

# Co-decision after Lisbon: The politics of informal trilogues in European Union lawmaking

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## Abstract

Informal trilogues have become a standard operating procedure in the European Union's ordinary legislative procedure. Generally, their occurrence is seen as a trade-off in which speed is prioritized over inclusive decision making. Hence, a relationship is assumed between intra-institutional processes and inter-institutional interactions. This article therefore tries to explain the number of informal trilogues in first readings. The contribution of this analysis is twofold. First, it shows that intra-institutional political processes such as contestation of the rapporteur's preferences, politicization inside the Council and the number of shadow rapporteurs matter. Second, it for the first time measures the number of informal trilogues directly for the full population of post-Lisbon legislative files.

## Keywords

Council of ministers, European Parliament, first-reading agreements, legislative processes, legitimacy

## Introduction

Co-decision (now the Ordinary Legislative Procedure) has fundamentally changed the European Parliament's (EP) working methods in the sense that inter-institutional interactions have grown increasingly important. Informal trilogues between the Commission, the EP and the Council are the main mechanism for inter-institutional legislative negotiations, enabling the institutions to agree on legislative acts early. The Amsterdam Treaty allowed the European Union (EU)

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legislative institutions to adopt legislative acts already in first reading in response to the Council's need to reduce its workload. In practice, this led to a relocation of political debate towards informal settings in which representatives of the three institutions negotiate behind closed doors (De Ruiter and Neuhold, 2012: 537).

Especially in the early years of co-decision, observers feared that the increasing recourse to informal trilogues would have a dramatic impact on the legitimacy of EU lawmaking (cf. Farrell and Heritier, 2004). In particular, decision making was feared to shift towards small groups of individual negotiators, with a key role for the EP's rapporteur, shutting out in particular the smaller political groups, the committee chair and political group coordinators (Farrell and Heritier, 2004; Shackleton and Raunio, 2003). Because the EP is the only EU institution with a direct link to the electorate, worries regarding a decline in legitimacy have primarily concerned the role of the EP rather than that of the Commission or the Council. At the same time, however, the rise of first-reading agreements has greatly expedited legislative negotiations compared to co-decision processes in the pre-Amsterdam era, and informal trilogues have nowadays become a standard operating procedure (Héritier and Reh, 2012).

Therefore, informal trilogues seem to be part of a trade-off, in which speed is prioritized over open decision making. Much depends on the ability of key EP individuals to effectively shut out fellow members of the EP (MEPs) from the legislative negotiations (Farrell and Heritier, 2004). Intra-institutional processes, however, still play an important role in inter-institutional negotiations: the rapporteur will prefer to conclude a political compromise only if he can safely anticipate that his committee and the EP plenary will not oppose a deal, and sometimes this translates into a higher number of inter-institutional interactions so as to find a solution that finds sufficient support in both legislative institutions. Hence, the relationship between intra-institutional processes and inter-institutional effects is at the heart of the literature on EU decision making (e.g. Costello and Thomson, 2011; Farrell and Héritier, 2003, 2004; Häge and Kaeding, 2007; Rasmussen, 2011; Ripoll Servent, 2011).

This paper hones in on this relationship, and asks: which intra-institutional processes explain the number of informal trilogues in first readings? The analysis shows that intra-institutional processes matter greatly in explaining the number of inter-institutional interactions in the form of informal trilogues. Indicators of inclusive decision making and contestation of the rapporteur's preferences, such as the number of political groups appointing shadow rapporteurs, or the number of amendments tabled on the rapporteur's draft report, strongly correlate with the number of informal trilogues. The same is true for contestation within the Council, which also raises the number of informal trilogues in first reading.

Second, it uses a novel approach to tap into the occurrence of informal trilogues. Earlier accounts of EU legislative processes only offer proxies that investigate the amount of resources spent by the institutions on negotiating files. One set of accounts focuses on the speed by which legislative acts are finally adopted after the Commission presents its proposal. Usually these studies employ survival

analysis or other types of analysis that are sensitive to time dependencies (e.g. Golub, 2007; Schulz and König, 2000). The other set of accounts uses the formal stage at which legislative negotiations are concluded as the dependent variable; sometimes combined with references to a political agreement with the Council in the EP's legislative resolution which implies the usage of informal trilogues. Analyses then differentiate between first-, second- and third-reading agreements and seek explanations for concluding legislative negotiations in each respective reading (e.g. Rasmussen, 2011; Reh et al., 2013).

Neither of the above approaches provides a direct measurement of the number of informal trilogues taking place in first reading. The strength of the first approach obviously is that it directly measures the duration of legislative processes, but a drawback is that time as such is not necessarily indicative of how many resources the institutions allocate to closing their files. The same holds for the second approach. Early agreements still may take quite a while to conclude (cf. Reh et al., 2013), simply because there are no formal time limits in the first reading. This gives the institutions plenty of opportunities to stall negotiations on selected files that are not prioritized (cf. Ripoll Servent, 2011: 10; Tallberg, 2003: 12–13). Therefore, the stage at which legislative procedures are finalized is not indicative of the number of inter-institutional interactions through informal trilogues.

This article therefore suggests an alternative, third, approach. It focuses on the amount of inter-institutional interactions that are necessary for finding a compromise and uses a novel dataset measuring the number of informal trilogues that took place for each of the 313 post-Lisbon legislative files that was concluded before the 2014 EP elections. These files, on average, were discussed in 2.9 trilogues each, but occasionally files may require up to 49 informal trilogues before completing negotiations.

## **Trilogues and early agreements: Speed versus open decision making**

### *The rise of first-reading agreements*

Early agreements are mushrooming in EU legislative politics, and they are a direct consequence of the reform of co-decision in the Amsterdam Treaty. Not only did this Treaty, like all subsequent ones, extend the number of policy areas to which co-decision was applicable, but it also changed the decision-making process by creating a 'fast track' (De Ruiter and Neuhold, 2012: 536). It became possible to conclude legislative negotiations already in the first reading, if the Council would, by qualified majority, accept all the EP's amendments.

Even though initially it was expected that the new possibility of adopting legislation in first reading would not be used on a widespread basis (Shackleton, 2000: 340), it rapidly became the norm rather than the exception. In 1999–2000, 17% of legislative files were concluded in first reading, a percentage rising to 80% in

2008–2009 (Héritier and Reh, 2012: 1137) and even 85% in the 2009–2014 term (European Parliament, 2014: 8).

The EU institutions have formulated different justifications for when legislative files may be considered for being fast tracked. These include, for instance, non-controversial or technical files, urgent situations or the political priorities of the Council presidency (De Ruiter and Neuhold, 2012). However, the list is not exhaustive, and a general culture of attempting to close negotiations early may well be discerned (Shackleton and Raunio, 2003) – a general norm to which the very high adoption rate in first reading clearly testifies.

A key explanation for the appeal of first-reading agreements is the voting rules in co-decision. The Council and the EP both have a strategic interest in closing negotiations in first reading. It is hard for the Council to amend a legislative proposal, and hence it has a strong interest in persuading the EP to propose amendments that are desired by a qualified majority in the Council. Similarly, the EP faces stricter voting rules in second reading, and hence it has an interest in only adopting amendments in first reading which it knows are acceptable to the Council. Also, both institutions are subject to tight deadlines in second reading, which in first reading simply do not exist. The online appendix 1 summarizes these voting rules.

Both institutions, therefore, have an interest in anticipating the other institution's positions before the EP formally acts in first reading, for otherwise they will be subject to strict decision-making procedures with uncertain outcomes in second reading. Moreover, they need to anticipate those positions *correctly*. For that matter, it has become common practice to informally negotiate a common set of amendments between the Council and the EP in informal trilogues. Trilogue negotiations involve the institutions' key players: the EP's rapporteur, a representative of the Council's Presidency, a Commission representative, and mostly they are accompanied by staff of the institutions' legal services, shadow rapporteurs, the EP's respective committee chair and political and administrative staff members (Héritier and Reh, 2012). When a set of amendments is negotiated successfully, the rapporteur formally tables it in the EP's plenary which rubberstamps it, and consequently the Council only needs to adopt the EP position.

### *The empowerment of relais actors*

Accounts of trilogue decision making in the early days of co-decision voice the concern that trilogue deals may come about so quickly that the full legislative bodies are simply incapable to check whether those deals are representative of the majority opinion in the full legislature (Farrell and Heritier, 2004; Shackleton and Raunio, 2003). Toshkov and Rasmussen (2012), as well as Reh et al. (2013), have shown that early agreements still may take quite a while to conclude. On average, finding an agreement in first reading takes 11.2 months. In cases where agreement is found in second rather than in first reading, the first reading on average takes 9.6 months (Toshkov and Rasmussen, 2012: 13).

This does not mean that the legislative institutions negotiate during the full duration of the first reading. Because there are no formal time limits in first reading, there are plenty of opportunities for the institutions to stall negotiations on selected files that are not prioritized (cf. Ripoll Servent, 2011: 10; Tallberg, 2003: 12–13). Also, the first trilogues are generally organized by the time both legislative institutions have internally formulated their respective positions on the Commission proposal. This means that trilogues are not organized right from the start of any first reading, but only after the Council and the EP have formulated their initial positions. Also, at the end of the first reading, the final parliamentary report needs to be adopted in plenary, and subsequently the first-reading position needs to be put on the agenda of the Council at minister's level. Hence, for any file negotiated in a certain amount of time, it may be just as likely that political agreements are rushed through plenary after just one trilogue, as that a series of negotiations take place before agreement is reached. This means that the duration of legislative processes as such is not necessarily indicative of the ease by which an inter-institutional compromise can be found.

Nonetheless, because of the widespread use of informal trilogues, it has been observed that legislative negotiations have *de facto* shifted from formal and – insofar the EP is concerned – publicly accessible arenas, to informal and closed arenas where only a limited number of actors are present (Héritier and Reh, 2012). From the Council, these include the rotating presidency at working party or Committee of Permanent Representatives (COREPER) level (Häge, 2011; Häge and Naurin, 2013); from the EP, these include the rapporteur, the committee chair or a vice-chair, and the shadow rapporteurs from each political group (European Parliament, 2014: Rule 73.3), but the EP committee may decide to further extend the negotiating team (European Parliament, 2014: Rule 73.2). Trilogues are therefore part of a trade-off, in which speed is prioritized over open decision making (Héritier and Reh, 2012; Lord, 2013; Shackleton and Raunio, 2003: 183). This trade-off primarily affects only one party to the informal trilogues, namely the EP, since the Council and the Commission because of their more administrative working methods traditionally have not derived their legitimacy from open decision making in the first place. It has, however, been found that the rise of co-decision and the concurrent rise of first-reading agreements has increased politicization in the Council at the level of ministers (Häge, 2011).

Most studies into trilogues have paid extensive attention to the development of rules governing informal trilogues, and to the democratic legitimacy of decision making by means of them. Contrary to political debates in the EP, be it in plenary or in its committees, trilogues are not accessible to the general public and meeting documents are not publicly available (Héritier and Reh, 2012; Stie, 2010). Negotiators may thus well exploit the lack of transparency surrounding trilogues in order to negotiate a political compromise that is favourable to their own individual preferences. This is known as the *relais actor thesis*, launched by Farrell and Héritier (2003, 2004). Relais actors form the linking pins between intra-institutional and inter-institutional games, which gives them plenty of opportunities for strategic

behaviour, including control over the circulation of information, especially when only few relais actors have been appointed.

The political power resulting from this relais position has been de-emphasized in several empirical studies (e.g. Costello and Thomson, 2011; Rasmussen and Reh, 2013), but the EU's legislative institutions, and most visibly the EP, have adapted their internal rules several times over the past decade with a view to clipping the wings of their relais actors. In part, these efforts sought to reduce the number of first-reading agreements (Héritier and Reh, 2012: 1148). After adopting a series of non-binding guidelines, the EP has amended Rules 70 and 70a in its rules of procedure (currently Rules 73 and 74) aiming to make first-reading agreements more inclusive. This includes mandating procedures, such as 'orientation votes', as well as reporting requirements (European Parliament, 2015: 48–49). However, as the data used in this study reveal, the trend of an increasing number of first-reading agreements persists.

## Hypotheses

Informal trilogues are at the juncture of intra- and inter-institutional processes, and hence inter-institutional processes cannot be seen as being entirely separate from intra-institutional dynamics (e.g. Eiselt and Slominski, 2006; Héritier and Reh, 2012; Hix, 2002). Hence, explanations are investigated that explicitly take account of the degree to which the EP's and Council's intra-institutional practices shape inter-institutional behaviour.

The first set of hypotheses relates to the composition of the negotiating team. They are derived from the literature that explains the gradual rise of co-decision, and how this affected the working methods of the EP. The first hypothesis directly addresses the number of participants and its relationship to the number of trilogues. Worries that trilogues would empower small groups of actors to quickly decide and present the entire legislative institution with a *fait accompli* have regularly been raised (e.g. Farrell and Heritier, 2004; Shackleton and Raunio, 2003). However, recent research has shown that first readings take longer since the procedures governing their proceedings have become increasingly specific, especially due to new internal EP rules regarding the composition of its negotiating team (Toshkov and Rasmussen, 2012). The key variable here is the number of shadow rapporteurs appointed by the various political groups in the EP. Scattered qualitative evidence shows that shadows, on occasion, do not stick to the agreed EP line; the presence of the committee chair needs to make sure that the infighting stops and the EP speaks with one voice (Roederer-Rynning and Greenwood, 2014). Similarly, Jacqué (2009, quoted in Roederer-Rynning and Greenwood, 2014) notes that the EP needs 'a certain dramaturgy' when negotiating with the Council. Often participants already know at the outset which solution will be found, but outsiders to the negotiations, including MEPs not present in the meetings, need to be shown how firmly Parliament has defended its interests. On occasion, the Council also negotiates with shadow rapporteurs directly if it is unhappy with the position taken by

the rapporteur (Judge and Earnshaw, 2011), which substantially protracts negotiations. In line with these findings and expectations, it is hypothesized that a larger number of negotiators inflates the number of trilogues.

The second hypothesis relates to the size of the rapporteur's political group. No matter which compromise is negotiated in trilogues, it will still need to be accepted by a majority in the EP. In normal circumstances, rapporteurs from large party groups may reasonably expect their own party to back them and require relatively little extra support: they can deliver the votes (Rasmussen and Reh, 2013: 1010). Also, smaller political groups tend to have more extreme points of view than the larger groups (Rasmussen, 2011; Ripoll Servent, 2012: 61), and their rapporteurs thus need to put more effort in securing support. This also complicates negotiations with the Council as it will be harder for the rapporteur to judge whether the proposed compromise agreement will be backed by a sufficiently large majority. Of course many such intra-parliamentary interactions will not take place during trilogues as such, but they may well cast their shadow on inter-institutional negotiations. The Council will have an incentive to strike a deal with the shadow rapporteurs of the larger party groups, bypassing the rapporteur, which will complicate negotiations between the Council and the EP in which the rapporteur acts as a spokesperson. Examples of the Council bypassing the rapporteur have been found and discussed elsewhere (e.g. Judge and Earnshaw, 2011; Roederer-Rynning and Greenwood, 2014). Therefore, it is expected that more trilogues are necessary when the rapporteur's political group is small.

The third hypothesis relates to the past experience EP committees have in applying the co-decision procedure. Since the treaties of Amsterdam, Nice and Lisbon all extended co-decision to further policy areas, some EP committees have obtained more experience in working under co-decision than others. Several earlier studies have found that it takes some time for institutional actors to adapt to changing legislative settings, which also manifests itself in negotiations between the EP and the Council. Reh et al. (2013) found that experience with co-decision relates strongly to the adoption of early agreements through trilogues, which they attribute to socialization effects. Ripoll Servent (2011) argues that under the consultation procedure, the EP can afford to strongly defend extreme positions since it does not need to strike a political compromise with the Council in the first place. It then takes a while for MEPs to get accustomed to new working methods after the introduction of co-decision, leading to more difficult negotiations. Therefore, it is expected that more informal trilogues are needed when co-decision novices are involved – that is, the EP committees on Fisheries, Agriculture and International Trade – because their experience in applying the co-decision procedure is only very limited.

*H1:* There is a positive correlation between the number of shadow rapporteurs appointed by the political groups and the number of informal trilogues.

*H2:* There is a negative correlation between the size of the rapporteur's political group and the number of informal trilogues.



*H3:* Files negotiated by co-decision novices (i.e. the EP committees on Fisheries, Agriculture and International Trade) require more informal trilogues than other files.

The fourth and fifth hypothesis relate to politicization in, respectively, the Council and the EP. Both the Council and the EP need to formally approve a first-reading agreement before it can be enacted. When bureaucrats working in the Council are not sure about the ministers' position, or when it is not sufficiently clear whether a proposed solution has the support of a qualified majority of member states, files enter the Council agenda as a B-point at ministers level. Files can be tossed around a number of times between ministers and bureaucrats before a final solution is found. Politicization in the Council is expected to prolong inter-institutional negotiations. Ministerial involvement increases the probability that ministers keep a close watch on the progress of inter-institutional negotiations, and it increases the necessity to strategically anticipate the position taken by the EP as this might further complicate decision making in the Council. Hence, it is expected that there is a positive correlation between the number of times an issue has been a B-point on the Council agenda, and the number of informal trilogues that take place for that file in first reading.

The EP negotiator, on the other hand, is watched by fellow MEPs. Before negotiations with the Council are opened, the rapporteur first puts together a draft report proposing amendments to the Commission's proposal. This draft report is first discussed in the committee and is open to further amendments from within and outside the rapporteur's own parliamentary committee. Often, many of those further amendments contradict one another, many are eventually rejected, or the rapporteur proposes so-called 'compromise amendments' replacing parts of the original draft report by a new text (Hurka, 2013). Even though this relates to internal deliberations inside the EP, it is expected that this political contestation of the rapporteur's preferences has an impact on inter-institutional negotiations. The rapporteur, after all, is responsible for securing the EP's interests in negotiations with the Council, and a high number of amendments are indicative of disagreement with the rapporteur's preferences. Therefore, following the logic of two-level game models (Putnam, 1988), a higher number of amendments tabled against the EP's draft report is indicative of a smaller winset, which complicates negotiations in informal trilogues.

*H4:* There is a positive correlation between the number of times an issue has been a B-point on the Council agenda, and the number of informal trilogues.

*H5:* There is a positive correlation between the number of amendments tabled against the EP Committee's draft report, and the number of informal trilogues.

Finally, two variables are introduced relating to the properties of the legislative proposals. First, legislative proposals that only amend existing legislation are expected to require fewer negotiations than entirely new proposals, and second,



longer proposals require more trilogues simply because of the amount of content to talk about.

*H6:* Amending legislative proposals require fewer trilogues than entirely new proposals.

*H7:* There is a positive correlation between the number of articles in a legislative proposal and the number of informal trilogues.

If informal trilogues are only about more expedient legislative processes, only the last two variables are expected to produce significant effects. When intra-institutional politics matter, we would expect to see more significant relationships. This would also demonstrate that the much-debated trade-off between speed and open decision making is not only a matter for normative assessments on the democratic legitimacy of EU politics but is also observable empirically.

## Data and methods

Information on informal trilogues is not publicly available. Hence, as with other forms of informal governance, the challenge is not only collecting data but also to find out what data can be collected in the first place (Christiansen and Neuhold, 2013: 1203). This was particularly challenging for measuring the dependent variable. Existing measures of early agreements rely on publicly available resources such as the EP's final report in first reading, and these at best only indicate whether political agreements are in fact fast-tracked early agreements (implying the usage of trilogues), or not (cf. Reh et al., 2013; Toshkov and Rasmussen, 2012). These measures do not count the number of informal trilogues.

For this reason, a novel dataset was constructed that for the first time to date directly measures the number of informal trilogues. The number of informal trilogues was counted for each and every co-decision file of which the proposal dates from after the entry into force of the Lisbon Treaty (1 December 2009), and where the final legislative act was adopted before the 2014 EP elections. Further information on the independent variables as specified in the previous section was drawn from the EU's data repositories OEIL and PreLex. In total, the population consists of 313 legislative files and the dataset includes the full population.

For measuring the number of informal trilogues, internal EP reports were used that are meant to give the EP's Conference of Presidents an overview of progress in pending co-decision files. These reports are drawn up in monthly intervals and list all trilogues taking place for each file under negotiation. These reports were obtained for the time period from January 2010 through the 2014 elections. For about 24% of the legislative files, the EP reports did not mention any trilogues. This percentage is consistent with the findings of Reh et al. (2013: 1118) for the sixth EP legislature, who found that about 28% of first-reading agreements came about without using trilogues. To check the validity of the data, 10 files were randomly selected that, according to the internal EP reports, were agreed upon

without any trilogues. For these 10 files, the Council's General Secretariat confirmed that no trilogues took place.

Usually, each trilogue is devoted to one legislative file only. However, in a small number of cases, multiple legislative files were negotiated as packages rather than as stand-alone measures. Wherever this was the case, the count of the number of trilogues has been corrected for the number of files in the package in order to make the number of inter-institutional negotiations comparable between cases.

Information on the EP-related independent variables was coded on the basis of documents retrieved through the EP's legislative observatory, which identify rapporteurs, shadow rapporteurs and the amendments tabled against the rapporteur's draft report. The number of times a file was a B-point on the Council's agenda was taken from PreLex. Information on the remaining independent variables stems from the Commission proposals.

The approach taken in this article thus complements earlier contributions in this field of research. Rather than relying on statements in the EP's final reports, which only indicate whether trilogues occurred, the data used in this study directly measure their number. As such, it provides an indication of how many inter-institutional resources the EU legislative institutions spend in order to close negotiations on legislative files. As the empirical analysis will demonstrate, this amount varies considerably between files and across EP committees.

## Empirical analysis

### *Escalation to late second reading happens very early*

For the population of 313 legislative files, 915 trilogues took place. The first informal trilogue in this dataset was held on 19 April 2010 and the last on 20 March 2014, giving an average of 233 informal trilogues per year. Not surprisingly, the far majority of these take place in first reading. In fact, only 20 files required a second or a third reading, leaving an astonishing 93.6% of files concluded in first reading. In effect, the ordinary legislative procedure has thus become a single-reading procedure (Roederer-Rynning and Greenwood, 2014: 3).

The growing popularity of first-reading agreements is usually explained by the absence of time limits and the lower majority requirements in Parliament. This means that, in principle, the institutions can take as much time as they like and negotiate files at length, only to resort to second or even third readings if they are unable to strike a compromise deal. Statistics on the average number of trilogues per file, as presented in Table 1, however, give rise to a picture that slightly diverges from this standard interpretation. On average, legislative files go through 2.9 informal trilogues in first reading, but files concluded in late second reading or in third reading hardly seem to be negotiated in first reading to begin with: they are discussed only once or twice, if at all. The decision to escalate a file towards second reading, thus, is not made after protracted inter-institutional negotiations. Rather, such decisions seem to be made early on in the process. In those cases, it is not just

**Table 1.** Number of informal trilogues occurring in first and second reading.

	Legislative reading at which a file is concluded				
Number of informal trilogues	First reading	Early second reading	Late second reading	Third reading	Total
<i>First reading</i>					
Total number	852	51	3	1	907
Average per file	2.9	3.2	1.5	0.5	2.9
<i>Second reading</i>					
Total number	—	0	7	1	8
Average per file	—	0.0	3.5	0.5	0.4
Number of legislative files	293 (93.6%)	16 (5.1%)	2 (0.6%)	2 (0.6%)	313 (100%)

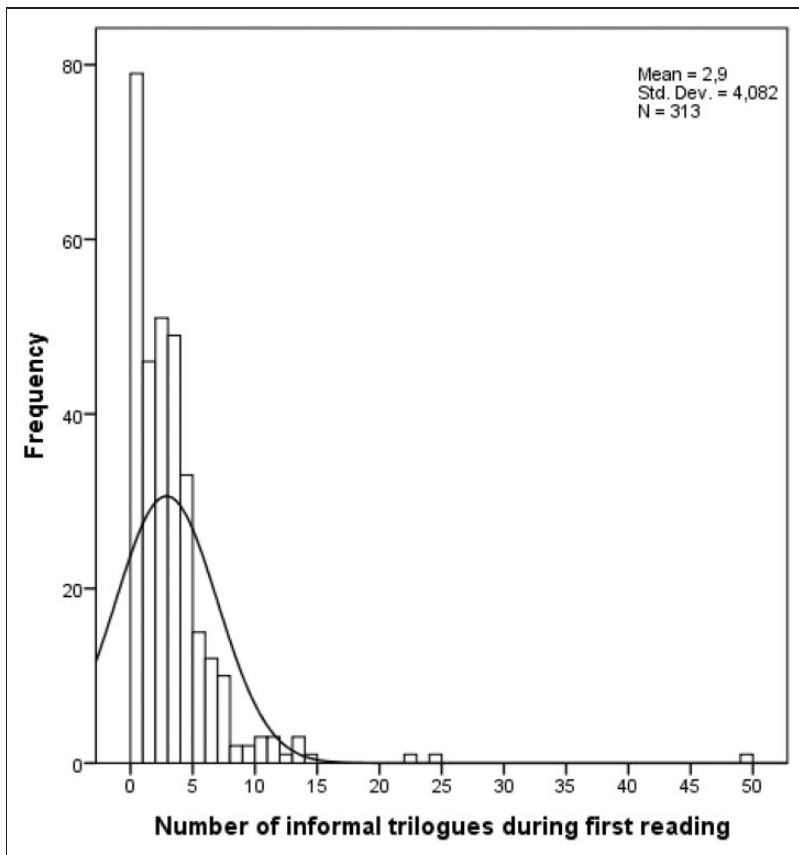
that the institutions cannot resolve their differences in first reading; but they do not even try.

The numbers in Table 1 show that second and third-reading agreements are quite exceptional. In fact, they presently occur so rarely that their number is too low to apply meaningful statistical tests. The remainder of this paper therefore limits itself to mapping out the variation in the occurrence of informal trilogues in first reading only, and testing explanations for this variance. The frequency of 2.9 informal trilogues per file in first reading presents a grand average, but there is substantial variation between files. Therefore, the following paragraph provides more insight into their occurrence in first reading by making further breakdowns.

### *The number of trilogues strongly varies between files*

Figure 1 shows the frequency distribution of informal trilogues per file. Several observations can be made from this. First, it shows that out of the 313 files included in this dataset, 76 files were agreed upon without any informal trilogues, 72 of which in first reading. This number is in line with findings by Reh et al. (2013) for the sixth EP legislature, from mid-2004 through mid-2009. Their findings show that codifications, extensions in time limits and repeals generally do not necessitate early agreements through informal trilogues.

A second observation is that the distribution is skewed. Most files that do require informal trilogues need only one to four such meetings, but a relatively small number of cases require more frequent interactions. The most extreme case is the 2011 proposal for a Regulation laying down common provisions for several EU funds relating to regional development. This file was agreed upon after 49 informal trilogues which, at times, were organized twice per week. Other such files include the 2011 proposal on the European Social Fund requiring 24 trilogues and the 2010 proposal on general rules applicable to the EU budget, which necessitated 22



**Figure 1.** Frequency distribution of informal trilogues per file in first reading.

Bars represent frequencies of files having an  $x$  number of informal trilogues in first reading. The line represents a normal distribution.

trilogues. These outliers, together with the relatively large proportion of files having no trilogues at all, also explain the relatively high standard deviation.

Web appendix 2 gives descriptive statistics per policy area. The EP's lead committee defines the policy areas. The committees on Budgets, Regional Development and Employment each dealt with an outlier in the dataset, clearly showing higher figures compared to the other committees. They, respectively, on average need 8, 7.9 and 4.8 trilogues per file. The committee on Economic Affairs, renowned for dealing with long, intricate measures such as those regulating financial markets, on average also tends to have more trilogues than other committees (4.7), but there are no outliers affecting the summary statistics.

We also see that the committees on Agriculture, International Trade and Fisheries had only few trilogues: on average, respectively, 1.2, 1.1 and 0.9 per file. This is a surprising finding as these three committees only started applying the

co-decision procedure as from the entry into force of the Lisbon Treaty. Rational explanations of parliamentary behaviour have put forward that the EP tends to be more vigilant as soon as it sees its competences increase, so as to try and make the most of its newly acquired prerogatives by setting precedents (cf. Earnshaw and Judge, 1995). At the same time, constructivist explanations put forward that the EP can sacrifice policy interests in order to solidify institutional interests, leading to a more compromise-driven attitude (Ripoll Servent, 2012).

In the above cases, traces of both explanations can be found. Whilst in general the three committees can work towards agreement with the Council without using as many trilogues as other committees do, this is not to say that they always manage to find agreement in the first place. Proposals on aligning the Common Agricultural Policy to the Lisbon Treaty, for instance, were never agreed upon and hence do not feature in the dataset; the institutions only found agreement a few years later on a new agricultural policy that replaced the old one in its entirety. The newcomers thus show a process of learning: while they were unable to even reach agreement in the first place, they later effectively used trilogues as an instrument to reach compromise.

The analysis now turns towards explanations of the number of informal trilogues held in first reading. Because the description above has shown that a significant proportion of files were agreed upon without trilogues (76 out of 313), the explanatory analysis is split in two parts. The first part attempts to explain whether any trilogues took place at all; the second probes into the question how many are needed for finding a compromise.

### *Explaining whether any trilogues are held*

A binary logistic regression analysis was performed on the full dataset, after creating a dummy variable indicating whether trilogues did take place (value 1) or not (value 0). The first model in Table 2 shows the results after only entering the three variables relating to the composition of the negotiation team (see Hypotheses 1 through 3). All three variables display significant effects. The more shadow rapporteurs are involved and the bigger the rapporteur's political group, the more likely it is that at least one trilogue will take place. A particularly strong effect shows up for negotiations falling within the domain of EP committees that did not apply the co-decision procedure before the Lisbon Treaty. Contrary to hypothesis 3, these committees tend to avoid trilogues. However, as further analysis demonstrates, this strong negative effect evaporates when further variables are added. The relatively high Nagelkerke's  $R^2$  indicates that this model substantially improves predictions whether files are agreed upon using informal trilogues or not.

This picture changes in Model 2 when variables are added that tap into intra-institutional politicization. The effects of the rapporteurs' party group size disappear, as does the effect for the EP committees' experience in applying the co-decision procedure. In their place, the number of amendments tabled against the EP rapporteur's draft report produces a strong and significant effect.

**Table 2.** Binary logistic regression explaining the usage of trilogues in first reading.

	Model 1	Model 2	Model 3	Model 4
<i>Composition of the negotiation team</i>				
Number of shadow rapporteurs	0.359*** (0.068) 1.432	0.258*** (0.080) 1.294	0.186** (0.085) 1.204	0.179** (0.083) 1.196
Rapporteur's party group number of seats	0.003* (0.002) 1.003	0.003 (0.002) 1.003	0.001 (0.002) 1.001	—
EP committee new to co-decision (ref. cat.: not new)	−1.648*** (0.317) 0.193	−0.572 (0.363) 0.565	−0.508 (0.383) 0.602	
<i>Intra-institutional politicization</i>				
Number of times issue was B-point on Council agenda	—	−0.044 (0.279) 0.957	−0.157 (0.307) 0.854	—
Number of amendments on draft report	—	0.027*** (0.006) 1.027	0.019*** (0.006) 1.019	0.021*** (0.006) 1.021
<i>Content-related variables</i>				
Solely amending act (ref. cat.: not solely amending)	—	—	0.560 (0.553) 1.750	—
Number of articles in proposal	—	—	0.153*** (0.057) 1.166	0.118*** (0.038) 1.125
Intercept	−0.074 (0.401) 0.929	−1.183** (0.489) 0.306	−1.850** (0.775) 0.157	−1.278*** (0.341) 0.278
N	313	310	295	295
Pseudo- $R^2$	0.29	0.49	0.53	0.52

EP: European Parliament.

Dependent variable is a dichotomous variable indicating whether any informal trilogues took place during first reading (1) or not (0); entries are the unstandardized beta coefficients with their standard error (SE) reported in parentheses. The odds ratios (exponentiated beta coefficients) are reported under the beta coefficients and standard errors. Pseudo- $R^2$  coefficient reports Nagelkerke's  $R^2$ .

Significance: \* < 0.10; \*\* < 0.05; \*\*\* < 0.01.

Council politicization, however, has no significant effect. In sum, this set of independent variables raises Nagelkerke's  $R^2$  substantially.

These effects persist when in Model 3 content related variables are added. It does not matter whether a legislative proposal only seeks to amend existing legislation or not, but the length of the proposal does make a significant difference. The longer a legislative proposal is, the more likely it is that it will be negotiated through trilogues. Every extra article increases the odds of having first reading trilogues by 17%. The lower  $N$  is a result of recasts dropping out of the data set: for those acts, it was not possible to unambiguously count the number of articles proposed.

Model 4 is a parsimonious one, only including variables that have a significant effect. This model was obtained by removing the least significant variable from the full model, until only significant variables were left. From each set of variables, one remains in the model. The number of shadow rapporteurs remains significant, as does the length of the proposal and the number of amendments against the rapporteur's draft report. The Nagelkerke's  $R^2$  of 0.52 is very high, especially considering this model contains just three variables.

### *Explaining the number of trilogues per file*

The analysis now turns to the explanations for how many trilogues are needed for every file. Because the distribution of this variable is all but normal, multiple linear regression could not be used. Negative binomial regression fits the data best, and its results are displayed in Table 3. The exponentiated beta values in the table show the percent change in the incidence rate of the dependent variable after a one unit change in the independent variable.

The data were transformed in two ways. First, negative binomial regression, like other techniques tailor-made for handling count data, requires full-integer data. However, as mentioned before, the data underlying this study take into account the fact that some trilogues deal with multiple files at the same time, which for some files gives totals of 2.3 or 13.5 trilogues. For the purposes of the analysis to follow, these figures have been rounded to the nearest full integer. Second, two variables relate to the dependent variable non-linearly: the number of articles in the Commission's proposal and the number of amendments tabled against the rapporteur's draft report. Therefore, the square roots of these variables were used instead.

The first model in Table 3 demonstrates the effect of the variables relating to the composition of the negotiation team. All three variables produce effects at the lowest level of significance. Surprisingly, only the number of shadow rapporteurs has an effect in the expected direction. The EP committees that only recently started to apply the co-decision procedure use fewer trilogues, not more. Also, the number of trilogues increases with the size of the rapporteur's party group.

Model 2 adds the politicization effects, which substantially improves the overall fit of the model (as indicated by the reduction in the Log Likelihood value). Except for the number of shadow rapporteurs, the effects found in Model 1 persist. Additionally, both politicization effects significantly add towards explaining the



**Table 3.** Negative binomial regression explaining the number of trilogues per file in first reading.

	Model 1	Model 2	Model 3	Model 4
<i>Composition of the negotiation team</i>				
Number of shadow rapporteurs	0.116*** (0.038)	0.048 (0.037)	0.047 (0.032)	—
	1.123	1.049	1.048	
Rapporteur's party group	0.003***	0.001**	0.001**	0.001**
number of seats	(0.001)	(0.001)	(0.001)	(0.001)
	1.003	1.001	1.001	1.001
EP committee new to co-decision (ref. cat.: not new)	-1.092*** (0.189)	-0.633*** (0.166)	-0.654*** (0.166)	-0.657*** (0.168)
	0.335	0.531	0.520	0.519
<i>Intra-institutional politicization</i>				
Number of times issue was B-point on Council agenda	—	0.108** (0.048)	0.106** (0.045)	0.103** (0.044)
		1.114	1.112	1.109
Number of amendments on draft report (sq. root)	—	0.052*** (0.007)	0.037*** (0.007)	0.040*** (0.007)
		1.054	1.037	1.041
<i>Content-related variables</i>				
Solely amending act (ref. cat.: not solely amending)	—	—	-0.066 (0.150)	—
			0.936	
Number of articles in proposal (sq. root)	—	—	0.068* (0.038)	0.071** (0.031)
			1.071	1.073
Intercept	0.261 (0.224)	-0.089 (0.171)	-0.078 (0.193)	0.029 (0.137)
	1.298	0.915	0.925	1.029
Log of dispersion parameter ( $\alpha$ )	0.628 (0.085)	0.268 (0.049)	0.250 (0.049)	0.251 (0.049)
N	313	310	295	295
Log likelihood	-656.66	-588.86	-559.51	-561.59

EP: European Parliament.

Dependent variable measures the number of informal trilogues per file in first reading (rounded to full integers); entries are the unstandardized beta coefficients with robust standard errors (SE) reported in parentheses. The incidence rate ratios (IRR) (exponentiated beta coefficients) are reported under the beta coefficients and standard errors.

Significance: \* < 0.10; \*\* < 0.05; \*\*\* < 0.01.

number of trilogues per file in the first reading. The more often a file has been a B-point on the Council's agenda, and the more amendments have been tabled against the rapporteur's draft report, the more trilogues are necessary.

The full Model 3 adds the content related variables and shows, unsurprisingly, that longer legislative proposals require more informal trilogues. Negotiations on acts that solely amend existing legislation, usually only at the level of specific paragraphs, do not significantly differ from negotiations on new policies when the number of informal trilogues are concerned. One might have expected that negotiating new legislation is more complicated than making amendments to existing acts, but apparently this is not the case. Again, the reduction in the log likelihood shows that this model is an improvement over the previous one.

The final, parsimonious, model again eliminates all insignificant variables from the full model; in this case just two. It shows that the number of informal trilogues in first reading comes about as a result of multiple logics. Intra-institutional politicization, content-related factors and the composition of the negotiation team all affect the amount of inter-institutional interactions.

Comparing the four models, it appears that the results for each variable are much the same between models. The only exception is the number of shadow rapporteurs, which loses its significance as soon as variables related to intra-institutional politicization are added to the model.

## **Conclusion**

This contribution set out to investigate EU legislative negotiations. While informal trilogues were introduced in the late 1990s to attain more expedient legislative negotiations, research investigating trilogues has predominantly focused on legitimacy concerns and possible effects on the distribution of power within and between institutions, and in particular the EP. This research investigated to what degree intra-institutional processes affect the frequency of inter-institutional interactions through informal trilogues. In order to measure that, this article took a novel approach: it used a direct measurement of the number of inter-institutional interactions rather than the duration of legislative processes or the formal stage at which they are concluded.

The results show that 24% of files are agreed upon without informal trilogues. Most of the remaining files require one to four trilogues, and only few require over eight such meetings. The explanatory analyses of the variation in the number of trilogues, as well as in the question whether any trilogues take place at all, show that a multiplicity of reasons underlies the frequency of inter-institutional interactions. Clearly, there is a functionalist argument: longer proposals necessitate repeated interaction, whereas short proposals often come with few reasons to reconvene, if at all. But there are more reasons to take into account; in particular intra-institutional processes. The more a rapporteur's draft report is criticized by fellow MEPs, the more informal trilogues are required. The issuance of a large number of amendments by fellow MEPs arguably makes the rapporteur feel he is

'being watched', which creates incentives to drive a tough bargain with the Council. Interestingly, the number of shadow rapporteurs does not seem to make a difference in this respect.

A high number of amendments are indicative of a smaller winset, resulting in more complicated negotiations. Similarly, politicization within the Council is a driver for the frequency of inter-institutional interactions. Also, support is found for the notion that past experience under the co-decision procedure affects inter-institutional interactions. However, the effect is in the opposite direction than expected. The same is true for the effect of the rapporteur's party group size. It was expected that rapporteurs belonging to smaller political groups use more trilogues, but the observed effect is very small and in the opposite direction. Further, perhaps qualitative, research that delves into the underlying reasons of these unexpected effects is necessary. Hypotheses 1 and 6 are thus rejected because of insignificant results, whilst hypotheses 2 and 3 are rejected because the results of the analysis are opposite to the predicted ones. The other hypotheses are maintained.

In sum, we can conclude that informal trilogues do indeed serve to promote swift legislative processes; the effect of the length of the legislative proposal clearly testifies to an instrumental logic. However, this is only part of the story. The effect of intra-institutional variables such as politicization in the Council and contestation of the rapporteur's position play a considerable role. Informal trilogues, thus, are more than just shortcuts in the ordinary legislative procedure. Simultaneously, they are venues of intra-parliamentary politics – a feature protracting negotiations. The much-debated trade-off between speed and open decision making is not only a matter for normative assessments on the democratic legitimacy of EU politics but is also observable empirically. Intra-institutional processes that involve actors other than the chief negotiators slow down the legislative process.

These findings call for a modest re-appraisal of the relais actor thesis, launched by Farrell and Héritier (2003, 2004). Recent research has convincingly shown that the political power emanating from relais positions such as being the Council's or EP's spokesperson in informal trilogues is only limited (e.g. Costello and Thomson, 2011; Rasmussen and Reh, 2013). This study, however, shows that we should be careful not to dismiss the relevance of the concept too quickly. Whilst institutions are never represented by sole spokespersons, the analysis does show that the degrees to which the Council's preferences are uncertain and the rapporteur's position is contested make negotiations more cumbersome. This shows that the control of information towards non-participants matters, and/or that the fact that a representative is being watched by fellows from the same institution, provides incentives to symbolically drive a hard bargain. Either way, it underlines the relevance attached to relais positions, and the potential to speed up or slow down legislative processes.

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