council mandates, identify the main differences article by article, and on this basis establish a list of issues to be solved. Each political trilogue is followed by a new round of technical meetings: their objective is “to agree on what we agreed the night before,” i.e., specify compromises on matters of detail with a low degree of political content (interview 1, European Parliament 10.9. 2014). This process is repeated as many times as needed to reach agreement on all issues. The number of iterations varies from file to file: one on the simple files, while more complicated dossiers can involve

more than 40 political trilogues, and at least as many technical trilogues, but 'typical cases' may involve 10-15 meetings in total, with the majority 'technical' in nature.

Full trilogue meetings are the places where political compromises are agreed in negotiations involving the delegations of the EP, Council, and Commission. These delegations are dissimilar in size, level of hierarchy, and type of personnel in that the Chair (or designated Vice-Chair nominee) and the shadow Rapporteurs and/or political group co-ordinators (or designated alternative) of the lead committee, are now *de jure* members of the EP negotiating team besides the Rapporteur. In addition, various support staff participate in the negotiations, bringing the whole EP team to 20-30 persons. The Council delegation is the smallest (1-3 persons, but occasionally up to 10). It is composed of civil servants from the Presidency at the level of the working party or COREPER—ranging from lower level attachés to the Deputy Permanent Representative, and in some cases, the Ambassador or even, rarely, the Minister—accompanied by staff or not. Most legislative files covered by co-decision have historically been covered by COREPER 1, with COREPER 2 more concerned with the more sensitive and political intergovernmental elements of Council decision making. The Lisbon Treaty made a change to such arrangements by moving legislative files falling in the economic and financial affairs (including budget) Council to COREPER 2. The Commission delegation is between that of the Council and that of Parliament in size (about 8-12), and always at a high level of hierarchy, i.e., Deputy-Director General and relevant Heads of Unit, together with support staff.

Political trilogues often involve marathon inter-institutional negotiations, not infrequently

overnight, and punctuated by breaks for intra-(and sometimes mini inter-)institutional deliberations. Observers and participants from both Council and Parliament describe the contrast between the EP's politicians-team and Council's civil servants-team as a source of frustration for Council and asymmetry in favor of Parliament: "politicians in Parliament are accustomed to political negotiations; civil servants not" (personal communication, Council official 18 September 2014); and "It can be difficult for Council to go against a politically-heated" line (interview 1); or yet: "I would characterise Trilogues as a game involving the 'adult' solution orientated Council and the teenage Parliament; they do get something from the noise they make, and the EP plays the game by starting with an extreme position on which it is quite easy to then give way as a 'concession'" (Interview 2, permanent representation, Brussels, 28.4.2014). Almost all political trilogues take place in the EP. They are attended by a large number of individuals: 30-50 people for an "unsexy" political trilogue, "easily 100" where there is "political sex" (interview, Council, 9 September 2014; interview 4). Crucially, access restrictions are asymmetrically felt at this stage: whereas anyone with an EP badge can in practice attend the political trilogues, Council officials complain of access restrictions for their own representatives (interview Council, 9 September 2014).

Technical trilogues, in contrast, involve a restricted number of participants, all technical staff; typically no observers, although an MEP might, very rarely, attend as observer; all three actors are represented. They are devoid of the glamour and drama associated with political trilogues, although they, too, are routinized and ritualized as part and parcel of the broader trilogue sequence. Interviewees from the EP and the Council report various ways through

which the distinction between 'technical' and 'political' is operated. In the EP, internal meetings with technical staff and group assistants prepare the ground, specifying where to draw the limit, ahead of technical trilogues (interview 1). There is also a consensual norm that technical trilogues should not involve staff at a high level of hierarchy (more on this below).

In both layers I and II, the legislators negotiate on the basis of specific mandates recorded in a so-called 'four-column table' document. Table 3 lists, provision by provision, the Commission proposal (column 1), the EP amendments to the Commission proposals (column 2), the Council's text (column 3), and the results from the negotiations (column 4) (Table 2).

Table 2 here

The four-column documents are publicly available once the legislative text is adopted, either through the webpages of some EP Committees, at the initiative of some parliamentarians, or through EU *Access to Documents* measures. However, this provision appears to be limited by practical and political difficulties. Four-column documents evolve continuously, making it very difficult to trace individual versions of them. Furthermore, access requires the consent of all three institutions, which is often not likely to be granted owing to prevailing norms of confidentiality in the Council (interview 3, European Commission, 10.9.2014).

Layer III meetings, by contrast, typically take place before trilogues have even begun. This layer consists of bilateral meetings between the Presidency and EP representatives. It is even less well known even though it is important and also to an increasing extent ritualized. The institution of the 'rotating Presidency' is an important driver of informal contacts.

'Presidency scorecards', i.e., performance assessments of incumbent presidencies, give individual presidencies strong incentives to deliver on clearly-identified legislative priorities. If the Presidency has done its job well, it has started to make informal contacts with all key EP interlocutors well ahead of its official mandate (a whole year before), for a legislative file takes on average 17 months to conclude in first reading, covering 3 presidencies (European Parliament, 2014). The phase of compromise amendments is of particular importance for the incoming Council Presidency as it informs it of the internal EP compromises and the alliances emerging between the shadow rapporteurs and the rapporteur (interview 4 with a former official of the CoM, Brussels, 21.3.2014; interview 5 with a Council official, Brussels, 28.4.2014). The Council will often focus specifically on the compromise amendments that are elaborated at this point. Each new Presidency starts with a series of 'speed-dating' meetings between the chairs of COREPER I and COREPER II or the relevant Council working party and the chairs of EP committees in order to select the priority files, to be closed by the end of the Presidency. In addition to these speed-dating meetings, the Presidency and the rapporteur may also meet to discuss the agenda on individual legislative dossiers, although this practice is becoming more regulated as a result of internal EP reform, as described in the next section. Plenty of lines of communication may be open to the Presidency at this early stage, since it may also consult shadow rapporteurs bilaterally (interviews 2, 4 and 5). Shadow rapporteurs may help the Presidency influence an EP position, if the Presidency has a problem with the way the discussions are going. Most legislative files take several months, so a Presidency has an interest

in contacting the shadow rapporteurs before an *esprit de corps* has fully developed in the EP team.

How trilogues constitute Parliament and Council as legislators

Trilogues have challenged the main actors participating in EU decision-making to specify how binding decisions should be reached. Exploring the norms, standard operating procedures, and the resources harnessed to fulfill institutionally-defined roles, we show how the embrace of trilogues has shaped Parliament and Council as legislators.

European Parliament—developing habits of a “normal” parliament

A distinct body of norms, standard operating procedures, and practices related to trilogues have developed in Parliament since the early 2000s when Shackleton and Raunio described the trilogue process (Shackleton & Raunio, 2003). Many of the norms underpinning the emerging EP culture of FRA originated in the ECON committee (interview 6, EP, 22.5.2014) under the chairmanship of Pervenche Berès (F, S&D) in the 6th term and Sharon Bowles (UK, ALDE) in the 7th term. ECON participated in more than twice as many trilogues as any other EP committee during EP7, accounting by itself for over 1 in 5 trilogues in which the EP participated (European Parliament, 2014b). Berès summed up the rationale of the ECON approach to trilogues with the axiom “tell me who wrote the rule, and I’ll tell you what’s in it”; from this recognition ensues the cardinal norm that the roles of negotiator and rapporteur must be clearly distinguished in order to avoid any conflict of interest (interview 7, EP, 9.9.2014). This implies carving a more active role for the committee chair, foreseen as the

EP leader of the negotiations, and for the shadow rapporteurs, which can mitigate the bias of the rapporteur. Thus, strong committee chairs are a necessary though insufficient condition for pluralization of the trilogue procedure in the European Parliament. We identify at least six standard operating procedures originating from ECON practices. First, committee members do not speak with the Presidency in the absence of the chair. Though it is difficult to monitor the range of bilateral contacts that may take place between MEPs and the national delegations, the ECON chair policed this precept persistently. The Presidency once had to return empty handed from a trip to Strasbourg as the ECON chair found out about, and demanded the cancellation of, a meeting scheduled to take place in her absence between an ECON member and the Presidency (interview 8, CoM, 9.9.2014). Second, bilateral talks do not start before both EP and Council (or COREPER) mandates are in place. Again, this procedure seems to have been internalized and/or policed as a Council official with a long experience of dealing with ECON registered an effective restriction of contacts with ECON representatives in the mandating phase (interview Council 9 September 2014). Third, there is a strict separation of the staff involved in technical meetings and political trilogues. Technical meetings are staffed by technical staff starting with junior administrators (“AD”) or assistant staff (“AST”). This has also become the standard operating procedure and normal practice in the Council, as a way of alleviating suspicions that technical meetings are political. Fourth, the committee chair leads the EP negotiating team and presides the trilogues. ECON chairs were active: Berès and Bowles attended all trilogue negotiations. For the ECON chair in the 7th term, this meant participating in 320 political meetings, which had led the secretariat to formulate scheduling

guidelines in order to avoid trilogue overlaps ((interview 9, UK, 7.7. 2014); interview 10, European Parliament 21.5.2014)). ECON chairs structured the discussions actively: summing up progress, reminding if necessary the Commission of its role or seconding the rapporteur in the negotiations when needed; allocating time and attention among the rapporteur and the shadow rapporteurs; and calling for breaks at key points of the negotiations to take stock of the EP position. Fifth, the EP team holds the pen in trilogues, including the updating of the strategic 4th-column of the 4-column document. Again, this procedure became established practice as the ECON chair refused to consider 4th-column documents authored by Council services (interview 8; interview 11, CoM, 11. 9.2014). Finally, trilogues are held in the EP. The venues selected by the committee's secretariat symbolized particularly well the ECON conception of co-decision: usually, they were committee rooms with a podium at which the ECON chair presided, looking (down) onto the representatives of the member-states (working parties or COREPER), the Commission *and the rapporteur*.

These norms, standard operating procedures, and practices for concluding legislation in FRA have *not* produced a uniform EP culture: 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. But they have clearly had an influence beyond ECON and EMPL, of which Berès was chair in the 7th term (interview EP, Directorate-General for Internal Policies, May 2014). Partly, the influence of ECON norms reflects specific features of this committee: ECON is one of the most prestigious EP committees; it attracts ambitious MEPs; it deals with epoch-making

financial integration; it participated in twice as many trilogues as any other EP committee; and it is perceived as having secured gains in high-profile legislative files. In addition, the influence of ECON norms reflects proselytizing. The ECON chairs in the last two EP terms have used a variety of platforms, especially the Conference of Committee Chairs (CCC), to disseminate their approach. ECON was the only committee to deliver an opinion in the 2012 reform of the EP's RoP amending Rule 70.

Seen from the Council, the ECON approach appears as a set of rigid and sometimes absurd rules, which have strained the working relations between the two co-legislators. Seen from ECON, it has been the key to delivering outcomes that were close to the EP's policy preferences while incorporating a plurality of views. From the vantage point of our research, the institutionalization of ECON norms in Parliament illustrates the insights that can be gained from viewing instrumental rationality as cultural action, i.e., conforming to local cultural prescriptions—here, common standards of transparency and accountability applying to “normal” legislative chambers—rather than general rules of efficiency. Whilst formal rules of the game may place Parliament at a disadvantage viz. the Council (the higher threshold for a majority in second reading, etc), the routines established by the Conference of Committee Chairs (CCC) or the EP secretariat on a cross-committee, the EP's dominance of logistical arrangements, the advantage conferred by numbers in full political trilogues, and its fleetness of foot relative to the Council, have enabled Parliament to acquire leverage over Council.

Council malaise

Council has traditionally worked on the basis of a substantive criterion, conditioning the opening of trilogue negotiations to the harnessing of a supportive coalition. A Presidency opens trilogue negotiations when it feels it has a substantive majority in Council. If a majority materializes at the level of the working parties, it will likely be confirmed at COREPER level, which is the reason why in COREPER I (with the longest experience with trilogues) the longstanding practice has been for working parties to prepare a mandate and then go straight into trilogue negotiations, COREPER being involved subsequently in the renewal (and formal adoption) of negotiating mandates. The glue holding this construction together has been a high level of interpersonal trust among working parties and COREPER resulting from frequent meetings and intense socialization (interview 2) as well as a fairly open process of mandating. Negotiating positions were, until recently, elaborated through an open (though not public) process allowing each national delegation to annotate a draft proposal circulated by the Presidency and Secretariat. Annotations appeared as footnotes to the master document, each footnote signaling a national issue to be taken into account. This process granted all national delegations access to one another's positions.

In the last few years, tensions have developed between the need for increased confidentiality and centralization on the one hand, and the need for accountability and monitoring on the other hand. Mandates are now elaborated in bilateral correspondence between the Presidency and the Secretariat on the one hand, and the national delegations (and the Commission) on the other hand. As was the case before, the Presidency and the Secretariat send draft proposals to the national delegations and the Commission; however now, feedback

from the national delegation takes place bilaterally and confidentially. At the same time, COREPER is now more systematically involved in delivering mandates. This happened first in the most sensitive COREPER II areas, but this practice has now spilled over to COREPER I owing to growing sensitivity to the need to refresh mandates in even uncontroversial files (interview 12, CoM, 8 September 2014) and a general uncertainty throughout the Council as to what might constitute a 'political' matter and what might be 'technical'. And COREPER may have limited information as to the course of events in trilogues, which some of the better resourced member states seek to remedy through closer monitoring of the Presidency, at the cost of some of the smaller countries.

There are several reasons for these developments. The addition of COREPER II and the Special Agricultural Council (SAC) to co-decision have introduced new layers of procedural norms and sub-culture for the Council, and an inevitable change to its *modus operandi*. In addition, Council is with these changes responding to the growing flows of communication that have developed across Parliament and Council as a result of trilogues. Contacts go both ways. National governments have become better at lobbying MEPs (Panke, 2012); MEPs in turn use their contacts in permanent representations to sound out and shape Council positions (interview 2). Council officials joke that they only have to tune in on the official statements of some MEPs in order to discover the position of their national governments (interview 8).

Changes in Council's approach finally reflect the impact of enlargement. Enlargement has brought with it many small states with limited technical resources and capacity to undertake the political complexities required in compositing the positions of twenty eight member states

(interview 13, CoM, 8.9.2014). Arrangements for Presidency co-ordination are in place through 'Troika' arrangements linking groups of three Presidencies together, but a disjuncture is created by the absence of 'gliding' arrangements to subsequent Presidencies. The General Secretariat of the Council is able to smooth out the bumps from one Presidency to another but it is not involved directly in trilogue negotiations (personal communication 18 September 2014), and generally defines its role in terms of a servant to the Presidency (interview 13). The European Council provides punctual relief but its involvement in legislative politics means that permanent representations are sidestepped by a parallel network of "sherpas" constituted of close advisors to the Heads of Member State and Government. Considering these developments, it is striking that the Council's "codecision dorsale" has not much changed since 2003, involving only nine persons in all today, four of them assistants (interview13). The more systematic involvement of COREPER thus reflects the fact that some of the larger member states have stepped up their vigilance over the Presidency.

If Council were to become the Senate of the EU, it would have to embrace norms of transparency and public accountability, as Parliament is doing. In the last few years, changes have indeed taken place, as we have seen, but they do not add up to a parliamentarization of Council. While the more systematic involvement of COREPER has led to a certain degree of proceduralization, Council continues to operate on the basis of norms of confidentiality that are difficult to reconcile with those of a legislative chamber (Wessels 1991).

Conclusion

In the old days of trilogues, Commission proposals disappeared in informal politics, only

to reappear in the formal legislative process as EP proposals including invisible elements of Council position. The substance of negotiations was agreed between critical 'relais actors' (Farrell and Héritier, 2004); trilogues were but a theatre of formalized meetings and observers (Bunyan, 2007). This drama seemed to involve a winner, Council, drawing on its superior organizational adaptation, clear information asymmetries and the expertise of 20-some national administrations, playing on the strategic advantages of its centralized representation, and instrumentalizing norms of political realism and legislative responsibility—to bring Parliament to its favored position. Parliament, on the other hand, was cast as the loser as trilogues hollowed it out, leaving its committees with little more than a nominal role in the legislative process.

By contrast, we find that trilogues today are an elaborate and ritualized process of aggregation and negotiation of preferences involving a broad range actors meeting both in inter-institutional fora as well as intra-institutional fora. They revolve around specific mandates, are underpinned by a distinctly recognizable body of norms, standard operating procedures, and practices in Council and Parliament, and are regulated by an increasing web of oversight mechanisms linking formal and informal institutions. In the end, the world of trilogues is not black-and-white and static. Different layers of inter-institutional interactions reflect continuing tensions between democratic and diplomatic conceptions of institutional design that have developed within and across Council and Parliament.

Likewise, trilogues constitute Parliament and Council as legislators in ways that are not easily reduced to any simple equation. Trilogues have imparted Parliament with a sharpened

consciousness of its role and identity as a “normal” Parliament. Parliament has learnt to navigate the world of informal politics and turn necessity into political virtue. It has seen in norms of public accountability a means to acquire leverage over Council. While formal rules may constrain EP strategies, control over logistical arrangements, the advantage conferred by numbers in full political trilogues, and fleetness of foot relative to the Council, have enabled Parliament to acquire leverage over Council. By contrast, trilogues have left Council increasingly perplexed about the limitations of the rotating Presidency, frustrated at Parliament, and somewhat confused about its own role. The growing involvement of the European Council in legislative files means growing reliance on contacts with ‘sherpa’ advisors in the member states to the Head of each Member State on European affairs, thereby also reducing the powers of national permanent representations.

These are important correctives to earlier research highlighting one-sidedly the ever-growing hold of diplomatic norms of negotiation in Parliament. They open up new areas of research on trilogues. We identify three priorities for future research. First, we need to assess more systematically the scope and depth of variation within Council and across EP committees. ‘Culture is not uniform’ as Lewis (2010, 655) reminds us, and the EP’s historical approach to trilogues has certainly been contextually defined, as different committees developed their own compass in inter-institutional negotiations. Therefore we should expect to find different cultural textures within the EP and probably also Council, reflecting different social and political processes. Future research must identify and trace the mechanisms underpinning norm creation and norm diffusion in both Council and EP. Second, we need to know more

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about how lobby groups and civil society at large respond to their exclusion from the trilogue process. Previous findings suggested that the EP's embrace of trilogues ushered in a new era of pragmatism at the cost of a loss of political contestation or of the capture of informal politics by special interests. Our present findings suggest that the linkages between trilogues and interest groups need more systematic examination as: information asymmetries are more complex than generally alleged; Parliament has learnt to navigate the world of informal politics, not least through a range of logistical advantages it holds over Council in the standard operating procedures of trilogues; and furthermore has seen in norms of public accountability a means to acquire leverage over Council. Third, there is a need to account for the strikingly growing legislative activism of the European Council in the last few years as this phenomenon escapes the boundaries of co-decision and creates a new informal venue of legislative politics disconnected from trilogues and associated oversight institutions.

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Interviews

Interview 1, European Parliament official, Brussels, 10.9.2014.

Interview 2 with a national permanent representational official, Brussels, 28.4.2014.

Interview 3 with an official from the European Commission, Brussels, 10.9.2014

Interview 4 with a former Council of Ministers official, Brussels, 21.3.2014.

Interview 5 with a Council of Ministers official, Brussels, 28.4.2014.

Interview 6 with a European Parliament official, Brussels, 22.5.2014

Interview 7 with a Member of the European Parliament, Brussels, 9.9.2014

Interview 8 with an official from the Council of Ministers, Brussels, 9.9.2014.

Interview 9 with a former Member of the European Parliament, United Kingdom, 7.7.2014.

Interview 10 with a European Parliament official, Brussels, 21.5.2014.

Interview 11 with an official from the Council of Ministers, Brussels, 11.9.2014.

Interview 12 with an official from the Council of Ministers, Brussels, 8.9.2014.

Interview 13 with an official from the Council of Ministers, Brussels, 8.9.2014.

Table 1 – Codecision at twenty: a single-reading procedure

Relevant EU Treaty	Number of policy areas covered by co-decision	Parliamentary term	Number of legislative files governed by co-decision*	Number of legislative files where co-decision concluded at first/ second/ third reading**
<i>Maastricht (1993)</i>	15	<i>1994-1999</i>	165	-/-/-
<i>Amsterdam (1999)</i>	39	<i>1999-2004</i>	403	28/50/22
<i>Nice (2003)</i>	44	<i>2004-2009</i>	447	72/23/23
<i>Lisbon (2009)</i>	85	<i>2009-2014</i>	456	84/14/2

*: In number of legislative files adopted under co-decision

** : In percentage of total number of legislative files adopted under co-decision

Source: Compiled from European Parliament (2012); and for the last parliamentary term (2009-2014), http://www.europarl.europa.eu/code/about/statistics_en.htm (accessed on 30 September 2014).

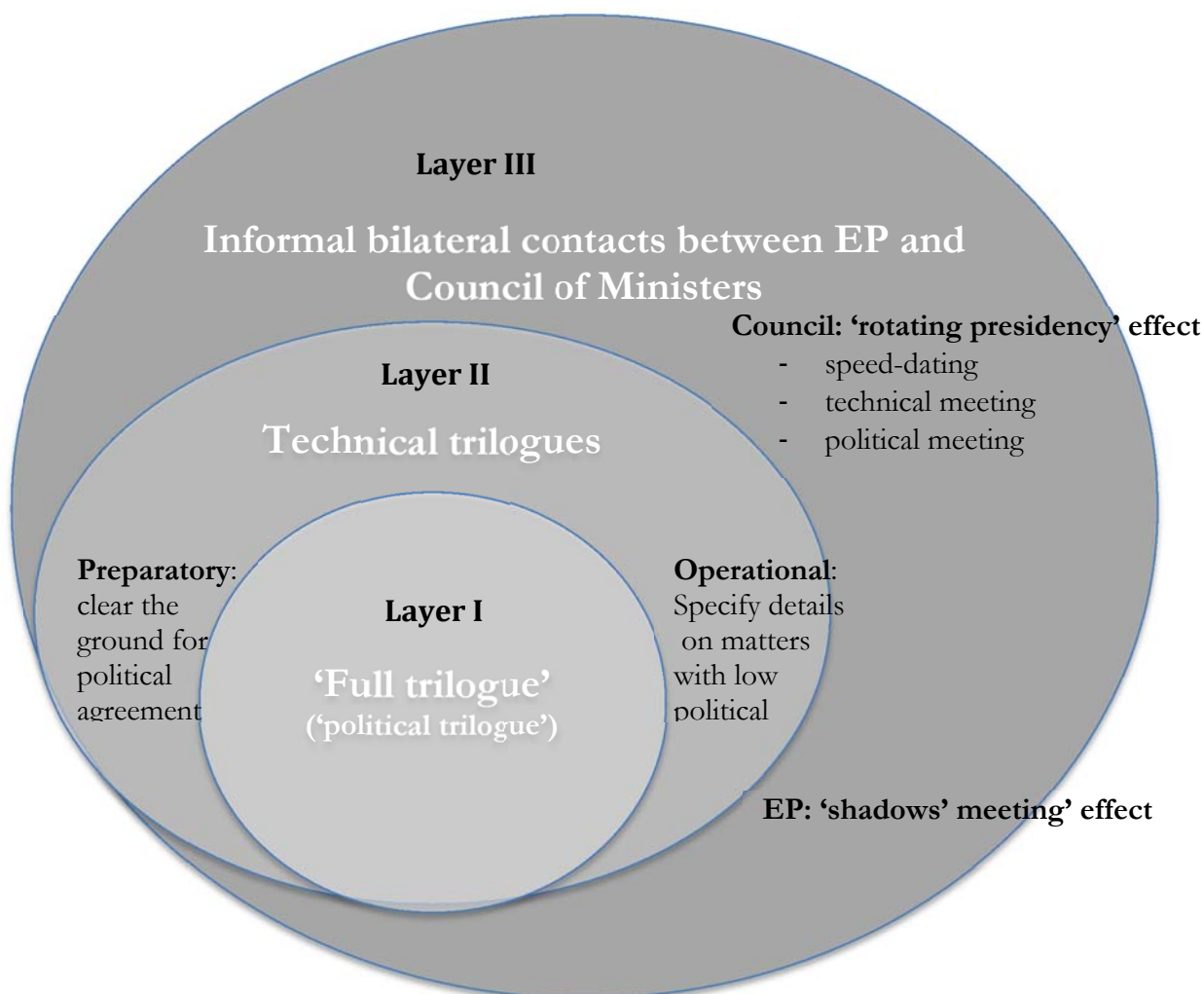


Figure 1 - Trilogues as a multi-layered institution