

# **Informal Negotiations in EU legislative Decision-Making: A Systematic Review and Research Agenda**

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## **Abstract**

Over the last 20 years, the political dynamics in EU legislative policy-making have fundamentally changed as trilogues have become the major forum for legislative negotiations. From this perspective, this article represents a first systematic review of the literature on trilogues by using the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA). In doing so, it demonstrates the impact of trilogues on EU legislative politics, both intra- and inter-institutionally, as well as the normative concerns they have raised. It also shows that trilogues do not yet constitute uniform practices. Further, this article identifies the limits of our knowledge, and therefore avenues for future research to improve our understanding of EU legislative politics.

**Keywords** early agreements · ordinary legislative procedure · research agenda, systematic review · trilogues,

## Introduction

In the period since the early 2000s, legislative negotiations in the European Union (EU) have undergone increasing informalization. To facilitate the inter-institutional negotiations required by co-decision, the co-legislators developed a system of informal negotiations called trilogues. Trilogues are secluded meetings in which representatives of the legislative institutions negotiate an informal compromise that can be formally adopted by the European Parliament (EP) and the Council of the European Union (Council) afterwards, fast-tracking thus the legislative process. The use of trilogue negotiations has since continued to increase, becoming the norm in EU legislative decision-making. During the eighth EP legislature, the vast majority of EU legislation was based on such informal compromises.

This evolution has not gone unnoticed in the academic literature. Scholars have investigated several facets of trilogues, many of which have raised normative concerns. Yet, despite the crucial place of trilogues in the EU, no systematic review of this literature has been carried out so far. Hence, the cumulative findings of this research remain partly blurred, especially since it is largely based on case studies. This paper aims to fill this gap by systematically taking stock of existing academic knowledge on trilogue negotiations to develop a research agenda. Importantly, trilogues here refer to inter-institutional negotiations beyond those formally provided for in the EU treaties that lead to the adoption of legislation. In other words, in this study I consider all kinds of informal negotiations between legislative institutions that can take place during EU legislative decision-making, and not merely tripartite meetings in the formal sense.

This review contributes to the literature in three ways. First, it offers a comprehensive synthesis of the existing literature on trilogue negotiation, which enables us to make sense of a scattered body of research. Since “proper understanding of the findings of a particular study lies in considering them alongside the results of similar studies” (Dacombe 2017, p.150), such aggregation of the cumulative results of existing research on trilogues is necessary for a good understanding of current legislative decision-making in the EU. Second, it makes visible the limitations of our knowledge, which enables identifying key avenues for future research on trilogues. Third, it assesses whether normative claims concerning trilogues are empirically

justified, and thus allows a better appraisal of the democratic legitimacy of the EU's legislative decision-making.

Overall, this review shows that the literature studying trilogues has examined five main topics: why co-legislators developed trilogues; why they choose to use them; their consequences on EU legislative politics; how they are conducted; and their normative implications for the EU. The existing research has revealed the profound impact of trilogues on EU legislative politics, both intra- and inter-institutionally. Informalization has affected the intra-institutional organization of co-legislators, as they have adapted their rules and practices to cope with informal negotiations. It also has modified their relationships, including by strengthening contacts between them and reinforcing the EP. Scholars have additionally observed that trilogues themselves have become progressively institutionalized, yet without constituting uniform practices. While trilogues now involve a defined set of actors in several kinds of meetings, variations are still observed in the way they are conducted.

Finally, the review identifies several limitations of this literature, calling for further research for a better understanding of trilogues. First, much remains to be done to understand how trilogues are actually conducted, and the intra-institutional dynamics during negotiations, especially among actors others than the EP, e.g. the Council or the Commission. Similarly, while studies have observed variation regarding how informal negotiations are conducted, they have fallen short in explaining this variation as yet. A third goal is to examine what this evolution has meant not only for EU institutions but for the policies eventually adopted in the EU.

The paper is structured as follows. The next section presents the method of the review and identifies the main lines of research in the literature on trilogues. Then, section three discusses the way in which trilogues and early agreements have been operationalized, and the potential issues it may bring up. The key findings of each line of research are presented in section four. Section five discusses the methods of this literature. Section six addresses the normative implications of this literature's findings. The last section concludes by providing avenues for future research.

## Method and Scope of the Review

This review is based on the “Preferred Reporting Items for Systematic Reviews and Meta-Analyses” (PRISMA) approach (Liberati et al. 2009). Systematic reviews consist of “a specific methodology that locates existing studies, selects and evaluates contributions, analyses and synthesises data, and reports the evidence in such a way that allows reasonably clear conclusions to be reached about what is known and what is not known” (Denyer and Tranfield 2009: 672). PRISMA lays out steps to follow to transparently and reliably summarize the available results about a specific subject.

The selection of articles for the review was made in three steps with the Scopus database. As the first step, I selected all the articles from the “Social Sciences” subject area published from January 1999 to January 2019 in which the title, abstract, or keywords contained the expression “European Union” or “EU” plus at least one of the following keywords/expressions: “legislative bargaining”, “legislative negotiation”, “informal”, “first reading trilogue”, “trialogue”, “early agreement”, “fast track”, “first-reading agreement”. This list of keywords was developed iteratively, first by searching for “trilogues”/“trialogues”/“early agreements” and then by adding all new keywords/expressions within the articles that were potentially linked to trilogues. I then repeated the operation until no new keywords appeared. Articles before 1999 were excluded because this is the year the Treaty of Amsterdam made early adoptions possible.

As the second step, on the basis of the abstracts, I excluded articles that did not deal with EU legislative procedure, such as those about “informal economy”. As the third step, on the basis of the full texts, I excluded articles related to the EU legislative procedure that did not also address trilogue negotiations, e.g. articles examining consultation procedure or introducing a special issue. The final list consisted of the 46 articles this review is based on. Figure 1 details the process of filtering through the articles.

[Figure 1 near here]

I examined the articles through a common grid addressing the following questions: What is the focus of the article? What are its main findings regarding trilogues? What are its

methods of data collection and analysis? These questions aimed to provide a comprehensive picture of the main lines of research about trilogues, a summary of their substantive findings, as well as an appraisal thereof. Practically, each question was divided into several sub-questions for the results to be as complete as possible. For instance, one of the sub-questions of the method is whether the article uses qualitative or quantitative analysis.

The literature on trilogues is rather recent, which is not surprising, trilogues being themselves a recent phenomenon. The first articles addressing trilogue negotiations date back to 2003, but the literature really started to burgeon from 2010, with 42 articles (88% of this study's sample) published since then. Scholars first focused mainly on the consequence of trilogues. For a long time, comparison between them and the formal procedure remained the major topic of interest. Research then progressively shifted toward the study of the process, and of the legitimacy of trilogues. This may be due to the decreasing relevance of comparing early agreements with other files, as they are now the norm. As regards the theoretical background, the large majority of articles use, implicitly or explicitly, a new institutionalist framework.

## **The Operationalization of Informal Negotiations in the Trilogues**

### **Literature**

Because of their informal nature – they are not in treaties – neither trilogues nor their outcomes have been clearly and unanimously defined. For instance, the term “trilogues” has sometimes been written as “trialogues”; the term sometimes refers to tripartite meetings in the formal sense, or to the process of informal negotiations in general, which is multi-faceted. Different names have also been used to describe the outcomes of this process, i.e. the legislation adopted on the basis of informal compromises.

Similarly, there is a range of operationalization of whether a legislative act was based on an informal compromise. Generally speaking, all operationalizations include at least one of these two elements: evidence of informal negotiations between co-legislators and/or an early adoption of legislation, but different combinations of the two have been used. Some operationalization looked only at whether informal negotiation took place. Others only looked

at the stage of adoption. Eventually, additional operationalization combined both elements, i.e. early adoption on the basis of informal compromise. Regarding stage of adoption, some required a first-reading adoption, others also considered early second-reading adoptions, i.e. adoption at the EP second reading. As a result, there are five ways of operationalizing early agreements (EA hereafter) according whether one requires: (1) informal negotiations only; (2) informal negotiations and adoption in its first or early second reading; (3) informal negotiations and adoption in its first reading; (4) adoption in its first or early second reading only; (5) only a first-reading adoption.

The existence of different measurements may be problematic when one wants to draw connections between different findings. Not only can this lead to contradictory results, but the selection of one definition might also entail bias in the findings of a study or be at odds with its theoretical justification. I identify three potential issues due to the measurement of informal negotiations and EAs. The first issue is due to trivial first-reading adoption, legislative acts that are adopted early not because of informal negotiations but because no negotiations are needed as both co-legislators agree. These differ from other files which require the co-legislators to reconcile divergent preferences. Yet, measures of EAs are generally binary, a file is either an EA or not. Thus, trivial adoptions are included in a category together with other forms of adoption despite likely having different causes and consequences.

The second potential issue occurs when both first and early second-reading agreements are put in the same category. Both are based on informal compromise, but in the latter case the EP approves the Council's common position in its second reading. In the EP, the rules for adopting a file differ between the two readings. A relative majority is required in the first reading, whereas an absolute majority is necessary in the second reading, making it harder for EP negotiators to secure a majority for their compromise. Moreover, after the first reading, EP representatives negotiate on the basis of the plenary's amendments, which are considered stronger mandates.

Finally, a third potential issue is due to the fact that informal negotiations are not limited to first or early second readings, but can occur at any stage in the process. Accordingly, second- and third-reading adoptions can also be based on informal compromises, e.g. Häge and Kaeding (2007). Similarly, the absence of early adoption does not mean that no informal negotiations were held, merely that no agreement was reached. Dyrhaug (2014) gave an

example of first-reading negotiations that did not succeed. This may be problematic when scholars base their causal mechanism on the conduct of informal negotiations but measure the occurrence of trilogues by considering the stage of adoption. In such cases, differences may not be due to informal negotiations, for they may take place in all cases.

## **Main Results of the Research on Trilogues**

Five main lines of research about trilogues have been identified in the literature. A first group (3 articles) has sought to explain why the practice of trilogues emerged, that is to say, why EU legislative institutions developed such practices. The second group (4 articles) examines why co-legislators choose to negotiate informally rather than follow the formal procedure when both options are available. The third group (20 articles) examines the consequences of trilogues on EU legislative politics by comparing files negotiated informally with those following the formal procedure as counterfactual. The fourth group (21 articles) investigates the process of trilogues without comparing it to the formal procedure. The fifth group (8 articles) assesses the legitimacy of trilogues from a normative perspective.

### ***The Emergence of Trilogues***

The main explanation for the creation of informal trilogues is that it was an unexpected consequence of the formal change of the Maastricht Treaty. To overcome the high potential for conflict induced by co-decision procedure, the co-legislators developed institutions such as trilogues to promote consensus and assure a swift functioning of the EU (Farrell and Héritier 2003, Mühlböck and Rittberger 2015). Initially developed to prepare conciliation, the efficiency of trilogues convinced the co-legislators, especially the Council, to extend this practice throughout the legislative procedure (Farrell and Héritier 2003). Member states took advantage of a broader treaty reform to make first-reading adoption legal. This was possible because all member states benefited from this modification – and thus did not oppose it – as the Council needed to reduce its workload, which had notably increased considerably during this period due to the extension of co-decision and the 2004 enlargement (Farrell and Héritier 2007).

## ***The Occurrence of Informal Negotiations***

Scholars put forwards several factors to explain the decision of the co-legislators to conclude early via trilogues, after the Amsterdam Treaty made it possible: proximity between the preferences of the rapporteur and those of the median MEP; whether rapporteurs come from a big political group; the impatience of the co-legislators and the number of years since the Treaty of Amsterdam (Rasmussen 2011); the priorities of the Member State holding the Council presidency, their coherence with the preferences of the rapporteur and whether these actors consider a legislative file as urgent (de Ruiter and Neuhold 2012); the coherence of the negotiators' position (i.e. whether they come from the same member state); the workload faced by the co-legislators; the 2004 enlargement; the complexity of a legislative file (Reh et al. 2013); and the proximity between the two institutions' preferences and the saliency of a file (Wøien Hansen 2014).

The plethora of causes identified might be due to the ways in which EAs have been operationalized. The treatment of trivial adoption is crucial. Because of the difference between trivial and non-trivial adoption, it is very unlikely that all the files adopted at first reading constitute a causally homogeneous population, in which a given cause has the same causal relationship with all outcomes (Beach and Pedersen 2016). In other words, there is hardly any cause explaining both trivial and non-trivial first-reading adoptions with the same mechanisms linking causes and results. The same might be true regarding first- and early second-reading adoption.

## ***Comparison with the Formal Procedure***

Articles aimed at assessing the consequences of trilogues do so by comparing files negotiated through trilogues with those which followed the formal procedure. Thus, the occurrence of trilogues is the main explanatory variable here. At first, scholars mainly investigated the intra- and inter-institutional consequence of informalization on the two co-legislators, focusing on whether trilogues modified the ability of actors to achieve their preferences. Subsequent works then extended the research in two directions. First, other potential consequences of trilogues were examined, e.g. on politicization. Second, other institutions were examined, such as national parliaments or the Commission.

The first studies examined the intra-institutional consequences of trilogues. Based on interviews, they resulted in the “relais actors thesis”, which claimed that trilogues empowered the negotiators therein (the so-called “relais actors”) vis-à-vis the other members of their institution (Farrell and Héritier 2004, Huber and Shackleton 2013, Shackleton and Raunio 2003). In particular, EP rapporteurs were identified as the main winner of informalization, while Council presidencies were seen as more constrained. This claim has had little further empirical confirmation. As an exception, Costello and Thomson (2010) observed that rapporteurs were more able to defend the interests of their states in the case of informal negotiations.

Subsequent works have empirically challenged the relais actors thesis. Judge and Earnshaw (2011) argued that the autonomy of the EP’s rapporteur was delineated by reforms in the EP rules of procedure. Notably, these enlarged the negotiations to other EP actors, such as shadow rapporteurs, who are able to contest the actions of rapporteurs. Similarly, Rasmussen and Reh (2013) did not find that trilogues increased the ability of rapporteurs and Council presidencies to promote their preferences (identified as, respectively, those of their political group and member state). Finally, Häge and Naurin (2013) did not detect an effect on the network capital of Council presidencies. The influence of relais actors on the stage of adoption is unclear. While neither Reh et al. (2013) nor Rasmussen (2011) found evidence that their preferences have an effect, de Ruiter and Neuhold (2012) suggested conversely that their priorities were crucial factors in early adoption. In sum, the relais actors thesis remains debated, perhaps because works testing it only studied a limited number of salient and controversial cases. This case selection may affect the results, saliency being a key factor explaining negotiators' autonomy (Laloux and Delreux 2018).

Studies also suggested that co-legislators adapted their internal practice to cope with trilogues. Farrell and Héritier (2003) showed that the Council quickly reacted to this evolution by strengthening its central procedures of monitoring and information sharing. In the EP, informalization led to intra-institutional conflicts, which triggered several internal reforms designed to regulate it (Héritier and Reh 2012). These reforms reinforced controls over the negotiators, including by increasing participation and intra-institutional transparency. In particular, shadow rapporteurs and Committee chairs were included on negotiation teams with rapporteurs (Roederer-Rynning and Greenwood 2015). The EP also developed technical

support for the negotiators (Bray 2014, Greenwood and Roederer-Rynning 2015). Eventually, trilogues began to impact intra-institutional politicization. The Council's ministers are significantly less involved when legislation is negotiated informally (Häge and Naurin 2013). In the EP, the necessity for the major centrist political groups to secure compromise leads to an increase in party discipline and voting cohesion (Bressanelli et al. 2016).

Inter-institutionally, a majority of articles suggested that trilogues empowered the EP vis-à-vis the Council (Costello and Thomson 2011, Häge and Kaeding 2007, Kirpsza 2018), the argument being that, because of the Council's more limited organizational resources (including time and staff), the EP is able to obtain political concessions in exchange for early conclusions. However, neither Kreppel (2018) nor Andlovic and Lehmann (2014) found such an effect. The latter even noted that trilogues decrease the EP's influence, the Council being generally better prepared.

Regarding other institutions, Cross and Hermansson (2017) argued that informal negotiations increase the number of amendments to the Commission's proposals, for they provide co-legislators with the opportunity to collude at the expense of the Commission. In contrast, Kreppel (2018) did not find a robust effect of trilogues on the Commission's preference attainment. There are three possible reasons for this difference. First, the two studies did not operationalize Commission influence in the same way. Second, the case selection differed from one article to the next. Cross and Hermansson considered all legislative files, Kreppel only salient ones. Third, the operationalization of EAs may also explain it. Cross and Hermansson considered trivial files as non-EAs while Kreppel did not include any in her sample. Trivial agreements are hardly amended, and are thus very close to the Commission proposals. This is not true for other legislative acts. Therefore, trivial files are likely to differ from others regarding number of amendments, increasing the difference between early agreements and non-early agreements without this being due to informal negotiations.

Studying national parliaments, Jensen and Martinsen (2015) noted that most did not adapt to informalization, and continue to lack effective means to monitor their executives during trilogues. Similarly, de Ruiter (2013) found that directives adopted early are less scrutinized by national parliaments. In contrast, for Finke and Dannwolf (2013), strong opposition parties at the domestic level increase their scrutiny for non-transparent negotiations. Andlovic and Lehmann (2014) observed that informal trilogues also reduce the ability of public

interest groups to influence policy outcomes, while private ones, which generally enjoy better resource and access to decision-makers, are less affected.

### *The Process of Trilogues*

In contrast to the preceding groups, articles in this group did not compare trilogue negotiations with any counterfactual but focused on the conduct of informal negotiations. It is noteworthy that the study of trilogues per se received little attention in the early trilogues literature. Several studies tackled this issue later, first by examining the actual process of trilogues, then by comparing across trilogues to identify patterns. Nowadays, the process of trilogue negotiations encompasses several layers of inter- and intra-institutional contact. Roeder-Rynning and Greenwood (2015) explored the practical functioning of trilogues in the ECON committee and the norms underpinning it. They argued that trilogues are now a highly institutionalized process “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” (Roederer-Rynning and Greenwood 2015: 1161).

The locus of substantial decision is usually the “political” trilogue meetings, which involve delegations representing the three institutions (Curtin and Leino 2017, Rynning and Greenwood 2015). In addition, a range of other meetings complement them, from technical staff meetings to bilateral contacts between the most relevant actors. Inter-institutional negotiations are also interspersed with intra-institutional meetings that allow negotiators to ensure that their compromises will be accepted by a sufficient majority within their institutions (Delreux and Laloux 2018). Yet, it must be noted that trilogue negotiations are not uniform, instead varying across legislative files.

While articles in this group cannot assess the relais actors thesis per se, they suggest that relais actors remain central in the negotiations. Other actors play an important role in trilogues, such as shadow rapporteurs (Judge and Earnshaw 2011) and committee chairs (Roederer-Rynning and Greenwood 2015, 2017). However, in most of the cases studied the negotiations revolved primarily around rapporteurs and presidencies (e.g. Delreux and Laloux 2018, Dyrhaug 2014). Further, Brandsma (2015) underlined their capacity to speed up or slow

down legislative decision-making while Laloux and Delreux (2018) found that they deviate more from their mandates than is strictly necessary for a deal.

Scholars also investigated the interaction between intra- and inter-institutional negotiations. Delreux and Laloux (2018) identified three mechanisms whereby negotiators in trilogues are able to link both to reach a compromise: (1) creating a tied-hand situation; (2) involving the other institution in intra-institutional negotiations; and (3) searching for signals in both institutions in the zone of agreements. Brandsma (2015) argued that internal politicization and contestation influenced the number of trilogue meetings required. In contrast, Laloux and Delreux (2018) observe that neither the level of intra-institutional support for the mandate nor the negotiators' size impacts deviations.

Inter-institutionally, the Council seems to be the most influential institution in trilogues. Whereas Roederer-Rynning and Greenwood (2015) argued that intra-institutional reforms enabled the EP to acquire leverage over the Council, several case studies concluded that compromises were close to the Council's preferences. Similarly, Laloux and Delreux (2018) noted that generally, Council negotiators deviate less than to those of the EP. Actors outside the legislative triangle can also shape informal negotiations by exerting pressure on co-legislators, notably the European Council (Bressanelli and Chelotti 2016) and private interest groups (Andlovic and Lehmann 2014).

Turning to intra-institutional practice, Roederer-Rynning and Greenwood (2015) pointed out the important role played by the COREPER in the Council, both to provide a mandate and to review it during negotiations. For them, this reflects the vigilance of the bigger states over smaller ones holding presidencies while potentially lacking resources and capacities. In the EP, the conduct of trilogues is formally regulated by its internal rules of procedure. Besides these formal rules, committees have developed a set of standard operating procedures which regulate, *inter alia*, who can participate in trilogues, where they take place and who functions as chair (Roederer-Rynning and Greenwood 2015). Practices vary, however, across files and committees (Curtin and Leino 2017, Roederer-Rynning 2018), notably as to the role played by committee chairs, and shadow rapporteurs differ across committees and files (Brandsma 2015, Ripoll and Servent 2012, Roederer-Rynning and Greenwood 2017). Brandsma (2018) also noted variation in the negotiators' reports to their committee as to who

makes the report (chairs or rapporteur) and to the quality of reports, which are often lacking or of poor quality.

Three other topics are also addressed with regard to the EP. First, O'Keeffe et al. (2016) examined the external bargaining strategy of the EP. They suggested that the degree of internal cohesion had a limited effect, the EP's tactics relying on a similar set of pillars. Second, Burns (2013) analysed the role played by associated committees in the EP. She observed that when conflicts occurred between the responsible and the associated committees, the latter was able to successfully defend its preferences. Third, two studies looked at the role of EP staff during negotiations. Dobbels and Neuhold (2013) observed that EP civil servants from the General Secretariat play a substantial role. They sometimes intervene directly into the policy-making process to steer it beyond their instructions. But again, this varies across files depending on several factors, namely the competence of the MEPs in charge, inter-personal relationships and politicization. Pegan (2017) found that MEPs' personal assistants are less involved in inter-institutional negotiations than party group advisors and EP officials.

### ***The Legitimacy of Trilogues***

Overall, articles on the democratic legitimacy of trilogues paint a rather negative picture. First, several lawyers have argued that their opaqueness does not live up to the standards required of EU treaties and the ECJ's case law regarding transparency and accountability, since the main working documents are kept secret (Berthier 2016, Curtin and Leino 2017, Leino 2017). Curtin and Leino (2017) identified three main challenges to transparency: the opacity of Council and member state positions, of the legal advice given during the process and of the documents used to map out negotiations. They also argued that whereas the EU ombudsman is to play a crucial role to improve this situation, its proposals are thus far unsatisfactory because they follow a logic of communication from the institutions and not of public access. The bounded participation of trilogues might also raise a problem of representativeness. Only institutions as a whole are representative of their constituency and thus collectively bring legitimacy to the legislation (Lord 2013). The handful of individuals negotiating in trilogues might not be representative, which casts doubt on the legitimacy of the compromises reached. Moreover, the seclusion of trilogues does not allow for public debates to justify the choices made, whereas this is crucial for a legislative procedure's democratic legitimacy (Lord 2013).

Reviewing the EP reactions, Bray (2014) argued that the modification of the rules of procedure improved sufficiently its transparency and inclusiveness. On the basis of the principal-agent model, Reh (2014) concluded conversely that if the EP internal reforms have led to improvements, they still flout several normative standards that are necessary to make trilogues democratically tenable. Brandsma (2018) argued similarly that, despite the EP's rules, the public reports of EP negotiators in committees are generally not sufficient. Further, Leino (2017) judged that the arguments given by the co-legislators to defend secrecy reflected a vision "that is not responsive to openness and prioritizes the internal efficiency of the institution's own work" (p. 13).

## **Methods of the Research on Trilogues**

Eighteen articles use quantitative methods (39%), twenty-six use qualitative ones (0.57%), and two mix both (0.04%). Figure 2 shows that the main method differs across lines of research. Articles on the process, legitimacy and creation of trilogues are primarily based on qualitative research. Quantitative methods are the most common among the other lines of research. Mixed methods were only used to study the consequences of trilogues. Differences between lines may be due to the ease of collecting information. As the conducting of trilogues remains to a large extent secluded, collecting information on this remains costly and often requires qualitative methods.

[Figure 2 near here]

In almost all quantitative articles on the subject, the cases studied are related to the legislative files. Most compare between legislative files, while others compare points of controversies between actors in files (Costello and Thomson 2011, Kreppel 2018) or contrast between the preferences of certain actors and the outcomes (Costello and Thomson 2010, Rasmussen and Reh 2013). Only used to study the consequences of trilogues, the last two comparisons increase the number of cases relative to the number of files in the sample. For instance, Reh and Rasmussen (2013) obtained 159 EP party group–outcome dyads on the basis of 13 files. The limited number of files might, however, cast doubt on the generalizability of the results. Besides files, articles compared between trilogue meetings (Brandsma 2018) and

answers to an online survey (Pegan 2017). The majority of quantitative articles obtained data from official documents. In addition, five articles used the DEUII dataset (Thomson et al. 2012), which contains information on actors' preferences collected through semi-structured interviews. All the articles comparing issues or dyads used this database. Finally, data were also collected from online surveys and from the webstream recordings of the EP's committee meetings.

Qualitative articles not only used legislative files as cases but also institutions (either through a case study of one institution or by comparing between the EP and the Council) or member states (for instance by comparing between presidencies or national parliaments). The number of EP committees studied is limited, ECON and ENVI representing the lion's share, perhaps because they often deal with very controversial and high-profile issues, and generally negotiate informally.<sup>1</sup> Qualitative articles are based on semi-structured interviews or official documents but often combine these two sources. The two mixed-method articles compared between member states by conducting an online survey, one combined with a large-*n* comparison of legislative files, the other with case studies of national parliaments.

As several studies focus on actors' influence, it is interesting to examine how this influence has been measured. Most did so through interviews (nine articles, five using the DEUII). In addition, a range of other methods was used: the stage of adoption; the number of meetings per file; surveys asking the number of co-operation partners; the rate of amendments' adoption; and the use of text-mining techniques to assess the dissimilarities between versions of legislative texts.

## **Normative Implications of the Research on Trilogues**

In addition to those presented in Section 4.5, several articles discussed their normative implications. Overall, their conclusions are twofold. On the one hand they raised several normative concerns about trilogues. On the other hand, several of these concerns have been mitigated over the years. The main criticisms are that trilogue negotiations reduce the transparency and inclusiveness of the EU's legislative process and thereby its democratic legitimacy. Trilogues are secluded and the working documents are not publicly available. This

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<sup>1</sup> For instance, in ECON, the six-packs package, which corresponds to these characteristics, has been studied in several articles.

lack of transparency hinders citizens, national parliaments and other MEPs from monitoring legislative decision-making (Häge and Naurin 2013, Huber and Shackleton 2013, Roederer-Rynning 2018). As a result, citizens cannot control and sanction the behaviour of their representatives in the EP, nor of their governments in the Council, undermining the accountability of the EU legislative procedure.

Another issue is the restricted participation in trilogues. Attendance remains limited to a small number of policy-makers. This reduces the range of opinion that contributes to the decision-making process and thereby raises a representativeness issue regarding the legitimacy of legislative policies (Bressanelli et al. 2016, Farrell and Héritier 2003). The lack of involvement of national parliaments in the EU legislative procedure is also identified as problematic because it challenges the so-called dual legitimacy of the EU, that is, national parliaments as a source of EU democratic legitimacy beside the EP (Jensen and Martinsen 2015). Scholars have also worried that fast-tracking the legislative procedure hinders the quality and effectiveness of EU legislation (de Ruiter and Neuhold 2012). They argue that by reducing the number of actors involved and speeding up decisions, trilogues limit the possibility of substantive discussion on policy. Finally, trilogues are also seen as decreasing the interest – and thus the support – of EU citizens in the EU (Bressanelli et al. 2016, Huber and Shackleton 2013). Pre-negotiated compromises leave little room for controversial debates which would attract citizens' attention.

Conversely, some scholars have argued that informalization enabled the EU to cope with several challenges it faced, particularly the increasing use of co-decision and the 2004 enlargement. By increasing the number of actors involved in the procedure, both posed a risk of blockage. Yet, the EU legislative production remained effective, potentially because trilogues facilitated the search for compromises (Farrell and Héritier 2007, Häge and Kaeding 2007, Mühlböck and Rittberger 2015). Some of the concerns expressed have also been allayed by empirical studies. Several studies have found no evidence that negotiators are able to defend positions that are not representative of those of their institutions. Furthermore, the institutional controls over EP negotiators, as well as their representativeness, have increased. The EP also takes longer to adopt its position at first reading when a file is adopted early, which leaves more time for substantive debates (Toshkov and Rasmussen 2012). Finally, Finke and Dannwolf (2013) argued that national parliaments intensify their scrutiny over governments for informal negotiations.

## **Conclusion and Research Agenda**

Over the two last decades, trilogue negotiations have progressively become the main forum for legislative negotiations between EU institutions. Accordingly, they have been subject to growing interest in EU studies. From this perspective, the objective of this paper has been to conduct a first systematic review of academic research about trilogues using the PRISMA approach. Based on the results, this conclusion aims to address what remains to be done to better understand trilogue negotiations. More precisely, it identifies several gaps in the literature and, based on these findings, proposes five avenues for future research on trilogues.

First, future research should continue to examine how trilogues are conducted. On the one hand, the examination of inter-institutional dynamics should be further developed. Thus far, scholars have observed that trilogue negotiations encompass different layers of negotiation involving different actors. Yet, there is still a need to investigate how the different levels of informal contact and the actors involved interact with each other. For instance, one could examine in more detail the extent to which the different layers contribute to final compromises or the distribution of work between these arenas (e.g. between technical and political trilogues).

On the other hand, much work remains to be done to understand the intra-institutional dynamics during trilogues. In this respect, studies have mainly focused on the EP, and we know little about how other legislative institutions are organized for the trilogues, for instance how the delegation of representatives takes place in the Council or in the Commission. Neither do we know how these institutions control their representatives in trilogues. Similarly, we barely know what the effect of trilogues has been on the organization of these institutions. The same holds true for institutions outside the legislative triangles. We neither know nor can explain how they organize themselves for trilogues, with the exception of national parliaments. For the EP as well, certain blind spots remain. As an example, several articles found that the internal rules regarding trilogues are hardly respected, but did not explain why MEPs do not follow these rules, thus opening interesting doors to further investigation.

Second, whereas scholars have studied the impact of trilogues on legislative politics, they have not studied these informally negotiated policies. For instance, trilogues seem to empower the EP, but what does this mean for the content of legislative acts? We do not know what the consequences are of informal negotiations for the policies enacted by EU legislation. To illustrate, one could examine whether informal trilogues resulted in more pro-integration or pro-environmental legislation as compared with the formal procedure. In sum, it is necessary to go beyond the politics of trilogues, and to link it with the policy outcomes that result therefrom.

Third, a range of other actors besides the co-legislators are likely to play a role in trilogues, and to be affected thereby. Recent articles have suggested that this was the case for the European Council and the Commission. Yet, overall, the role of other institutions in trilogues, and their capacity to adapt their strategy to successfully influence such negotiations, remain largely unknown. More research is therefore necessary to better understand how these actors act in informal negotiations and why. For instance, one could examine what strategies interest groups have developed for trilogues. One could also examine other actors that formally participate in the legislative procedure, e.g. the Committee of the Region. As such, trilogues are likely to have affected them, but hitherto this has not been investigated. Eventually, the effect of informalization on EU citizens remains unknown, for example, whether trilogues have had an impact on citizens' normative assessment of the EU or of its policies. Furthermore, studies on these actors are mainly based on case studies. Hence, future studies should further test whether the existing findings can be generalized, for instance, whether the European Council is always able to put pressure on trilogue negotiations to impose its preferences, and if not, why.

Fourth, the literature suggests that the conduct of trilogue negotiations differs across legislative files and meetings. Variations have been observed regarding, notably, who the main negotiators are, the extent to which they deviate from their mandate, and the quality of reports in EP committees. However, studies that draw comparisons across files or trilogue meetings have remained descriptive. In other words, scholars have identified variation but have not explained it yet. Hence, explanatory research is needed to identify the factors affecting this variation. This is particularly interesting with regard to the *relais actors* thesis, as contradictory findings have emerged suggesting a variation that should be investigated. Likewise, one could investigate whether the way in which trilogues are conducted – e.g. who the main negotiators

are or the level of involvement of the technical staff – impacts the final results, in other words, how the variation that we observe regarding negotiations matters with respect to the laws adopted thereby, or for the bargaining success of the legislative institutions?

Eventually, methodological considerations may also warrant future research. Three examples are given here. First, I have given examples of why the measurement of EAs can bias the results of a study. Future works should therefore replicate existing studies with different measurements in order to assess whether this is the case. Second, qualitative studies may benefit from the use of process tracing techniques. Existing research rarely theorizes comprehensively the causal mechanisms behind their hypotheses to test whether they operated as expected. With its focus on the process linking causes and outcomes, process-tracing could therefore improve the strength of the causal claims about trilogues. In fact, the benefits of process-tracing for the study of delegations, such as with trilogues, have already been put forward (Reykers and Beach 2017). Third, research should be conducted on cases that have not hitherto been examined. A large part of our current knowledge on trilogues is based on similar kinds of files. This may bias our understanding of the phenomenon, making it necessary to analyse other kinds of legislative negotiations. For instance, case studies should focus on less controversial policy-making processes or less studied committees to see whether the findings are transferrable from case to case. This would make it possible to generate a more comprehensive picture of EU legislative policy-making.

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