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Christilla Roederer-Rynning and Justin Greenwood

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

KEY WORDS codecision; Council of the European Union; early agreements; European Parliament; inter-institutional relations

INTRODUCTION

Codecision has *de facto* become a single-reading legislative procedure. Whereas in the fifth (1999–2004) legislature, every other codecision file was agreed in the second reading, in the seventh (2009–14) European Parliament (EP) term almost 90 per cent of all legislative files under codecision were adopted as first-reading agreements (FRA) (European Parliament 2013, 2014a). The critical element behind this phenomenon is the development of inter-institutional trilogue negotiations. Trilogues have no reference in the EU treaties, but have developed in practice from the need of the two branches of the legislature, the Council of the European Union (Council of Ministers – CoM) and European Parliament, to manage their interdependence (Shackleton and Raunio 2003). Trilogues include features that are problematic from a democratic perspective: they are secluded; involve a restricted number of participants selected according to unclear criteria; and produce intermediary outcomes that have to be sanctioned by formal decision-making processes (Rasmussen and Reh 2013; Reh *et al.* 2013). Consequently, the implications of trilogues for political contestation and the ability of EU institutions to avoid capture by special interests have attracted growing attention.

This article addresses two gaps in the literature. First, despite the pivotal role of trilogues in the legislative process of the European Union (EU), we still have a

limited understanding of what trilogues are. Our knowledge, which shapes the contemporary public discourse on trilogues, is either based on stylized definitions or on outdated empirical data. Second, in spite of an established focus on the normative dimension of trilogues, we know little about the social processes underpinning trilogues. The primary focus of the extant literature has been on instrumental rationality and attendant power games, efficiency gains and redistributive implications. Recent research has pointed to some limitations of this agenda while highlighting the role of socialization processes (Reh *et al.* 2013). Taking our cue from sociological approaches considering instrumental rationality as a form of cultural action, we view trilogues as cultural constructs and set out to analyse more systematically the set of practices often indiscriminately collapsed under the notion of trilogues. We contribute to the literature by mapping out previously uncharted practices and showing how trilogues constitute the Parliament and Council as legislators.

TRILOGUES BETWEEN EFFICIENCY AND ACCOUNTABILITY

Trilogues originally emerged as a means to facilitate the ‘conciliation procedure’ envisioned in the Maastricht Treaty (1993), which obliged the Council and Parliament to meet, subject to strict institutional requirements, in order to reach an agreement. The Council soon learned the new realities of being a colegislator, in that Parliament would veto any attempt by the Council to reintroduce its common position, as it did in the Open Network Provision (ONP) Voice Telephony Directive in 1994 (Shackleton 2000). The Council understood that legislative efficiency under codecision required early inter-institutional confidence-building measures. Since the early days of codecision trilogues have become *the* way of making EU laws under codecision after the Amsterdam Treaty (1999) made it possible for EU legislation to be passed at first reading (Art. 251 TEC now Art. 294 TFEU), thereby extending their use beyond that of the conciliation procedure (Table 1).

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

Table 1 Codecision at 20: a single-reading procedure

<i>EU Treaty</i>	<i>Policy areas under codecision (number)</i>	<i>Parliamentary term</i>	<i>Legislative files under codecision (number)</i>	<i>Codecision files concluded at 1st/2nd/3rd reading (%)</i>
Maastricht (1993)	15	1994–1999	165	–/–/–
Amsterdam (1999)	39	1999–2004	403	28/50/22
Nice (2003)	44	2004–2009	447	72/23/23
Lisbon (2009)	85	2009–2014	456	84/14/2

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

a more detailed set of rules. These were adopted as the EP's *Code of Conduct* in 2008 and annexed to the EP's Rules of Procedure (RoP) in 2009 (European Parliament 2008). However, the code did little to ease the tide of criticism owing to its lack of binding status. In 2011, the Constitutional Affairs Committee, at the request of the Conference of Presidents, drafted recommendations to give a legal status to the Code provisions. This new wave of reform led to the revision of Rule 70 (now 73) of the RoP on 'Interinstitutional negotiations in legislative procedures,' which incorporated key provisions of the Code into the Rules and introduced the possibility of making the opening of trilogue negotiations conditional upon a mandate delivered by the EP's Plenary (Rule 70a, now 74).

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

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

THE NEW NORMATIVE AGENDA

Codecision has been extensively scrutinized since its introduction in the Maastricht Treaty more than 20 years ago; but it is only in the last decade or so that observers, acknowledging the emergence and extension of trilogues to each and every phase of codecision legislation, have brought the informal politics of codecision to the analytic centre (Shackleton 2000). Analyses of trilogues emerged from the concern of observers to produce ‘a more realistic picture of codecision’ (Jacqué 2009: 183). These early accounts generated three lasting insights. First, trilogues are institutionally different depending on their role in codecision: they are most formal in the conciliation phase, where ‘the context of negotiations is very clearly defined’ and ‘Council is obliged to respond to [EP] amendments’ (Shackleton and Raunio 2003: 177–8); least so in first reading, where neither Parliament nor the Council have defined their positions, and negotiations assume the character of a moving target. Second, the Council has most to win from trilogues (but see Häge and Kaeding [2007] for a different interpretation). This results from a combination of organizational changes in the Council, chief among them the establishment of a ‘codecision *dorsale*’ in the General-Secretariat (Shackleton and Raunio 2003), and growing political realism in Parliament (Burns 2013; Burns and Carter 2010; Jacqué 2009; Rasmussen 2012; Ripoll Servent 2011). Third, trilogues epitomize a trade-off between efficiency and accountability. Paradoxically, the Council, with arguably greater attachments to diplomatic habits than to accountability, was more adept than Parliament at securing internal democracy. There were indications – but little concrete evidence – that the Council had developed elaborate mechanisms of internal co-ordination, which enabled the Presidency to better aggregate the positions of the national delegations. By contrast, Parliament presented a rather sorry picture, as the increasing role of core trilogue players in making informal deals undercut the ability of EP committees to aggregate internal preferences (Shackleton and Raunio 2003).

A decade after the emergence of trilogues, normative issues have become the most pressing item on the academic and political agendas. Discussions on trilogues have spilled over into the public debate, where normative concerns have featured prominently. Years of institutional reform to make EU decision-making processes more transparent and visible have not succeeded in preventing broad public criticism as to the legitimacy of trilogues. Respected media regularly portray EU law-making as ‘infernally undemocratic’ and ‘secret,’ pointing to trilogues as the main culprit (*EU Observer* 2013, 2014; *International New York Times* 2014). Such criticisms are serious, given the pivotal role of trilogues, which EU practitioners commonly view as indispensable (‘it would have to be invented if it did not exist’). They challenge scholars to evaluate more systematically the democratic implications of trilogues. Work has begun on defining a set of evaluative standards that we can apply to such a complex decision-making system as the EU’s (Reh 2014; Stie 2013). By contrast, our knowledge and understanding of trilogues remains fragmentary. It is either based on older

empirical work or stylized definitions that indiscriminately collapse a variety of practices under the notion of trilogue and overlook the norms and processes of interest articulation that have developed around these practices. This is the knowledge that shapes the broader public discourse on trilogues. An important task ahead is to analyse more systematically the set of practices constituting trilogues and their relationship to formal rules.

THE CULTURE OF TRILOGUES

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

Building on these preliminary insights, we view trilogues as cultural constructs, conforming to local practices and understandings rather than abstract efficiency rules. Our point is not that norms and socialization matter – we assume they do. Nor is it to deny the role of efficiency – we acknowledge efficiency as one of the main forces shaping trilogues. Rather, we see instrumental action as cultural action (Dobbin 1994), in line with a rich though eclectic intellectual tradition urging us to explore the social origins of instrumental rationality (DiMaggio and Powell 1991; March and Olsen 1989; Weber 1930). We define *culture* as shared conceptions of social reality, and draw more specifically upon ‘organizational culture’, which has been defined as ‘how things are done, and how they are meant to be done in the organization’ (Kreps quoted in Lewis 2010: 656). Culture involves prescriptions of social role, or *norms*; norms are manifested in *standard operating procedures* – the organizational expression of norms; and eventually, they generate distinctive *practices* when they are internalized and adequately policed. We use the term *institutionalization* specifically to refer to the process whereby formal organization and technical procedure becomes infused with value (Selznick 1949). Through institutionalization, organizations (actors) are turned into institutions (cultural categories). Institutionalization makes interactions (and conflicts) more predictable and ritualistic, while at the same time constituting actors, with their interests and identities (Dobbin 1994: 134). Finally, culture is not static or

deterministic. Shared conceptions of social reality are negotiated in cultural encounters; and in turn they are inflected in individual strategies, combining sometimes even quite deliberately aspects of the cultural ‘toolkit’ into individual strategies (Swidler 1986). Even so, ‘this kind of deliberate use of culture is highly institutionalized’ (Dobbin 1994: 132).

Thus, when we speak of trilogues as an institution, we mean that trilogues have moved away from being simple technical devices for managing the interdependence of the co-legislators to become cultural constructs crystallizing different conceptions of institutional design. We see in trilogues the unstable product of the encounter of, and permanent negotiations between, different ‘conceptions of institutional design’ involving different evaluations of the proper place of informal and formal politics (Shackleton and Raunio 2003: 176). In these encounters, not only rival appropriate conceptions of institutional design affront each other; legislators are constituted.

Inspired by phenomenological approaches (Dobbin 1994: 128), we take stock of the knowledge that actors involved in trilogues have acquired and that they ‘use to interpret experience and generate social behaviour’ (Spradley 1979: 5). Our interpretation of trilogues is based on extensive field research. Thirty-four interviews were conducted in 2014, in which the trilogue process formed the main focus of discussion. Given our focus on organizationally embedded perceptions and roles, we conducted interviews in the Commission, Council, and Parliament. Our aim was to reconstruct an in-depth narrative of trilogues free from prior theoretical hypotheses other than the basic epistemological assumptions above, and based on the perceptions of trilogue participants. We start by mapping out the various informal processes often lumped together under the notion of trilogues; we then explore how trilogues constitute Parliament and the Council as legislators by pinpointing the development of distinctive norms and practices in both institutions.

RITUALIZED CONFLICT

Trilogues can be understood as an onion-like construct encompassing three main layers of practices. At the core of this structure (layer I) are the full trilogues, also called *political trilogues*; a second layer (layer II) consists of *technical trilogues* with a restricted number of technical staff of the EP, Council and Commission; and yet a third layer (layer III) consists of *bilateral meetings* between the political and technical staff of the EP and the Council surrounding. These layers of inter-institutional relations take place in parallel, sometimes even simultaneously, with intra-institutional meetings where EP and Council delegations continue the legislative work with their respective bases (EP committee and group members; national delegations in the Council) (Figure 1).

Layers I and II form a rather coherent, well delineated and ritualized sequence of meetings. This sequence normally opens up with an exploratory meeting at the technical or political level; thereafter begins an iterative process alternating (several) technical meetings and one political trilogue. The objective of the

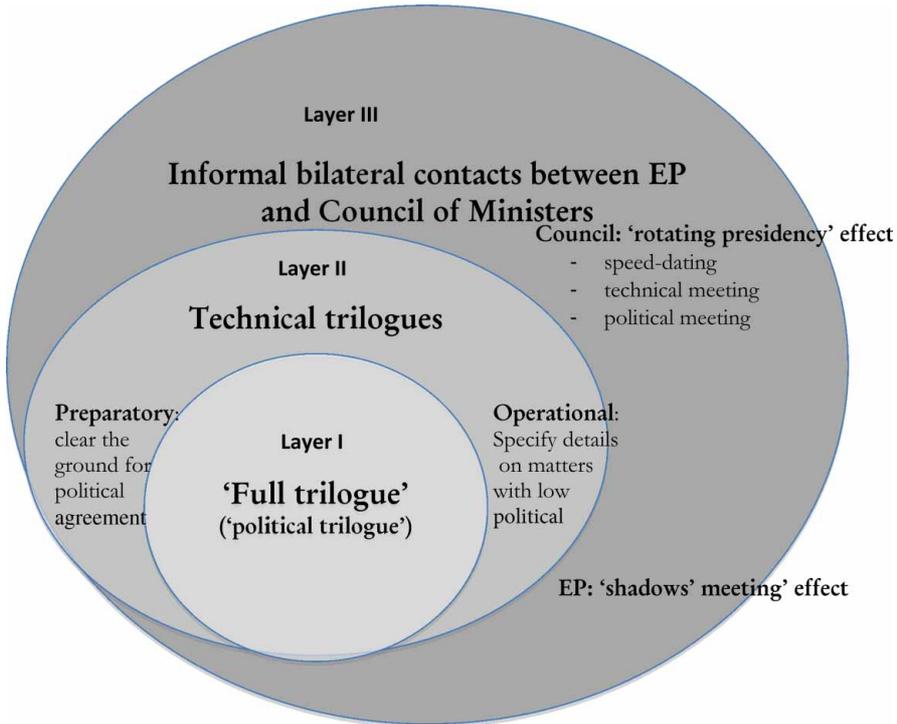


Figure 1 Trilogues as a multi-layered institution

exploratory meeting is to identify salient themes to be addressed in the ensuing negotiations. Often, it involves a technical meeting where staff undertake a first comparative reading of the Parliament and Council mandates, identify the main differences article by article, and on this basis establish a list of issues to be solved. Each political trilogue is followed by a new round of technical meetings: their objective is 'to agree on what we agreed the night before,' i.e., specify compromises on matters of detail with a low degree of political content (Interview 1; see Appendix). This process is repeated as many times as needed to reach agreement on all issues. The number of iterations varies from one trilogue on simple files to more than 40 political trilogues, and at least as many technical trilogues on more complicated files. 'Typical cases' may involve 10–15 meetings in total, with the majority 'technical' in nature.

Full trilogue meetings, or political trilogues, are the places where political compromises are agreed in negotiations involving the delegations of the EP, Council and Commission. These delegations are dissimilar in size, level of hierarchy and type of personnel. The chair (or designated vice-chair nominee) and the shadow rapporteurs and/or political group co-ordinators (or designated alternative) of the lead committee, are now *de jure* members of the EP negotiating team besides the rapporteur. In addition, various support staff participate in the

negotiations, bringing the whole EP team to 20–30 persons. The Council delegation is the smallest (1–3, but occasionally up to 10). It is composed of civil servants from the Presidency at the level of the working party or the Committee of Permanent Representatives (COREPER) – ranging from lower level attachés to the deputy permanent representative, and in some cases, the ambassador or even, rarely, the minister – accompanied by staff or not. Most legislative files covered by codecision have historically been covered by COREPER 1, with COREPER 2 more concerned with the more sensitive and political inter-governmental elements of Council decision making. The Lisbon Treaty made a change to such arrangements by moving legislative files falling in the economic and financial affairs (including budget) Council to COREPER 2. The Commission delegation is about 8–12, and always at a high level of hierarchy, i.e., deputy-director general and relevant heads of unit, together with support staff.

Political trilogues often involve marathon inter-institutional negotiations, not infrequently overnight, and punctuated by breaks for intra- and sometimes mini inter- institutional deliberations. Observers and participants from both the Council and Parliament describe the contrast between the EP's politicians team and Council's civil servants team as a source of frustration for Council and asymmetry in favour of Parliament: 'politicians in Parliament are accustomed to political negotiations; civil servants not' (personal communication, Council official, 18 September 2014); and 'It can be difficult for Council to go against a politically-heated' line (Interview 1); or yet:

I would characterise Trilogues as a game involving the 'adult' solution orientated Council and the teenage Parliament; they do get something from the noise they make, and the EP plays the game by starting with an extreme position on which it is quite easy to then give way as a 'concession.' (Interview 2)

Almost all political trilogues take place in the EP. They are attended by a large number of individuals: 30–50 people for an 'unsexy' political trilogue, 'easily 100' where there is 'political sex' (Interviews 4, 8). Crucially, access restrictions are asymmetrically felt at this stage: whereas anyone with an EP badge can in practice attend the political trilogues, Council officials complain of access restrictions for their own representatives (Interview 8).

Technical trilogues, in contrast, involve a restricted number of participants, all technical staff; typically no observers, although a member of the European Parliament (MEP) might, very rarely, attend as an observer; all three institutional actors are represented. These trilogues are devoid of the glamour and drama associated with political trilogues, although they, too, are routinized and ritualized as part and parcel of the broader trilogue sequence. Interviewees from the EP and the Council report various ways through which the distinction between 'technical' and 'political' is ritualized. In the EP, internal meetings with technical staff and group assistants prepare the ground, specifying where to draw the limit, ahead of technical trilogues (Interview 1). There is also a consensual norm

that technical trilogues should not involve staff at a high level of hierarchy (more on this below).

In both layers I and II, the legislators negotiate on the basis of specific mandates recorded in a so-called ‘four-column table’ document, including provision by provision: the Commission proposal (column 1); the EP amendments to the Commission proposals (column 2); the Council’s text (column 3); and the results from the negotiations (column 4). The four-column documents are publicly available once the legislative text is adopted, either through the webpages of some EP committees, at the initiative of some parliamentarians, or through EU ‘Access to Documents’ measures. However, this provision appears to be limited by practical and political difficulties. Four-column documents evolve continuously, making it very difficult to trace individual versions of them. Furthermore, access requires the consent of all three institutions, which is often not likely to be granted owing to prevailing norms of confidentiality in the Council (Interview 3).

Layer III meetings, by contrast, typically take place before trilogues have even begun. This layer consists of bilateral meetings between the Presidency and EP representatives. It is less well known even though it is important and, to an increasing extent, ritualized. The institution of the ‘rotating Presidency’ is an important driver of informal contacts. ‘Presidency scorecards’, i.e., performance assessments of incumbent Presidencies, give individual Presidencies strong incentives to deliver on clearly identified legislative priorities. If the Presidency has done its job well, it has started to make informal contacts with all key EP interlocutors well ahead of its official mandate (a whole year before), for a legislative file takes on average 17 months to conclude in first reading, covering three Presidencies (European Parliament 2014a). The phase of compromise amendments is of particular importance for the incoming Council Presidency, as it informs it of the internal EP compromises and the alliances emerging between the shadow rapporteurs and the rapporteur (Interviews 4, 5). The Council will often focus specifically on the compromise amendments that are elaborated at this point in the so-called ‘shadows’ meetings’. Each new Presidency starts with a series of ‘speed-dating’ meetings between the chairs of COREPER I or COREPER II or the relevant Council working party, and the chairs of EP committees in order to select the priority files, to be closed by the end of the Presidency. In addition to these speed-dating meetings, the Presidency and the rapporteur may also meet to discuss the agenda on individual legislative dossiers, although this practice is becoming more regulated as a result of internal EP reform, as described in the next section. Plenty of lines of communication may be open to the Presidency at this early stage, since it may also consult shadow rapporteurs bilaterally (Interviews 2, 4, 5). Shadow rapporteurs may help the Presidency influence an EP position, if the Presidency has a problem with the way the discussions are going. Most legislative files take several months, so a Presidency has an interest in contacting the shadow rapporteurs before an *esprit de corps* has fully developed in the EP team.

HOW TRILOGUES CONSTITUTE PARLIAMENT AND COUNCIL AS LEGISLATORS

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

European Parliament – developing habits of a ‘normal’ parliament

A distinct body of norms, standard operating procedures and practices related to trilogues have developed in Parliament since Shackleton and Raunio first described the trilogue process (Shackleton and Raunio 2003). Many of the norms underpinning the emerging EP culture of FRA originated in the ECON (European Parliament Committee on Economic and Monetary Affairs) (Interview 6) under the chairmanship of Berès (France, S&D [Progressive Alliance of Socialists and Democrats]) in the sixth term and Bowles (UK, ALDE [Alliance of Liberals and Democrats for Europe]) in the seventh term. ECON participated in more than twice as many trilogues as any other EP committee during EP7, accounting by itself for over one in five trilogues in which the EP participated (European Parliament 2014b). One interviewee summed up the rationale of the ECON approach to trilogues with the axiom ‘tell me who wrote the rule, and I’ll tell you what’s in it’; from this recognition ensues the cardinal norm that the roles of negotiator and rapporteur must be clearly distinguished in order to avoid any conflict of interest (Interview 7). This implies carving a more active role for the committee chair, foreseen as the EP leader of the negotiations, and for the shadow rapporteurs, which can mitigate the bias of the rapporteur. Thus, strong committee chairs are a necessary though insufficient condition for pluralization of the trilogue procedure in the European Parliament. We identify at least six standard operating procedures associated with ECON. First, committee members do not speak with the Presidency in the absence of the chair. Though it is difficult to monitor the range of bilateral contacts that may take place between MEPs and the national delegations, the ECON chair policed this precept persistently. The Presidency once had to return empty handed from a trip to Strasbourg as the ECON chair found out about, and demanded the cancellation of, a meeting scheduled to take place in her absence between an ECON member and the Presidency (Interview 8). Second, bilateral talks do not start before both EP and Council (or COREPER) mandates are in place. Again, this procedure seems to have been internalized and/or policed as a Council official with a long experience of dealing with ECON registered an effective restriction of contacts with ECON representatives in the mandating phase (Interview 8). Third, there is a strict separation of the staff involved in technical meetings and political trilogues. Technical meetings have technical staff starting with junior administrators

(‘AD’) or assistants (‘AST’). This has also become the standard operating procedure in the Council, as a way of alleviating suspicions that technical meetings are political. Fourth, the committee chair leads the EP negotiating team and presides over the trilogues. ECON chairs were active: Berès and Bowles attended all trilogue negotiations. For the ECON chair in the seventh term, this meant participating in 320 political meetings, which had led the secretariat to formulate scheduling guidelines in order to avoid trilogue overlaps (Interviews 9, 10). ECON chairs structured the discussions actively: summing up progress; reminding if necessary the Commission of its role or seconding the rapporteur in the negotiations when needed; allocating time and attention among the rapporteur and the shadow rapporteurs; and calling for breaks at key points of the negotiations to take stock of the EP position. Fifth, the EP team holds the pen in trilogues, including the updating of the strategic fourth column of the four-column document. Again, this procedure became established practice as the ECON chair refused to consider fourth-column documents authored by Council services (Interviews 8, 11). Finally, trilogues are almost always held in the EP. The venues selected by the committee’s secretariat symbolized particularly well the ECON conception of codecision: usually, they were committee rooms with a podium at which the ECON chair presided, looking (down) onto the representatives of the member states (working parties or COREPER), the Commission *and the rapporteur*.

These norms, standard operating procedures and practices for concluding legislation in FRA have *not* produced a uniform EP culture: the EP’s approach to trilogues has historically been contextually defined, as different committees developed their own compass in inter-institutional negotiations; and inevitably there will continue to be variation in practice. But they have clearly had an influence beyond ECON and EMPL (European Parliament Committee on Employment and Social Affairs), of which Berès was chair in the seventh term (Interview 6). Partly, the influence of ECON norms reflects specific features of this committee: ECON is one of the most prestigious EP committees; it attracts ambitious MEPs; it deals with epoch-making financial integration; and it is perceived as having secured gains in high-profile legislative files. In addition, the influence of ECON norms reflects proselytizing. The ECON chairs in the last two EP terms used a variety of platforms, especially the Conference of Committee Chairs (CCC), to disseminate their approach. ECON was also the only committee to deliver an opinion in the 2012 reform of the EP’s RoP amending Rule 70.

Seen from the Council, the ECON approach appears as a set of rigid and sometimes absurd rules which have strained the working relations between the two co-legislators. Seen from ECON, it has been the key to delivering outcomes that were close to the EP’s policy preferences while incorporating a plurality of views (Greenwood and Roederer-Rynning 2014). From the vantage point of our research, the institutionalization of ECON norms in Parliament illustrates the insights that can be gained from viewing instrumental rationality as cultural action, i.e., conforming to local cultural prescriptions – here,

common standards of transparency and accountability applying to 'normal' legislative chambers – rather than general rules of efficiency. Whilst formal rules of the game place Parliament at a disadvantage *viz.* the Council (the higher threshold for a majority in second reading, etc.), Parliament has acquired leverage over Council through the routines established by the CCC or its secretariat on a cross-committee basis, dominance of logistical arrangements in trilogues, and the advantage conferred by numbers in full political trilogues.

Council malaise

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

In the last few years, this standard operating procedure has changed as tensions have developed between the need for increased confidentiality and centralization on the one hand and the need for accountability and monitoring on the other. Mandates are now elaborated in bilateral correspondence between the Presidency and the Secretariat on the one hand and the national delegations (and the Commission) on the other. As was the case before, the Presidency and the Secretariat send draft proposals to the national delegations and the Commission; however, now feedback from the national delegation takes place bilaterally and confidentially. At the same time, COREPER is now more systematically involved in delivering mandates. This happened first in the most sensitive COREPER II areas, but this practice has now spilled over to COREPER I owing to growing sensitivity to the need to refresh mandates in even uncontroversial files (Interview 12) and a general uncertainty throughout the Council as to what might constitute a 'political' matter and what might be 'technical'.

There are several reasons for these developments. The addition of COREPER II and the Special Agricultural Council (SAC) to codecision have introduced

new layers of procedural norms and subculture for the Council, and an inevitable change to its *modus operandi*. Also, with these changes, the Council is responding to the growing flows of communication that have developed across Parliament and the Council as a result of trilogues. Contacts go both ways. National governments have become better at lobbying MEPs (Panke 2012); MEPs in turn use their contacts in permanent representations to sound out and shape Council positions (Interview 2). Council officials joke that they only have to tune in on the official statements of some MEPs in order to discover the position of their national governments (Interview 8).

Changes in Council's approach finally reflect the impact of enlargement. Enlargement has brought with it many small states with limited technical resources and capacity to undertake the political complexities required in composing the positions of 28 member states (Interview 13). Arrangements for Presidency co-ordination are in place through 'troika' arrangements linking groups of three Presidencies together, but a disjuncture is created by the absence of 'gliding' arrangements to subsequent Presidencies. The General Secretariat of the Council is able to smooth out the bumps from one Presidency to another, but it is not involved directly in trilogue negotiations (personal communication, 18 September 2014), and generally defines its role in terms of a servant to the Presidency (Interview 13). The European Council provides punctual relief, but its involvement in legislative politics means that permanent representations are sidestepped by a parallel network of 'sherpas' constituted of close advisors to the heads of member state and government. Considering these developments, it is striking that the Council's 'codecision *dorsale*' has not changed much since 2003, involving only nine persons in all today, four of them assistants (Interview 13). The more systematic involvement of COREPER thus reflects the fact that some of the larger member states have stepped up their vigilance over the Presidency.

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

CONCLUSION

In the old days of trilogues, Commission proposals disappeared in informal politics, only to reappear in the formal legislative process as EP proposals including invisible elements of Council position. The substance of negotiations was agreed between critical '*relais* actors' (Farrell and Héritier 2004); trilogues were but a theatre of formalized meetings and observers (Bunyan 2007). This drama seemed to involve a winner, the Council, drawing on its superior organizational adaptation, clear information asymmetries and the expertise of some

20 national administrations, playing on the strategic advantages of its centralized representation in trilogues, and instrumentalizing norms of political realism and legislative responsibility – to bring Parliament to its favoured position. Parliament, on the other hand, was cast as the loser, as trilogues hollowed it out, leaving its committees with little more than a nominal role in the legislative process.

By contrast, we find that trilogues today are an elaborate and ritualized process of aggregation and negotiation of preferences involving a broad range of actors meeting both in inter-institutional fora as well as intra-institutional fora. They revolve around specific mandates, are underpinned by a distinctly recognizable body of norms, standard operating procedures and practices in the Council and Parliament, and are regulated by an increasing web of oversight mechanisms linking formal and informal institutions. Different layers of inter-institutional interactions reflect continuing tensions between democratic and diplomatic conceptions of institutional design that have developed within and across the Council and Parliament.

Likewise, trilogues constitute Parliament and the Council as legislators in ways that are not easily reduced to any simple equation. Trilogues have imparted Parliament with a sharpened consciousness of its role and identity as a ‘normal’ legislator while leaving Council frustrated and confused about its own role. Parliament has learnt to navigate the world of informal politics and turn necessity into political virtue; it has seen in norms of public accountability a means to acquire leverage over the Council. While formal rules constrain EP strategies, control over logistical arrangements, the advantage conferred by numbers in full political trilogues and fleetness of foot relative to the Council have enabled Parliament to acquire leverage over the Council. By contrast, the Council must come to terms with the limitations of the rotating Presidency and the legislative involvement of the European Council. Growing reliance on ‘sherpa’ advisors to the head of each member state could develop at the expense of national permanent representations.

These are important correctives to earlier research highlighting an apparently ever-growing hold of diplomatic norms of negotiation in Parliament. They open up new areas of research on trilogues. We identify three priorities for future research. First, we need to assess more systematically the scope and depth of variation within the Council and across EP committees. ‘Culture is not uniform’ as Lewis (2010: 655) reminds us, and the EP’s historical approach to trilogues has certainly been contextually defined, as different committees developed their own compass in inter-institutional negotiations. Therefore, we should expect to find different cultural textures within the EP, and probably also the Council, reflecting different social and political processes. Future research might be orientated towards the mechanisms underpinning norm creation and norm diffusion in both the Council and EP. Second, we need to know more about how lobby groups and civil society at large respond to their exclusion from the trilogue process. Previous findings suggested that the EP’s embrace of trilogues ushered in a new era of pragmatism at the cost of a loss

of political contestation or of the capture of informal politics by special interests. Our present findings suggest that the linkages between trilogues and interest groups need more systematic examination, as information asymmetries are more complex than generally alleged. Third, there is a need to account for the strikingly growing legislative activism of the European Council in the last few years, as this phenomenon escapes the boundaries of codecision and creates a new informal venue of legislative politics disconnected from trilogues and associated oversight institutions.

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APPENDIX: INTERVIEWS

- Interview 1: European Parliament official, Brussels, 10 September 2014.
- Interview 2: National permanent representational official, Brussels, 28 April 2014.
- Interview 3: Official from the European Commission, Brussels, 10 September 2014
- Interview 4: Former Council of Ministers official, Brussels, 21 March 2014.
- Interview 5: Council of Ministers official, Brussels, 28 April 2014.
- Interview 6: European Parliament official, Brussels, 22 May 2014
- Interview 7: Member of the European Parliament, Brussels, 9 September 2014
- Interview 8: Official from the Council of Ministers, Brussels, 9 September 2014.

Interview 9: Former Member of the European Parliament, United Kingdom, 7 July 2014.

Interview 10: European Parliament official, Brussels, 21 May 2014.

Interview 11: Official from the Council of Ministers, Brussels, 11 September 2014.

Interview 12: Official from the Council of Ministers, Brussels, 8 September 2014.

Interview 13: Official from the Council of Ministers, Brussels, 8 September 2014.