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Transparency of EU informal trilogues through public feedback in the European Parliament: promise unfulfilled

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ABSTRACT

Significant parts of the EU's legislative process remain shrouded in secrecy. In informal trilogues, representatives of the three main institutions negotiate compromises behind closed doors which are subsequently rubber-stamped in public meetings. While most research on (EU) transparency focuses on the availability of documents, this article investigates how much information on trilogue proceedings is shared with the general public through European Parliament (EP) committee meetings as the only forum to which public account must be rendered during the negotiation process. This article analyses the degree to which trilogues are reported back on, and the quality of feedback provided. Although the EP requires its trilogue negotiators to report back to its committees after each trilogue, the majority of trilogues is not reported back on at all, or not in time. Where feedback is given, its quality is often only poor. The EP thus does not deliver on its promises, which seriously undermines the legitimacy of the EU's legislative process.

KEYWORDS Accountability; European Parliament; legitimacy; ordinary legislative procedure; transparency; trilogues

Introduction

Historically, the European Union (EU) is not renowned for its transparency, and in public discourse, the image of a secretive supranational bureaucracy is still widespread. In public perception, thus, the EU has the odds against itself. Yet, the EU has become remarkably more transparent over the course of the last two decades. Two developments underlie this trend. Firstly, a set of legal provisions have been put in place that regulate access to information, in particular documents (European Parliament and Council 2001). Secondly, the rise of the Internet has spurred the EU institutions to pro-actively release ever more documents related to the decision-making process through various internet

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repositories (Brandsma et al. 2008; Curtin and Meijer 2006). Also, the Council's meetings at ministers' level as well as the European Parliament's (EP) plenary and committee meetings are webstreamed, allowing the general public to follow political discussions from home (Leston-Bandeira 2012; Settembri 2005; Shackleton 2014).

Still, the institutions have found ways to circumvent transparency requirements, leading to significant pockets of secrecy (e.g., Hillebrandt et al. 2014; Leino 2017). One prominent example are the so-called informal trilogues (cf., Curtin and Leino 2017; Reh 2014). They are informal meetings between representatives of the Council of Ministers, the EP and the European Commission, with the aim of brokering a political compromise on a legislative act between the institutions. This political compromise is then subsequently reviewed and approved by the EP and the Council, so that a legislative file can be closed early. By now, nearly all files are closed in first or early second reading as a result of informal trilogues, so that 'codecision has de facto become a single-reading legislative procedure' (Roederer-Rynning and Greenwood 2015: 1148).

The downside of this arrangement is that it is an *informal* (though proceduralized) process, and any documents exchanged during informal trilogues are not pro-actively shared with the general public (Curtin and Leino 2017). Given that the process of finding a political compromise has in practice moved to this informal arena, many authors have lamented the lack of transparency surrounding trilogues (Curtin and Leino 2017; Lord 2013; Reh 2014; Roederer-Rynning and Greenwood 2015; Stie 2015). Since the availability of information is an important element of meaningful democratic accountability (Bovens 2007), trilogues deprive the general public of the opportunity to scrutinize their representatives in the EP and, indirectly, in the Council.

Since informal trilogues are not publicly accessible, any information on the proceedings of political negotiations has to come from the three institutions that participate in them. We need not expect much from the European Commission or from the Council. The former defends and explains its legislative initiative, whilst finding a political agreement is mainly up to the two legislative institutions. The latter mainly relies on political discussions in COREPER and in its working groups, which are not publicly accessible either. Only legislative deliberations at ministers' level are open to the general public (Council 2009: 18–20), and many files only end up at ministers' level in order to formalize agreements found at lower levels in the Council's hierarchy (Häge 2008).

With the EP, chances of obtaining information on the proceedings of trilogues are higher. During the process of inter-institutional negotiations, the EP's lead negotiators are required to report back during the next meeting of their parliamentary committee after every single trilogue. Only when this is not possible in a timely manner can they suffice by informing the coordinators of the political groups (European Parliament 2017, rule 69f). Since EP

committee meetings are broadcast via the Internet and can be followed directly by the general public, information on the proceedings of informal trilogues thus simmers through via this route.

While much of the existing literature on the transparency of the EU's legislative processes focuses on the availability of documents or the underlying access to documents regulation, the negotiators' feedback delivered in public to the EP committee meetings is the only formal procedure in place that seeks to guarantee information provision on trilogues to the general public while the legislative process is still running. This article, therefore, investigates to what degree the proceedings of informal trilogues are made transparent to the general public by means of such reports in EP committee meetings. Three interrelated questions guide its analysis: How much information is shared with the general public, what is the quality of that information, and do any obvious gaps in information provision remain?

The role of trilogues in the legislative process

The emergence of informal trilogues during early second and first reading of the ordinary legislative procedure has been documented at great length. They first appeared around the turn of the century to ease political negotiations on particularly difficult files, but practice spread quickly making informal trilogues a standard operating procedure (Brandsma 2015; De Ruiter and Neuhold 2012; Farrell and Héritier 2004; Roederer-Rynning and Greenwood 2015; Shackleton and Raunio 2003). Between 1999 and 2004, 54% of legislative files were adopted in first or early second reading; a figure rising to a staggering 97% between 2014 and 2016. In parallel, third reading agreements have become very rare. In fact, since the 2014 EP elections not a single file has gone into conciliation (European Parliament 2017). Informal trilogues are an important tool for the Council and the EP to be able to close legislative files in an early stage of the legislative procedure.

This development has not been without controversy. Particularly in the EP, people feared that informal trilogues would affect the balance of power inside the EP in favour of the rapporteur (Farrell and Héritier 2004). As gate-keepers between inter-institutional negotiations and intra-institutional actors, it was particularly feared that rapporteurs would filter information and strategically frame alternatives so as to eventually bias the outcome of negotiations towards their own interest rather than to that of the institution they represent.

While a lively debate took off on the validity of this so-called 'relais actor thesis' (cf., Brandsma 2015; Costello and Thomson 2011; Delreux and Laloux 2018; Farrell and Héritier 2004; Rasmussen and Reh 2013), the EP simultaneously responded to those concerns and changed its rules of procedures a number of times in order to fence in its chief negotiators, and to ensure broad participation from multiple political groups, committee chairs and

members present in plenary (cf., Héritier and Reh 2012). The Council left its rules for conducting trilogues untouched.

With the tightening of procedural rules governing trilogues, and particularly so in the EP, gradually a more or less standardized model emerged for conducting trilogues. Roederer-Rynning and Greenwood (2015) describe a layered process in which formal meetings at political level are at the apex. These include the institutions' chief political negotiators, and are governed by the aforementioned procedural rules that ensure representation of all political groups and the committee chair. The political trilogues are generally supplemented by meetings at technical level with fewer attendees (i.e., political assistants, members of the secretariat), and by bilateral meetings between the rapporteur and the Council Presidency representative, both of which are not proceduralized.

The result of this general layered structure of trilogue negotiations is that despite a standardized model of conducting trilogues in place, this model offers numerous options to tailor the process of conducting negotiations to the needs of the chief negotiators. Hence, there still exist considerable differences between the practices of negotiating files. For instance, the degree to which the chair of a parliamentary committee takes part in the political process differs between committees or even persons (Roederer-Rynning and Greenwood 2015, 2017), and practices of the delegation of preparatory tasks to staff vary as well (Dobbels and Neuhold 2013). The result is that there exists by now a more or less stable repertoire of instruments that can be used by negotiators, but that these instruments are not always used in the same fashion which obscures the proceedings of inter-institutional negotiations.

Since trilogues effectively fully smoothen out inter-institutional differences, they have become *de facto* the forum where decisions are taken (albeit under the assumption that a majority in the EP's plenary and a qualified majority of ministers in the Council will formally approve the political compromise found in trilogues). However, since it is an informal (though proceduralized) way of brokering compromises, trilogues cannot be observed by the general public. Many authors argue that some degree of transparency is necessary in order to safeguard the democratic credentials of trilogues (Curtin and Leino 2017; Lord 2013; Reh 2014; Roederer-Rynning and Greenwood 2015; Stie 2015). This study contributes to that debate by investigating for the first time for all files negotiated in a certain time frame how transparent trilogue decision-making has been to the general public on the basis of reports delivered in EP committee meetings.

Before outlining the methodology and data used by this study as well as its results, the analysis first proceeds by introducing the concept of transparency as well as its constitutive elements that relate to democratic legitimacy,

followed by a synthesis of existing research into the EU institutions' practices regarding the transparency of trilogues.

Conceptualizing transparency

Transparency is a multi-faceted phenomenon of which many definitions and conceptualizations exist: it can refer to the exchange of information between subordinates and superiors, or between organizations and outside actors (e.g., Coremans 2017; Heald 2006). In a large systematic literature review, Cucciniello et al. (2017) found that most research focuses on the availability of information to external stakeholders. Resultingly, they adopt 'the extent to which external actors are afforded access to information about the way public organizations operate' as a general broad definition of transparency (Cucciniello et al. 2017: 36).

In order to see how transparency aids the legitimacy of government, it is useful to distinguish between transparency of decision-making, of policy content, and of policy outcomes as three distinct objects of transparency (Grimmelikhuijsen et al. 2013). This threefold distinction captures different political and administrative actors and different stages in the policy process simultaneously. As this study solely focuses on the transparency of decision-making as the object of transparency, it is situated exclusively in the political rather than in the administrative realm (cf., Meijer et al. 2018).

Although some authors see transparency as a normative desideratum in its own right (e.g., Birkinshaw 2006), typically it is seen as a tool for fostering popular control over political decision-making: it empowers citizens and curtails the power of government (Héritier 2003; Meijer et al. 2018). Popular control is mainly achieved through citizen participation in decision-making, and accountability of decision-makers. These are two very different mechanisms of fostering legitimacy, given that citizen participation is only a viable mechanism before the enactment of a decision whilst accountability refers to *ex post facto* justification and, possibly, sanctioning (Bovens 2007; Meijer et al. 2018). Both, however, require that information on decision-making is made available to the public. According to the literature on accountability, it is important that information includes an explanation and justification of the behaviour of actors (Bovens 2007), be it whether this concerns information on final decisions made or information on interim agreements or progress reports for ongoing processes (Brandsma 2013). Furthermore, it is helpful when information is not biased, framed or coloured in favour of one particular actor, but rather reflects the actual contribution to the decision-making process of all the relevant actors involved (Grimmelikhuijsen et al. 2013; Meijer et al. 2018).

For facilitating citizen participation, timely availability of information is a more important issue than for *ex post facto* accountability. After all, citizens

can only ultimately express their content or discontent during elections, while for fostering participation it is important for the public or organized interest to still be able to intervene while the decision-making process is still pending.

Many EU policy documents have stressed the importance of public access to information and decision-making as one of the key solutions to its alleged lack of democracy (cf., Curtin and Meijer 2006). These pleas for more openness have led to the adoption of particularly access to documents laws. Access to documents, it is assumed in these laws, would facilitate the participation of citizens in the democratic life of the Union. The same reasoning is also reiterated in the Treaty of Lisbon, which states that 'Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and closely as possible to the citizen' (Article 10, Treaty on European Union). Timely provision of information on (ongoing) decision-making processes, and in particular explanation and justification of the behaviour of actors therein, is therefore not only important for the reasons outlined above, but also for the EU to deliver on its promises to its own citizens as laid down in the Treaty.

The transparency of trilogues

The trend of concluding political decision-making increasingly in secluded trilogues seems at odds with the objective of taking decisions as openly as possible, which prompted the European Ombudsman to open an own-initiative enquiry into the openness of trilogue decision-making in 2015 (European Ombudsman 2016; Neuhold and Nastase 2017). More, in particular, she investigated if and how trilogues are publicly announced, which documents are produced by the institutions, and if these documents are accessible to the general public.

Practices with regard to each of these three aspects were considered problematic. In spite of the joint inter-institutional declaration made in 2007 stating among other things that trilogues shall be announced 'where practicable', they are in fact not announced publicly (European Parliament, Council and Commission 2007). The EP does keep records on when trilogues are organized for each and every file but does not publish these (Brandsma 2015), and meeting documents are not made available pro-actively either (Curtin and Leino 2017). Progress in the negotiations is captured by so-called *four-column documents*, but these do not have a standard format as to the contents of the fourth column in which normally political compromises on text, potential solutions or issues of disagreement are listed. They are informal working documents and as such are not published on-line by the institutions. Those who want to see them depend on cumbersome access to documents requests with long processing times, and access is only granted when legislative files have already been closed (cf., Brandsma and Blom-Hansen 2016; Curtin and

Leino 2017). In summary, although the Treaty foresees decision-making that is as open as possible (Article 10, Treaty on European Union), the institutions almost completely rely on a system where information is available upon request only.

During the European Ombudsman's enquiries, the EP, the Council and the Commission adopted an inter-institutional agreement on better law-making in which they committed themselves to a greater transparency of the legislative process. These commitments, however, are vague: the institutions speak of 'improve[d] communication to the public during the whole legislative cycle', and announce the establishment of a joint database on the state of play in legislative files (European Parliament, Council and Commission 2016). At the same time, the agreement remains silent on its exact contents, and to date, this joint database has not yet been implemented. The Ombudsman's recommendations address similar objectives, stressing in particular that documents should be made available pro-actively on whether trilogue negotiations are taking place on a legislative proposal, about the content of those negotiations, and on who is taking part in them (European Ombudsman 2016). As yet, the EP, the Council and the Commission are still considering how exactly to address the Ombudsman's recommendations and also how to establish the document register for trilogue negotiations to which they committed themselves.

In parallel, the retired head of unit of the secretariat to the EP's civil liberties committee Emilio de Capitani filed a court case against its previous employer on access to trilogue documents, and won. After requesting a large number of documents on ongoing trilogue negotiations, the EP refused to grant access to the above-mentioned fourth column on the grounds that this would seriously undermine the decision-making process, that it would lead to public pressure on the negotiators, and that the policies concerned were considered 'sensitive'. In what is already considered a landmark case, the General Court on 22 March 2018 dismissed all the EP's arguments (Court of Justice 2018). It ruled that trilogues must be considered integral parts of the EU's legislative processes, and that the argument of 'a serious undermining of the decision-making process' cannot be used as a default reason to refuse access to trilogue documents: any risks emanating from publishing such documents must be specified and substantiated, and cannot be purely hypothetical when access is refused. Hence, the institutions can only refuse access to documents relating to ongoing trilogue negotiations in specific and duly justified cases, which implies that trilogue documents should, as a general rule, already be available to the general public when a legislative procedure is still ongoing. In seeking to make trilogues more transparent, this judgment goes far beyond the recommendations of the Ombudsman. As this landmark judgment is still recent, it is not clear yet how the institutions will respond to it. In any event, trilogue documents are presently not made

pro-actively available by the EU institutions during the course of a legislative procedure.

In sum, the aforementioned institutional reports, as well as the academic literature, present a rather bleak picture of trilogue transparency. Although information on the Commission's and the EP's starting positions are available in the form of the legislative proposal and the EP's committee report (or the latest draft thereof prior to the beginning of negotiations), as is information on the end result in the form of the negotiated compromises that are tabled in the EP's plenary, the political negotiations during trilogues are still a black box. The transparency of precisely this element is crucial with a view to the legitimacy of EU law-making: it is here that decisions are crafted that require explanation and justification to the public *in a timely manner*, in order to enable the public to hold decision-makers to account or to voice their concerns while the negotiations are still ongoing.

However, the above studies and reports mainly focus on rules of procedure regarding access to documents, and do not address alternative ways by which information on trilogue proceedings are shared with the general public. This study contributes to this field by investigating another way in which the EU institutions communicate the progress made during trilogues to the general public, namely through feedback on trilogue negotiations given during EP committee meetings. The other two institutions do not have procedures in place to systematically provide information on the proceedings of trilogues that is publicly available. Although the Commission has adopted a more open approach to transparency than the Council has (cf., Coremans 2017) and although at times it acts like a negotiator in its own right, the Commission's role during informal trilogues is more to facilitate the agreement between the EP and the Council. It does not perform a secretarial role during negotiations (Roederer-Rynning and Greenwood 2015), and it does not systematically communicate to the general public about the proceedings of trilogues. The Council only applies the principle of openness (while legislative processes are still under way) to meetings at ministerial level. The bulk of the Council's work, however, is done by working parties (cf., Häge 2008) which report to COREPER. This is also true for trilogue negotiations: mandates are to be cleared by COREPER, and it is COREPER to which the Council's trilogue negotiators need to report back (Shackleton and Raunio 2003). During the course of legislative negotiations, this is sealed off from the public eye.

The only institution that is to some degree capable of providing the general public with updates on the progress made during trilogue negotiations, is the EP. Researchers have argued that trilogues and their evolution have triggered a normative process in the EP, which has led to a more pro-active regulation of trilogues (Roederer-Rynning and Greenwood 2015). According to its own internal rules of procedure, the negotiating team needs to keep the parliamentary committee up to date on the proceedings of trilogue negotiations

(European Parliament 2017, rule 69f), and the parliamentary committees normally meet in public. As these meetings are being webstreamed, this constitutes an alternative route for systematically informing the general public of the proceedings of trilogue negotiations, and therefore it can be used as a source to gauge the degree to which trilogue proceedings are made transparent to the general public. The next section describes the analytical framework used to quantify and assess the degree of transparency of trilogues on the basis of this source.

Data and methodology

Before quantifying and assessing transparency of trilogues, we first identified the objects that we were seeking transparency on. With a view to making an assessment of the current state of affairs regarding transparency, we created a list of all trilogues that took place in the first half year of 2017. Since such a list is not publicly available, we asked the EP's secretariat to provide us with the same type of documents that Brandsma (2015) used to identify trilogues during the previous parliamentary term. These documents include for each legislative file under discussion the name and number of the file, the EP committee that leads the negotiations and the dates on which informal trilogues took place.

Subsequently, we consulted the archive webpage of the webstream recordings of the EP's committee meetings, and identified for each trilogue that we listed at what date the next parliamentary committee meeting took place. In case it was scheduled only one or two days following an informal trilogue, we also noted the subsequent committee meeting as a possible venue for in-time feedback on the proceedings of trilogues. Then, we watched all webstreams of all EP committee meetings identified by this method to check whether the according trilogue has been reported back on at all.

If this were the case, we continued by assessing the quality of the feedback given during the committee meeting. For this, we created a scale that includes the constitutive elements of decision-making transparency: explanation of actors' behaviour during trilogues, justification thereof, and (lack of) bias or framing. In view of the specific context of this study, we operationalized these three elements as follows. First, explanation of actors' behaviour refers to specific points that the institutions want to achieve, or meanwhile have achieved. More general descriptions such as, for example, 'working towards more sustainability' thus do not qualify as explanations of actors' behaviour as these do not specify what exactly has been under discussion. Second, justification refers to arguments why a certain position is taken or a certain compromise has been made. Finally, bias has been gauged by observing to what degree feedback emphasizes the EP negotiators' own behaviour

or whether it rather takes into account the other institutions’ behaviour during trilogues as well.

Given that justification can only occur in the presence of explanation, and that the absence of bias is valued higher than its presence, this leads to the following scale for assessing the quality of transparency provided via EP committee meetings:

Excellent: Explanation and justification of actors’ behaviour, no bias towards the EP.

Good: Explanation and justification of actors’ behaviour, bias towards EP.

Fair: Explanation of actors’ behaviour but no justification, no bias towards the EP.

Mediocre: Explanation of actors’ behaviour but no justification, bias towards the EP.

Poor: Neither explanation nor justification of actors’ behaviour.

In total, we identified 50 legislative files that were negotiated during the first half of 2017, for which a total of 111 trilogue meetings took place during the same period. Trilogues during which multiple files were negotiated as a package were counted once.

Table 1 shows a breakdown of these meetings per parliamentary committee. Particularly the committee for Economic and Monetary Affairs, as well as the Civil Liberties committee, experienced a high workload during the period under investigation. Other committees, like Agriculture and Rural Development, Culture and Education, and Employment and Social Affairs, only dealt with a single file each. Fifteen meetings considered three files that were dealt with by multiple EP committees together. We excluded those from

Table 1. Number of files and trilogues per EP committee during the first half year of 2017.

EP Committee	Number of files	Number of trilogue meetings
Agriculture and Rural Development	1	4
Budgets	2	6
Culture and Education	1	1
Economic and Monetary Affairs	6	13
Employment and Social Affairs	1	5
Environment, Public Health and Food Safety	6	5
Internal Market and Consumer Protection	2	6
International Trade	3	6
Industry, Research and Energy	4	8
Legal Affairs	3	3
Civil Liberties, Justice and Home Affairs	8	20
Fisheries	3	5
Regional Development	2	5
Transport and Tourism	5	9
Multiple committees	3	15
TOTAL	50	111

our study because it was not evident in which of the EP committees feedback could be expected. This left a total of 96 trilogue meetings on which we attempted to retrieve feedback. Overall, however, since the vast majority of files is dealt with by only one parliamentary committee, the exclusion of these three files does not substantially impact on the validity of our conclusions beyond the time period that we investigate.

Empirical analysis

The empirical analysis is split into two parts. The first part explains in a bit more detail where and in what form feedback on trilogues can be found during the often lengthy EP committee meetings. The second and main part of the empirical analysis moves to the core of the ambition of this study, namely to measure the degree to which feedback is given as well as the quality thereof and the location of any gaps.

Four modes of feedback

Parliamentary committees differ tremendously in *how* they provide feedback on trilogues during committee meetings. Some committees allow the rapporteur ample time to discuss the current state of play, and leave room for questions and interventions by other members of parliament. Other committees do not publicly discuss trilogue proceedings at all, or are found somewhere in between with only brief feedback on ongoing negotiations on the committee's agenda. We identified four dominant modes of providing feedback.

File-based feedback is the dominant mode of feedback in the committees of Culture and Education, Agriculture and Rural Development, Budget, Legal Affairs and Civil Liberties. Under this mode of giving feedback, it is the rapporteur who provides an update to the committee on the state of play in trilogues, and often (but not always) there is room for further questions by other members of parliament. The negotiated files are listed as separate items on the committee's agenda, and can thus be found easily.

Rapporteur-centred summaries are dominant in the committees for Industry and Research and International Trade. The committees' agendas include a point on feedback on ongoing negotiations, after which the floor is given to individual rapporteurs in order to briefly update the committee. Although feedback on trilogues can easily be located in this way, it is not always clear from the agendas of the committee meetings on which files feedback will be delivered.

Committee chair-centred summaries prevail in the committees for Regional Development, Environment, Employment and Social Affairs and Economic and Monetary Affairs. Sometimes as a special point on the agenda on ongoing trilogues, but usually as part of the chair's announcements at the

opening of the meeting, the committee chair updates the committee on the state of play. Usually, this is done very quickly and little detail is provided, with no room for interventions by members.

No public feedback is given in the committees on Fisheries and Transport. In the Transport committee, feedback on trilogues is listed as a separate agenda item, but *in camera*, which means that cameras and microphones are switched off during this item, and non-MEPs are asked to leave the committee room during this point. During the meetings of the Fisheries committee, no mention of trilogues was made whatsoever (Table 2).

In the Agriculture committee, usually a short debate follows the rapporteur’s feedback in which various members intervene who are not part of the negotiating team. In 12 cases under other committees, members were

Table 2. Dominant modes of feedback in EP committees.

EP Committee	Actor reporting back	Reference in committee agenda	Dominant feedback mode
Agriculture and Rural Development	Rapporteur	Negotiated file is separate agenda item	File-based feedback
Budgets	Rapporteur	Negotiated files are separate agenda items	File-based feedback
Culture and Education	Committee chair AND rapporteur	Negotiated file is separate agenda item	File-based feedback
Economic and Monetary Affairs	Committee chair	Part of chair’s announcements	Committee chair-centred summaries
Employment and Social Affairs	Committee chair	Part of chair’s announcements	Committee chair-centred summaries
Environment, Public Health and Food Safety	Committee chair	Grouped under ‘Report back on ongoing interinstitutional negotiations’, with negotiated files specified	Committee chair-centred summaries
Internal Market and Consumer Protection	Sometimes committee chair, sometimes rapporteur	Listed as ‘Update on trilogues and events’	No dominant mode
International Trade	Rapporteur	Listed as ‘State of play of ongoing trilogue negotiations’	Rapporteur-centred summaries
Industry, Research and Energy	Rapporteur	Listed as ‘Feedback from ongoing negotiations’	Rapporteur-centred summaries
Legal Affairs	Rapporteur	Negotiated files are separate agenda items	File-based feedback
Civil Liberties, Justice and Home Affairs	Rapporteur	Negotiated files are separate agenda items	File-based feedback
Fisheries	None	Not applicable	No public feedback
Regional Development	Committee chair	Part of chair’s announcements	Committee chair-centred summaries
Transport and Tourism	Unknown	Feedback on trilogues listed as in-camera item	No public feedback

asked to intervene or ask follow-up questions after feedback has been provided but no interventions were made. Only twice outside the Agriculture committee did non-chairs or rapporteurs take the floor: once in the Regional Development committee did a member compliment the chair on excellent work done, and furthermore once in the Civil Liberties committee did the Council make a few remarks as it happened to be represented during that meeting. We considered such debates or interventions part of the feedback provided, and hence took those into account when scoring the quality of feedback provided.

Most trilogues are left undiscussed

The analysis now turns towards a measurement of the degree to which feedback is given as well as the quality thereof. [Table 3](#) shows scores for both the presence as well as for the overall quality of reporting back to the EP committees.

The figures clearly show that in a majority of cases, no feedback is provided at all. Fifty-two out of the 96 trilogues identified were not mentioned during the EP's committee meetings. This includes 14 trilogues under the Transport and Fisheries committees which normally do not publicly report back on trilogues anyway, and two meetings under the Civil Liberties committee on which feedback was given late. Furthermore, the placement of feedback on trilogues on the committee's agenda, or an established practice of the chair providing feedback, does not guarantee that feedback is actually given. In four cases, trilogues were left undiscussed because either the chair or the rapporteur was absent. In these cases, the replacing chair was not informed of trilogue proceedings and could not report back, or the rapporteur had not delegated the reporting to a colleague. For four more trilogues, feedback was announced on the committee's agenda but was not given for unknown reasons. These eight cases correspond to 8.3% of the sample investigated.

In the 44 cases where timely feedback was given, there is a clear bias towards poor reporting. For 17 trilogues, some feedback was provided but without explaining or justifying what had been discussed. Typically, poor feedback remains limited to atmosphere descriptions or brief announcements

Table 3. Quality of reporting back to EP committees.

Quality of reporting back	Frequency	Percentage
None	52	54.2
Poor	17	17.7
Mediocre	9	9.4
Fair	9	9.4
Good	8	8.3
Excellent	1	1.0
Total	96	100

of general issues that have been or will be discussed, without providing any detail as to what positions are taken by the negotiators. For 18.8% of trilogues, explanations were provided as to the negotiators' conduct during trilogues but feedback lacked underlying arguments, with the reports for half of those cases being biased in favour of the EP. Only for 9.3% of the trilogues, both explanations and justifications for the negotiators' behaviour were given, which corresponds to the 'good' and 'excellent' categories of the scale.

These results clearly show that only in a minority of instances feedback on trilogues is provided and that only for roughly a quarter of all trilogues explanations on actors' conduct during trilogues are given, supplemented by justifications in an even smaller set of instances. It is thus certainly possible to get a good impression of the political negotiations that have taken place during trilogues on the basis of feedback provided in EP committees, but those instances are relatively scarce.

Feedback gaps vary across EP committees

We now proceed to the final part of the empirical analysis by locating the gaps in information provision. In which parliamentary committees is feedback more or less likely to be given? [Table 4](#) shows in more detail how practices on providing feedback on trilogues vary between parliamentary committees. For this analysis, given the general low quality of feedback provided, we limited ourselves to scoring the presence of feedback on trilogues.

Some committees routinely discuss all trilogues held since the previous committee meeting, whilst in other committees practices vary a lot. The strongest routines are found in the Agriculture, Regional Development, Internal Market and International Trade committees. Some committees where much less feedback has been given might also fit into this category, as the scores may well be lower than 100% for trivial reasons. The low score for the

Table 4. Availability of feedback in EP committee meetings.

EP Committee	Number of trilogue meetings	Feedback available (%)
Culture and Education	1	100.0
International Trade	6	100.0
Regional Development	5	100.0
Internal Market and Consumer Protection	6	83.3
Agriculture and Rural Development	4	75.0
Economic and Monetary Affairs	13	69.2
Legal Affairs	3	66.7
Environment, Public Health and Food Safety	5	40.0
Industry, Research and Energy	8	37.5
Budgets	6	33.3
Civil Liberties, Justice and Home Affairs	20	25.0
Employment and Social Affairs	5	20.0
Fisheries	5	0
Transport and Tourism	9	0

Environment committee could, for instance, be explained by the absence of the committee chair during one meeting where normally three trilogues would have been discussed. Had he been present, the score of this committee might well have been 100%. On the other side of the continuum, the Fisheries and Transport committees provide no feedback in public or no feedback at all, which seems to be a structural feature.

The remaining committees are found in between, and feedback patterns are erratic. The low score for the Civil Liberties committee clearly reflects its very high workload. The agendas of its meetings are very full, and despite the fact that feedback on ongoing legislative negotiations systematically features on the agenda of the committee, clear gaps in feedback remain and the majority of trilogues are not reported back on. While the EP's Rules of Procedure require updates on the progress in trilogues in the committee meeting directly following them, rapporteurs in this committee instead cover a longer timespan once in every several committee meetings, and report back on multiple trilogues at once. As a result, gaps occur in the provision of feedback and feedback is not given timely, if at all. Similarly, twice feedback was given to committee meetings after the according trilogue took place. These practices cause this committee's feedback figures to drop.

In other committees, the workload issue is not as significant as for this particular committee, but figures are low nevertheless. This is indicative of a lack of established routines to provide the committee with feedback during a public meeting.

Conclusion

This article studied the transparency of trilogues by looking at the degree and quality of reporting back to the EP's committees. Earlier studies on the transparency of the EU's legislative process focused on access to documents. With respect to trilogue documents such as meeting documents and four-column documents, they found that it is hard to figure out which documents exist in the first place and that their accessibility is only poor as access is only given upon request after the legislative process has been closed (Brandsma and Blom-Hansen 2016, Curtin and Leino 2017). The institutions have expressed commitment of making information pro-actively available in an earlier stage but are yet to deliver on this promise. The *De Capitani* judgment further underscores the necessity for the EU institutions to grant access to information while legislative processes are still pending, but it remains silent as to whether this information should be made pro-actively available or whether it should be available upon request.

Currently, the EP has the most generous policy as regards transparency while legislative processes are still pending: trilogue negotiators are required to deliver feedback on every single trilogue during the next EP committee

meeting, which meets in public (European Parliament 2017, rule 69f). This study, however, shows that this rule does not deliver on its promise. For over half of the trilogues that took place during the time period investigated, no public feedback was given whatsoever. In the minority of cases where feedback was given, it often lacked substance and thus was of poor quality.

Therefore, even the EP fares poor regarding transparency to the general public on the proceedings of trilogues despite it being the only institution having procedures in place to provide it. Given that the feedback it provides during its committee meetings is the only way through which the institutions officially provide for any kind of feedback on trilogues towards the general public whilst the legislative file is still under negotiation, we consider this highly problematic. Particularly justifications for positions taken, or compromises made, are lacking in practice. Irrespective of whether transparency is seen as a means to foster accountability or citizen participation in the decision-making process, substantive information on progress and justification for positions taken are always necessary elements – and these are generally lacking. Neither the degree to which feedback is given nor the quality thereof contributes to legitimizing decision-making in trilogues.

Although particularly inside the EP, the gradual rise and evolution of trilogues has triggered a normative process that has led to a more pro-active regulation of trilogues (Roederer-Rynning and Greenwood 2015), which also includes the feedback rule of which the workings have been investigated in this article, the results of this study show that the norms enshrined in its rules of procedure are simply hardly complied with. This begs the question to what degree the rules enshrined in the EP's Rules of Procedure pay lip service to its principles of open decision-making, or whether these rules will further affect the (social) norms that guide its members behaviour. Presently, at least, the gap between the EP's formal norms and the ones that emerge from its practices are evident, and the drivers of this discrepancy would be an important area for future research.

Processes for achieving more transparency are likely to remain painstakingly slow. Researchers and the EU institutions alike commonly identify a trade-off between transparency and a smooth functioning of the legislative process (i.e., efficiency). In particular they fear that an increase in the openness of decision-making processes makes negotiators posture; they would be tempted not to reach a compromise because they know that they are being watched (e.g., European Ombudsman 2016; European Parliament 2015; Heritier 2003; Prat 2005; Stasavage 2004; but see Lindgren and Persson [2010] for a different view). Although systematic empirical evidence for this claim is lacking (cf., Hillebrandt and Novak 2016: 529), the EU institutions for this very reason exploit the room for claiming a free 'space to think' under the EU's transparency regulation up to or even beyond its limits (Curtin and Leino 2017; Hillebrandt and Novak 2016). Justification of

positions expressed or deals made while trilogue negotiations are still ongoing might, in this view, jeopardize the eventual outcome: it would make it harder for negotiators to break up interim deals made, or they would have to explain making concessions in the view of expecting some possible future favour in return. Whether transparency really leads to inefficiency has so far hardly been subject to empirical research, and a systematic assessment of this projected trade-off would be timely and necessary.

The establishment of a joint inter-institutional register also including information on trilogues is a step in the right direction, but its implementation has been postponed, as has an update of the EU's transparency regulation which dates back to the year 2001 (Curtin and Leino 2017; Hillebrandt et al. 2014). But even with promising transparency and accountability systems in place, past experience shows that there is often a large gap between the rules in place and their actual functioning (e.g., Brandsma et al. 2008; Curtin and Leino 2017; Hillebrandt and Novak 2016). This investigation of trilogue transparency adds to the list of promises unfulfilled. For further legitimizing trilogues, it is vital to make them more transparent.

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