

## CHAPTER 8

# Politicization in trilogues – Investigating an unlikely couple

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### Introduction

It is a conventional prejudice that EU legislation is agreed under debatable democratic circumstances. Somewhere in a secluded room in Brussels, a chosen few negotiate directives or regulations with considerable impact on European citizens. This procedure is called a trilogue – and negative assessments as to its democratic quality abide, both in academia and in the wider public (Reh, 2014; Roeder-Rynning and Greenwood, 2015; Laloux, 2020; Brandsma and Hoppe, 2020; European Ombudsman, 2015).

In the last two legislative turns, trilogues have rapidly replaced whichever formal routes the treaties had foreseen legislative proposals to take in the ordinary legislative procedure. By now, virtually all legislative proposals that need negotiations between the European Parliament (EP) and the Council of the EU (Council) pass trilogues. In trilogues, (a few) representatives of the EP, the Council and the Commission negotiate legislative files on the basis of the Commission proposal and negotiation mandates issued by the legislative institutions (Laloux, 2020). These negotiations take place ‘in camera’ (Curtin and Leino, 2017). Complementary documents are hard to trace and access, and reporting back, both to the public and to the respective institutions, is of varying quality at best (Brandsma, 2019). In a wider European and EU political landscape which is increasingly politicized (de Wilde et al., 2016), trilogues are hence a prime example of what many would call depoliticized policy making.

Recent insights give reason to doubt this rather one-dimensional view on trilogues. Since their inception, trilogues have undergone a considerable institutionalization. The trilogue process has been diversified and now offers different options for the negotiating actors to, possibly, factor in and use wider societal politicization in their favour. This

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analysis investigates the impact of wider politicization on what has been called the ‘machine room of EU policy-making’ (Roederer-Rynning and Greenwood, 2020). The question, hence, is not whether EU politicization occurs, but how the politicization of EU politics impacts policy- and decision-making in trilogues and how we can make theoretical sense of it.

In the following, both politicization and trilogues will be conceptualized. Based on these conceptualizations, a causal model will be developed as to how we can expect politicization tendencies to impact trilogue negotiations. Afterwards, the trilogue negotiations of a highly politicized legislative file – the posting of workers directive – will be analysed, in order to produce first findings on the impact of politicization on trilogues.

## **Permeable doors? Theoretical perspectives on trilogues and politicization**

Given the impressive institutional trajectory trilogues have taken in the last two decades, scholarly interest has increased, as has our understanding of trilogues. Space does not allow for a comprehensive summary of this literature here – luckily, this has been excellently done elsewhere (Laloux, 2020). Instead, we will present a short outline of what trilogues are and what we know about them, with an eye to this analysis.

The earlier statement that all legislation passes through trilogues is not an exaggeration. In the 2014–19 legislative turn, out of 401 pieces of legislation that were agreed, none entered the third reading, and only four entered the full second reading phase (European Parliament, 2019). The other 397 were agreed early – either at the first or early second reading. We know that whenever this is the case, trilogues were the chosen venue of negotiations. How exactly do these negotiations come about?

After the Commission issues a legislative proposal, both the EP and the Council internally negotiate a mandate for their respective negotiators or negotiation teams to enter trilogue negotiations. For the Council, the rotating presidency takes on this role. For the EP, a negotiation team is headed by both the rapporteur of the file and the chair of the respective committee(s) responsible. In addition, shadow rapporteurs from each political group complement the negotiation team. For the Commission, mostly several representatives of the respective DG(s) are present in trilogues, again from varying hierarchical levels (Brandsma and Hoppe, 2020).

Once the institutions have issued their mandates, the negotiators can officially start the trilogue process. In a variable number of secluded trilogue meetings they negotiate a final version of the text. In between meetings, the negotiators report back to their institutions and if needed have their mandates updated (Häge and Naurin, 2013). Once the negotiators agree on a preliminary result, the legislative file needs to be agreed formally by both institutions.

What is of specific interest for this analysis is what exactly happens in the time between a mandate is issued and preliminary agreement. The above short summary is not comprehensive in that, in place of just a few full or ‘political trilogues,’ the

negotiators engage in a plethora of other meetings. Roederer-Rynning and Greenwood (2015) have shown that negotiators interact in a three-layered institutional setup: At the highest hierarchical level, there are political trilogue meetings in which all negotiators are entitled to be represented. Second, so-called technical meetings or technical trilogues take place in between political trilogues and assemble representatives of all negotiators at the technical or assistant level. Third, informal negotiations often take place between a limited set of actors, often only involving the chief negotiators: the presidency representative and the EP rapporteur (Roederer-Rynning and Greenwood, 2015).

It is especially this multi-layered character of trilogues as an institution which has led to first cautious revisions of the view of trilogues as *only* a depoliticizing device developed to insulate EU policy negotiations from societal politicization. In general, recent studies especially emphasize the institutional flexibility within trilogues – the possibility that negotiators themselves or other factors may decisively alter the institutional practices and routes a legislative file follows (Farrell and Heritier, 2003, 2007; Reh and Heritier, 2012; Judge and Earnshaw, 2011; Delreux and Laloux, 2018; Brandsma and Hoppe, 2020). Further, the three venues identified above differ in aspects relevant to politicization: Both the range and political hierarchy of participants, as well as accessibility to third parties (interest representatives and civil-society organizations (CSOs)) (Greenwood and Roederer-Rynning, 2019). Trilogues have been conceptualized as ‘politicized diplomacy’, in which the political nature of negotiations in the EP collides with the diplomatic tradition in the Council (Roederer-Rynning and Greenwood, 2020). Hence, despite the first impression of trilogues as depoliticization devices, this informal institution actually does offer institutional space for politicization. The question then is how politicization processes are gone about.

### ***The Agency perspective on politicization***

Politicization research has blossomed in the last two decades. Again, comprehensive and insightful summaries of this literature are given elsewhere, both in this volume and beyond (de Wilde and Zürn, 2012; de Wilde et al., 2016; Bresanelli et al., 2020). And while there are many arguments for rethinking the currently established definitions and conceptions, this analysis will stick with the conventional definition of politicization developed by de Wilde and others: ‘(a) the growing salience of European governance, involving (b) a polarisation of opinion, and (c) an expansion of actors and audiences engaged in monitoring EU affairs’ (de Wilde et al., 2016, p. 4). This definition of politicization has a rather broad, societal component and is issue-sensitive, seeing politicization as an issue-specific development rather than a broader condition of the Union. The aim of this study is to link, first theoretically and then empirically, the politicization of EU policy issues to the very heart of EU decision-making in trilogues.

How then do we theorize this link? Following Bresanelli et al. (2020), the above-mentioned domestic politicization can be seen as bottom-up pressure on EU-level actors (both national and supranational) (Bresanelli et al., 2020, p. 330). Accordingly, ‘under such pressure EU-level actors have to respond’ (ibid.). We can hence logically

expect EU-level actors to respond to politicization pressures, and this also counts for actors in trilogues. It is this response which primarily determines whether and how politicization influences decision-making in trilogues.

Following Schimmelfennig, we take an agency-based perspective on politicization. ‘Member state governments and supranational actors have strong incentives to overcome the constraints of domestic politicization pressures or use these pressures to their advantage’ (Schimmelfennig, 2020, p. 343). Broadly speaking, this ‘reactive politicization management’ has two potential directions:

*By (re-)framing and (re-)packaging policies, selecting and changing decision-making processes and (re-)designing institutions, EU actors can prevent or deflect politicization that would limit their room to manoeuvre. Alternatively, they may choose to be responsive to domestic pressures or even ‘ride the wave’ by fuelling and exploiting politicization pressures for their own purposes (Schimmelfennig, 2020, p. 343).*

As an institution, trilogues can be and have been considered (albeit not necessarily explicitly so) as reactive depoliticization (Shackleton and Raunio, 2003; Reh, 2014; Roederer-Rynning and Greenwood, 2015). This analysis aims to dig deeper and focus on the individual actors within single trilogue negotiations in situations of contentious policy-making. Having developed into a complex institutional framework, we can expect politicization to have differentiated effects on trilogue negotiations. Following an actor-centred view on politicization, it is to the actors within the trilogue process that we ascribe a central role in the causal model.

The role and influence of trilogue actors was a focus of analysis early on in the literature on trilogues. In the so-called relais-actor thesis, Farrell and Heritier argue that specifically rapporteurs gain disproportionate influence in trilogue negotiations relative to MEPs outside of trilogues (Farrell and Heritier, 2004, p. 1208). To date, there is no consensus on the actual influence relais actors have as negotiators in trilogues, especially as concerns the content of the legislation agreed upon (Laloux, 2020; Brandsma and Hoppe, 2020). Yet, negotiators do have influence when it comes to the process of negotiations. Research has shown that negotiators have important leeway in determining this process, especially when it comes to choosing between the three layers of negotiations outlined above, as they have the freedom to ‘steer the actual negotiations away from [political] trilogue meetings towards even more informal bi- and multilateral consultations’ (Brandsma and Hoppe, 2020, p. 360). When analysing the impact of politicization on trilogues, it is exactly this procedural dimension of actors’ influence which we need to focus upon. In terms of this procedural influence, we can expect the rapporteur and the Council presidency to be the most central trilogue actors with the biggest influence in shaping the negotiations. How, then might a causal model explaining the impact of politicization in trilogues look?

A first, crucial step in a potential impact of politicization on trilogue negotiations is of course the existence of a politicized policy issue. Often, policy issues negotiated in trilogues are highly technical and hardly attract public attention. Hence, a first

necessary precondition for politicization to impact actors in trilogues is a *high degree of politicization around the policy issue under negotiation*.

In case a policy issue is politicized, there is a range of possible reactions during the process of trilogue negotiations. The assumption is that it is actors' preferences which drive their behaviour. Neither the origin of their preferences nor the role of institutional and ideational factors on these preferences can be further elaborated on in this study.

The only distinction that can be assumed to be of theoretical importance is that which exists between the two different types of preferences and the opportunities and constraints created by politicization for actors to pursue these preferences.

First, actors have a substantive policy interest, i.e. an interest in shaping the content of the resulting piece of legislation in a specific way. It is reasonable to assume that all actors involved, both MEPs and representatives of the Member States, have a specific policy preference in any negotiation. Second, actors have what can be called a procedural interest, i.e. an interest in concluding the negotiation with a positive result (legislation being adopted) or not. File adoption, i.e. the successful conclusion of long and costly (in terms of time, etc.) negotiations is a good in itself, and within the EU institutions it is of high importance, as 'efficiency constitutes a primary goal of EU actors and is an important motivation behind the creation of decision-making institutions' (Mühlböck and Rittberger, 2015, p. 7). The negotiators (especially the presidency and rapporteur) have a strong incentive to bring negotiations to a positive result – *especially* with a politicized file, where positive file conclusion generates media attention.

Concerning these preferences of the actors involved, high degrees of politicization involve both opportunities and constraints for the actors to achieve their preferences. Specifically, politicization could represent a constraint, as file conclusion can be expected to be more difficult the higher the interest in the file, and the less negotiators are 'left alone' to find compromises among themselves. In contrast, policy-seeking actors might be able to use the increased interest and publicly push for their referred positions. Hence, in terms of substantive policy interest, politicization could offer opportunities. Following Schimmelfennig, we assume that actors will apply different politicization management strategies according to their preferences and their respective means of influencing the negotiation process (Schimmelfennig, 2020, p. 345). Accordingly, *actors will use strategies of politicization management to advance their specific interest*. They either try to make use of the new opportunities offered by politicization (reactive politicization), or to find a way of diminishing the constraints coming with a politicized file (reactive depoliticization).

Actors have three main avenues for impacting the negotiation process: (1) changing the institutional venue of negotiations (within the three-layered setup described above); thereby (2) expanding or restricting the range of trilogue insiders present in specific moments of the negotiations; (3) Insulating the negotiation process through informalization or opening it up to the wider public. The exact behaviour within these three avenues of action will depend on actors' preferences (both on policy content and on file conclusion) and their ability to manipulate the course of action

during trilogues. Either way, the negotiating *actors with the power to do so will (partly) determine the process of trilogue negotiations* as a means of politicization management. Figure 1 summarizes the causal model.

**Figure 1.** Causal Model

Step 1	Step 2	Step 3
Policy issues in trilogues exhibit high degrees of public politicization	Actors in trilogues use politicization management strategies	Actors (partly) determine the process of trilogue negotiations
	Actors reactively try to either use strategies of politicization or depoliticization management in order to advance their interest in negotiations	By broadening or decreasing the audience and/or choosing specific institutional venues for negotiations, actors will change the course of trilogue negotiations due to their strategies of (de)politicization management

## Methods

Having developed a first causal model for politicization in trilogues, a plausibility probe is the appropriate method to put the theoretical expectations to a first empirical test. Plausibility probes ‘involve attempts to determine whether potential validity [of a model] may reasonably be considered great enough to warrant the pains and costs of testing, which are almost always considerable’ (Eckstein, 1975, p. 108). It ‘allows the researcher to sharpen a hypothesis or theory, to refine the operationalization or measurement of key variables, or to explore the suitability of a particular case as a vehicle for testing a theory before engaging in a costly and time-consuming research effort’ (Levy, 2008, p. 7). Given that the agency-perspective on politicization is relatively recent and, to the author’s knowledge, the politicization potential of trilogue actors has never been theorized, the plausibility probe provides a good opportunity to test whether our theoretical expectations can be considered reasonable. It allows us to ‘shed light on [the] plausibility’ (Eckstein, 2000, p. 124) of the assumed causal connection between politicization and proceedings in trilogues. Applying the theoretical model to the case allows us to determine whether it is supported by the empirical realities. Thereby, we can (1) establish whether it is worthwhile testing the model across a broader range of cases and contrasting cases with divergent degrees of politicization, and (2) possibly refine and develop the model further on the basis of the in-depth analysis of the case.

The case chosen for this analysis is the negotiation process on Directive (EU) 2018/957 on the posting of workers. It can be considered a most likely case for seeing the effects of politicization in trilogues. This directive amends the original 1996 directive. While the case will in detail be introduced below, the directive can be considered one of the most important files of the legislative turn of 2015–19, and

certainly exhibits degrees of politicization which are unlikely for day-to-day EU policy-making.

In order to analyse the negotiations on posting, several data sources are used. Firstly, official EU documents accompanying the negotiations will be utilized, such as the Commission proposal, the EP draft report, report and amendments, and different presidency documents from the Council, especially during the mandating phase. Second, so-called ‘four-column documents’ are used as the main negotiation documents by the institutions. In four columns, they depict the original Commission proposal, the positions of the EP and the Council and, lastly, compromises struck during the negotiations. Lastly, eleven participants in the trilogue negotiations were interviewed in 2018 within the framework of a broader research project on trilogues. The interviews aim to cover all involved institutions. Table 1 gives an overview of the institutional positions of interviewees.

**Table 1.** Institutional positions of interviewees

Position	Quantity
MEP	2
Commission representative	1
EP administrative staff/policy advisor	4
Member State representative	2
Council administrative staff	2

The respondents have been promised anonymity, which is why they will be referred to as ‘R(espondent)1’ to ‘R11’ in the analysis.

In the following, first the directive will briefly be explained, as well as the degree of politicization of the file. Secondly, the negotiation process will be described, with a focus on the events and processes relevant to politicization management. Afterwards, strategies of politicization and depoliticization management used by actors during trilogue negotiations will explicitly be mentioned and linked to the theoretical considerations above.

## The Posting of workers directive

The posting of workers directive has ‘basically [been] the most important proposal in the social area’ (R11) of the 2014–19 legislative term. It regulates the conditions of employees who ‘have a genuine employment relationship with the employer in the country of origin/sending country [and are posted for] the temporary provision of a service within the territory of the receiving country’ (Voss, 2016, p. 44). Even though they only account for a limited percentage of the total workforce in the Union, posted workers have caused intense debate. They are often seen as a reason for wage-dumping

and unfair competition for employees in high-wage countries, and have therefore featured in many Eurosceptic narratives.

The legislative environment around posted workers was outdated, which is why the left parties in the EP made their support for a new Commission President Juncker dependent on the promise of revising the original 1996 directive.

Juncker kept his promise, and the Commission published a proposal for a revision of the posting of workers directive in 2016 (European Commission, 2016). While some of the issues will again be touched upon later, the actual policy content is secondary for the aim of this analysis, which will focus on the negotiation process rather than outcome.

### ***Politicization management at play?***

#### ***The degree of politicization***

The first step of the theorized mechanisms includes a simple, yet crucial aspect: For politicization to affect the negotiations, the issue must be politicized. The data shows that this has clearly been the case in the negotiations on this directive. The directive was perceived as ‘one of the most political files, and the most controversial and the most discussed [in the media]’, which ‘adds some dimensions in the negotiation process’ (R1). One of the signs of the high salience of the file was that, early on in the process, eleven parliamentary chambers issued a so-called reasoned opinion, together filing a ‘yellow card’ and forcing the Commission to revisit the proposal and justify in case it wants to stick to it. Since the inception of the procedure in the Lisbon treaty, national parliaments have only made use of this procedure three times (Cooper, 2015).

As an exceptional case in EU law-making, the issue of posting ‘was discussed very emotionally. In the media, it was flared up very passionately’ (R8, but also R4, R5, R7, R11). For some of the presidencies, ‘it was a very hyped-up topic. Throughout the media, it was the most important file’ (R3). Accordingly, the range of actors scrutinizing the negotiations was experienced as particularly high: ‘It was followed from all different actors and sides. Associations, communities, both sides, business communities, and trade union communities, as well’ (R5).

In both legislative institutions, the polarization of opinions figured prominently from the beginning. One line of political separation ran geographically across the continent, with Member States more in the east of the Union generally opposing strict legislation, while especially receiving Member States in the west and north of the Union wanted strict legislation (R2,4,5,8,11). The file ‘divided Europe almost more than migration. We were in the middle of the migration crisis<sup>2</sup> and Europe was divided. [...] When the Commission came with the proposal for revising posting, it divided even more’ (R5).

Not only have there been clear dividing lines, but the opposition between the camps has also been experienced as particularly tense: ‘It was constantly “give and

<sup>2</sup> The refugee crisis of 2015/16

take". I have never seen that with other proposals that you were so aware constantly that you are giving or taking from someone.' (R3) The polarization also shows in the intra-institutional processes towards reaching a negotiation mandate. Both the Council and EP needed around one-and-a-half years to agree on a mandate within their institutions (Council of the European Union, 2016). The actors involved in the negotiations were hence not only aware of an increase in polarization but considered the posting of workers directive to have 'divided people in a very, very heavy way' (R5).

### *The negotiation process*

On 14 November 2017 inter-institutional negotiations began with the first of eight political trilogues. Customary trilogue practice would have expected us to see that these political trilogue meetings would have been accompanied by technical meetings, involving technical-level staff and political advisors. These technical meetings normally precede and follow-up political trilogues to prepare compromise and substantiate political agreements found. Yet, the posting negotiations stand out in that none of these technical meetings took place.

### *A curious choice: The absence of technical trilogues*

This fact can be attributed to the choice within the EP negotiation team, and especially the two co-rapporteurs, to prevent these technical meetings (R1,2,3,4,5,6,7,8,9,10,11). The two biggest party-groups in the EP, EPP and S&D had early on in the process decided to share the rapporteurship, as neither wanted to pass on this leading role in a file of such political importance (R1,3,5,6,11). Together, the two rapporteurs Elisabeth Morin-Chartier (EPP) and Agnes Jongerius (S&D) decided that 'this file was so politically important, there is nothing technical' (R9), and that technical meetings would not be appropriate (R2,9,10,11). This decision was far from undisputed.

Many trilogue participants disagreed (R1,2,4,8,11), as 'it's also technically a very complex file. And to explain in the trilogue technical issues is impossible' (R5). Especially the Council negotiators 'tried several times [...] to at least do the preparatory steps, which is normal for any negotiation round. You have to prepare it. But it was refused, they said there is no discussion anywhere else except in that political forum of trilogues' (R1).

Disputed or not, the rapporteurs succeeded in preventing technical meetings until the very end of the negotiation process, which only proceeded slowly in the beginning. The first trilogue is often merely a first meeting in which the respective institutions officially present their positions, while no compromises are agreed yet. Only in the second trilogue were compromises first reached, with slow progress in the following two trilogues until the end of 2017.

### *A new presidency and stagnating negotiations*

The change of years after trilogue four also saw an important change in the composition of negotiators. With the rotating presidency changing as of January 2018, Estonia left the chair of the negotiation team on the Council side and gave way to the Bulgarian presidency. This change of presidencies had been accompanied by substantive worries among some of the participants (R1,3,4,6,7,11). While both Estonia and Bulgaria had been countries in which parliamentary chambers participated in the yellow card procedure, the Estonian presidency had been widely acknowledged for its political neutrality on (not only) the posting of workers file. This perception of honest and neutral brokering among Member States and the EP was expected by some to change with the Bulgarians taking over.

Yet, these fears turned out to be ill-founded. On the contrary, the Bulgarian presidency was acknowledged in all institutions for its splendid and impartial approach to the negotiations: ‘The Bulgarians were very constructive. I didn’t expect that in the beginning, also because it was not clear which position they would take due to their yellow card, but they tried to advance the file’ (R9, but also R1,3,4,6,11).

Despite the constructive role of the presidency, the negotiations in early 2018 still progressed very slowly and even, according to some participants, came to a halt, which was mainly attributed to the high degree of polarization of positions (R3,5). What made the situation so difficult was in part the involvement of very high-level governmental actors. The most interesting case for this analysis is the strategy by the French delegation and, especially, (then) newly elected president Emmanuel Macron.

### *External actors: The involvement of Macron and too many cooks*

The proposal on a revision of the directive coincided with the competition for the French presidency in 2017. The candidates’ positioning towards the EU and the general growing Euroscepticism of the French electorate became important topics. In this campaign, Emmanuel Macron was strongly positioned as pro-European, and he specifically used the posting of workers directive in his campaign (Briaçon, 2017). While Macron’s aim was to reduce the risk of unfair competition in general, he was explicitly vocal on a specific issue of the directive, namely what (wrongly) became publicly known as the length of posting.

One provision on the proposal was to lay down the number of months after which ‘all the applicable terms and conditions of employment which are laid down in the Member State where the work is carried out’ apply to a posted worker (European Commission, 2016). Hence, after a certain period of time the posted workers would fully fall under the labour and social regulation of the receiving Member State. In contrast to how it often has been portrayed in the media the posting would not stop after this period of time. Initially, the European Commission envisioned this switch to occur after 24 months. Macron, however, in his electoral campaign, publicly promoted ‘posting to end’ after 12 months, and after his election this became the official position of the French government.

The consequence of such high-profile involvement of Heads of State and Government became clear during the negotiations. The twelve months for the Council became a ‘red line on which we couldn’t move’ (R1). That is why everybody was aware that in the negotiations, ‘we couldn’t do anything on these two points during trilogue negotiations’ (R9), which was considered ‘not really helpful, because we could not touch this deal they agreed’ (R9). This is a good example of how polarized the positions were:

*We had quite tight majorities, it means when you have one Member State in either block [and] the Member State has a very strong position on something, by compromising on that you risk that they fall out of a supporting qualified majority, and then you have no qualified majority at all. So always, it is a manoeuvre on the brakes, we have to be very careful because if we give in here, we risk to lose them, if we give in on that we risk to lose others, so it was really a balancing act throughout the negotiations (R1).*

For EP actors, which arguably have less potential to adhere to the public, a common strategy used especially by the left parties (and the Greens) has been the heavy involvement of trade union representatives (R2,3,5,6,7,10,11). ‘The trade unions were obviously one of the biggest stakeholders for us to work with. Sometimes, [this way] we had more influence instead of going directly’ (R4). Union representatives could use the leverage they had with some Member States in the Council and try to push the EP’s positions indirectly.

To some, this involvement was a burden, with the feeling prevailing that ‘there were too many cooks involved’ (R7). Compromising on their own positions, which is so essential in trilogue negotiations, was considered losing, ‘and nobody wanted to lose’ (R3). In a situation of high polarization, many participants experienced the negotiations stagnating at the beginning of 2018: ‘It was definitely locked at some point. There was a stage where it was in my opinion completely locked, particularly in the beginning of the Bulgarian presidency, up until it suddenly started moving very fast’ (R4).

### ***High-level resolutions***

How could the standstill be resolved? The data shows that the chief negotiators used a well-known trilogue strategy to foster agreement: Informal exchange involving a selected few. In political trilogue seven, a general understanding was reached, and the four-column documents show us that both before and especially after trilogue seven the great majority of the compromise cells had been filled. This was only possible due to the extensive informal talks involving only the co-rapporteurs, the presidency and the Commission at the highest political level (R1,2,4,5,7,8,11).

‘What of course happened, especially towards the end, were informal contacts between [the rapporteurs], the Commission and the presidency, to see how the file could be concluded’ (R9). In principle, the chief negotiators would meet before trilogue negotiations to exchange the positions within their own institutions, but also possible negotiation strategies in the upcoming trilogues in the spirit of being able to conclude

the file (R1,2,4,6,7,9,11). ‘It was the highest political level, meaning [the] ministerial [level] and Commissioner; there were direct contacts between them’ (R1).

Next to a general awareness as to the existence of these informal meetings, they can also be recognized during the negotiations: ‘I think a lot took place behind closed doors, in the sense that the rapporteurs met with the respective presidency and the Commission, that’s quite clear that there were agreements. You also noticed that in the talks and the dynamics, where it was difficult and where it proceeded a lot quicker’ (R10). These informal talks between the chief negotiators were what facilitated agreement to a degree that the eighth and last trilogue was perceived as ‘a theatre performance, where more or less all elements were pre-agreed in a very small circle of about six actors’ (R8). It is interesting to see that while the co-rapporteurs considered this file too important to have their assistants and advisors hold technical meetings with their counterparts in the Commission and the Council, they did get involved in highly informal talks, severely insulating actual negotiations from public pressure.

## **Politicization dynamics in trilogues**

The case of the posting of workers directive offers manifold insights on the consequences of politicization in trilogue negotiations. Let us briefly revisit the causal model step-by-step to evaluate what the process illustrates.

First, the issue of posting was politicized to a high degree. Already before the negotiations started this was perceived as one of the most important files of the legislative turn of 2015–19. Second, we expected that actors would use strategies of either politicization or depoliticization management that would suit their personal or institutional preferences. The case study showed that both re-active politicization and depoliticization strategies were employed.

### ***Politicization***

An early trace of clear politicization was the rapporteurs’ decision to prevent technical meetings. Their official reasoning was directly linked to the politicization of the file: Given the strong political interest in and importance of the posting of workers directive, they considered it inappropriate for anything to be discussed at a technical level only, without the involvement of high-level political actors (read: themselves). While nobody disputed the political importance of the file, many opposed the decision.

Accordingly, with the actual need for technical meetings acknowledged by most actors except the rapporteurs, there is reason to believe that the decision was driven by strong motives. Indeed, some interviewees suspect the fear of ‘losing out’ in technical meetings was a reason for the chosen strategy. This is in line with earlier findings on the perception in all institutions that while in general, political trilogues have fostered the position of the EP vis-à-vis the Council, it is in technical meetings where the Council and possibly the Commission still out-perform parliamentary representatives (Roederer-Rynning and Greenwood, 2020). This seems in line with

our theoretical expectations: Actors with the power to shape the negotiation process use a politicization-strategy in accordance with their interest, specifically using the opportunities offered by politicization to advance their own policy interests.

A second example of politicization strategies could be witnessed in the Council. The strategy of the French delegation was clearly based on using the societal politicization of the file to (1) publicly state their position already during the mandating phase and thereby (2) establish it as a steady red line in the negotiation. Not only did Macron use the salient issue to position himself in his electoral campaign, by re-framing the issue, he managed to mobilize public support, which was afterwards difficult to argue against. In addition, all actors involved were aware that after such active public statements the French delegation could not move away from the twelve-month position. As a consequence, this strategy hardened the positions in the Council. The strategy of the French hence, willingly so or not, strengthened the negotiation position of the Council on this issue and complicated negotiations. Again, an actor used reactive politicization strategies to foster his interest, both within as well as beyond the negotiations, but with severe consequences for the latter.

Parliamentary actors especially tried to gain leverage by extensively involving Trade Union representatives in the negotiations, not only to make sure these actors were satisfied with the outcome but also, in part, to reinforce their positions by using the often very influential Unions as partners. While arguably the politicization of the file was helpful in that it led to greater overall Union-interest in the file, the data does not allow the conclusion that this strategy was case-specific and thereby in direct relation and reaction to the societal politicization of the file. While in general this strategy extends to the actors involved in the negotiation, and could be considered a reactive politicization strategy, we cannot conclude that it was triggered by overall societal politicization – or rather it is a very common trilogue phenomenon.

### ***Depoliticization***

The case study has also shown, as has been established in earlier research (Reh, 2014; Brandsma and Hoppe, 2020), that trilogues offer influential actors possibilities for further depoliticization strategies. Indeed, the chief negotiators, especially towards the end of the negotiations, made extensive use of the possibility to meet in very informal settings, not involving more than a few influential actors to prepare the political trilogue meetings and at least carve out potential avenues towards finding agreement. The data does not provide reasons to believe that the rationale behind these meetings was pushing through their own policy preferences. Rather, the ultimate goal of informally negotiating was to reach an agreement and lead the negotiations to a successful end.

In line with our expectations, it seems to not only be policy preferences that drive actors in choosing reactive (de)politicization strategies: The strong wish of all actors to arrive at an agreement has driven the choice for reactive depoliticization by shielding negotiations even further, not only from the public eye, but also the members of their respective institutions and even some of those who are entitled to a seat at the table.

Actors have tried to reduce the constraints associated with increased politicization by further insulating the negotiations. What becomes clear is that the general agency perspective on politicization needs to be adapted in the case of trilogue negotiations, as the preference to conclude a file is of the highest importance in explaining chief negotiators' behaviour.

## Conclusion

In this chapter, we have shown that the public politicization of contentious policy issues has an impact on trilogue negotiations. Additionally, the chapter provides first insights into just how this happens: Just as politicization in the public sphere does not happen 'out of the blue' and has to rely on the agency of influential actors, this agency is also needed if politicization is to impact the proceedings in Brussels (Bresanelli et al., 2020; Schimmelfennig, 2020). Trilogues offer different roads for negotiations to take and different venues for issues to be negotiated at, and this analysis shows that politicization is one of the factors determining this trajectory. Of the different strategies of politicization management, especially reactive politicization by trilogue actors has figured prominently and could directly be linked to earlier public politicization. These tendencies are also in line with hypotheses on reactive politicization formulated elsewhere (Schimmelfennig, 2020).

While also reactive depoliticization has played a role in these negotiations, it is unclear how far they are triggered by prior politicization or simply belong to the normal trilogue routine. This is one interesting future line of research: Does the prior public politicization of an issue determine the degree of depoliticization within trilogues (mainly through further informalization of the negotiations), or has this become an inherent part of trilogue negotiations independent of public interest in a file. We need to know more about the conditions under which actors decide to apply which strategy in relation to politicization. This also ties into a broader debate about our understanding of politicization: Is it an issue-sensitive phenomenon, or can politicization be considered the current condition of the EU, so that all institutional developments need (also) be interpreted in light of this overarching condition?

Another interesting question concerns the normative implications. Should future research confirm the first signs that politicization impacts trilogue negotiations, can this be considered a positive development from a democratic perspective, given that it means societal developments find their way into the Brussels 'machine room'? Trilogues have traditionally been considered depoliticization devices par excellence. Should we be able to trace a consistent impact of politicization on trilogue negotiations, this could be applauded from a citizen perspective: What happens in Brussels' machine rooms is not fully detached from broader societal developments.

Yet, tracing an impact of politicization, especially conceptualized and theorized as in this study, does not necessarily increase the role of 'the public', or societal actors. It merely means that trilogue actors have to react to politicization. How exactly public politicization hence impacts trilogues depends to a large degree on a few

central actors. In this reading, politicization could be seen as broadening the choice of a set of already privileged actors, especially in an institutional setting of trilogues which offers well-functioning institutional setups to escape the constraints posed by societal politicization. From a third perspective, the politicization of trilogues could be regarded critically, as ‘messy politics’ could complicate mostly technical discussions on the best design of European legislation. In this technocratic view of trilogues, political fights are to be fought elsewhere (especially in the EP and the Council), while trilogues are simply an institutional setting to allow finding the compromises the EU is dependent upon. In short: The normative assessment depends on the interpretation of the role of trilogues within the EU institutional setup. Especially in light of ongoing discussions on a potential reform of trilogues, it is very important to further reflect on these questions.

In other words, we have only just begun to understand how politicization matters for decision-making processes in Brussels. Any future study can learn from the insights provided above, and should not deter the actors so pivotal for politicization from entering decision-making routines in Brussels.

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