

# Black boxes and open secrets: trilogues as 'politicized diplomacy'.

ROEDERER-RYNNING, C., GREENWOOD, J.

2021

*This is an original manuscript / preprint of an article published by Taylor & Francis in West European Politics on 18/2/2020, available online: <http://www.tandfonline.com/10.1080/01402382.2020.1716526>*

**BLACK BOXES AND OPEN SECRETS:  
TRILOGUES AS ‘POLITICIZED DIPLOMACY’**

Christilla Roederer-Rynning, University of Southern Denmark (Corresponding author)

[crr@sam.sdu.dk](mailto:crr@sam.sdu.dk), ORCID id <https://orcid.org/0000-0002-6663-3869>

Justin Greenwood, Robert Gordon University, Aberdeen

ORCID id <http://orcid.org/0000-0003-3721-0960>

**Funding details:** This work was supported by the Economic and Social Research Council under grant award ES/NO18761/1

**Disclosure statement:** no financial interest or benefit has arisen from the direct applications of this research

**Word count:** 8959 words (without title page and tables)

**Acknowledgements:** Previous versions of this article were presented at the ARENA Tuesday Seminar, Oslo (November 2018), the Aberdeen ORA workshop (October 2018), the Jean Monnet Lecture Series at the University of Copenhagen (November 2018), and the Research Seminar at the Center for Border Region Studies at the University of Southern Denmark (May 2018). The authors wish to acknowledge Dorte Jagetic Andersen, Gijs Jan Brandsma, Alexander Hoppe, Marie Konge Nielsen, Guri Rosén, and Signe Pihl-Thingvad for their constructive comments and contributions. Research assistance was provided by Niels Lachmann and Kasper Viholt Nielsen.

**Biographical statements:**

Christilla Roederer-Rynning Professor with special responsibilities (WSR) in Comparative European Politics at the University of Southern Denmark, Odense.

Justin Greenwood is Professor of European Public Policy at the Robert Gordon University, Aberdeen, UK, and a Visiting Professor at the College of Europe.

**BLACK BOXES AND OPEN SECRETS:  
TRILOGUES AS ‘POLITICIZED DIPLOMACY’**

**Abstract** How can we explain the puzzling contrast between formal rules of open EU lawmaking and the practice of secluded trilogues? This question, arising against growing public controversy, points to a blind spot in the scholarly agenda on trilogues, which has overwhelmingly focused on their internal games. Drawing on the interpretivist tradition, we argue that rules are shaped by tradition and the dilemmas arising from conflicting beliefs and lived experiences. On this basis and drawing on extensive interview material, we argue that: 1) the vagaries of EU lawmaking can best be understood through the concept of ‘politicized diplomacy’; 2) a new tradition arose in support of seclusion, around the core belief of protecting the ‘space to think’; and 3) institutionalized contradictions, together with ideological tensions and ambiguous lessons from the lived experience of EU lawmakers have turned trilogues into a permeable institution, while prompting renewed public demands for transparency.

**Keywords:** ordinary legislative procedure; trilogues; seclusion; interpretive research; politicized diplomacy

## INTRODUCTION

This article takes its point of departure in a puzzling contrast in the current EU legislative process. On the one hand, the successive treaties establishing the Ordinary Legislative Procedure (OLP) as the normal legislative process highlight the idea of *open* lawmaking at its core. On the other hand, a significant part of EU lawmaking in practice takes place in *secluded* arenas (Novak and Hillebrandt 2019; Hillebrandt and Novak 2016), with the so-called legislative trilogues at the pinnacle of the legislative process. Trilogues are *in camera* negotiations between representatives of the European Parliament (EP), Council, and Commission. While they have no reference in the treaties, trilogues are now the ‘new normal’ of EU lawmaking, used at all phases of the ordinary legislative procedures and across a very broad spectrum of issues as a way of reaching legislative compromises.

This contrast now forms the theme of a rapidly growing public conversation involving: 1) the European Ombudsman’s own-inquiry into the transparency of trilogues, initiated in 2015 (European Ombudsman 2018); and 2) the March 2018 ruling of the Court of Justice of the EU on the *De Capitani* case (General Court of the European Union 2018: Case T-540/15) annulling a decision of the EP to refuse to grant Mr Emilio De Capitani, an EP administrator, full access to trilogue documents. The Court ruling recognized trilogues as a decisive part of the EU legislative process, contrary to what Council had maintained. Both the Ombudsman and the Court pinpointed problematic features of the current trilogue process, specifically: 1) the lack of public information regarding the trilogue meetings, agendas, participants, documents, and decisions; and, underpinning this, 2) the EU institutions’ very restrictive interpretation of the principles of publicity and transparency in trilogues, amounting to a problematic ‘general presumption of non-disclosure’ (General Court of the European Union 2018). EU lawmaking institutions have yet to implement the Court’s ruling and the Ombudsman’s recommendations.

In this article, we ask: Why do EU actors promote secluded and informal fora of decision-making *even as* they have committed themselves to open and public lawmaking (Novak, 2013)? How do they perceive and reconcile the tension between the practice of EU lawmaking and the democratic values of their institution? And how do they cope with challenges and dilemmas arising from such a situation in practice?

To shed light on these questions, we turn to interpretivism, an approach still largely overlooked in the field of EU studies (Dietz 2015; but see Heinelt and Münch 2018), which is a mystery given its relevance for the study of informal processes and governance (Finlayson 2004). Interpretivism's appeal to us is twofold. First, interpretive reasoning, at least in some of its variants, is puzzle-led; it 'begins with a puzzle, a surprise, or a tension', which it then seeks to elucidate by asking: 'what circumstances would render [this] event, ... word, ... relationship, or whatever else one is seeking to explain more "commonsensical"--less surprising, less puzzling' (Schwartz-Shea and Yanow 2012, 27). This emphasis helps us maintain analytic attention on what is strange, and therefore in need of an explanation, in the process of EU lawmaking even as we become familiar with it. This is critically important not only for the scholarly community, and researchers' duty to speak truth to power, but also for ordinary people, for whom EU politics and processes often do not make sense and need to be elucidated.

Second, in chasing these puzzles, interpretivists single themselves out by ascribing a considerable importance to meanings in individual and collective endeavors. Their central contribution is that 'to understand actions, practices and institutions, we need to grasp the relevant meanings, beliefs and preferences of the people involved' (Bevir and Rhodes 2004, 130). This emphasis is particularly useful to us given our interest in understanding actors' perceptions and sense-making. Our contention is that paying more attention to meanings and beliefs helps us elucidate the puzzle of EU lawmaking.

Importantly, paying attention to beliefs does *not* mean that researchers are ‘simple conduits of research participants’ concepts’, or that they are ‘merely describing the social and political worlds’ (Schwartz-Shea and Yanow 2012, 39). What it *does* mean, instead, is that researchers engage in a ‘world-making’ activity, in which actor’s beliefs take the drivers’ seat. This makes their research a ‘scholarly, political act of persuasion that requires careful attention to the many elements it can (or should) contain which produce a trustworthy research study’ (Schwartz-Shea and Yanow 2012, 39).

Accordingly, our aim in this article is to produce a trustworthy interpretation of trilogue seclusion helping us elucidate the puzzle of EU lawmaking spelled out at the beginning of this introduction. We proceed in four steps. First, we take stock of the literature on trilogues with a view to developing an initial understanding of the issues connected to trilogue seclusion: this part highlights the democratic ambiguities of trilogues. Second, we spell out the conceptual underpinnings of our interpretive approach, emphasizing the explanatory concepts of ‘tradition’, ‘dilemmas’, and ‘narratives’. Third, we provide key information about our methodology of ‘soaking and poaking’. Finally, we develop our interpretation of EU lawmaking as *politicized diplomacy*.

## **DEMOCRATIC AMBIGUITIES OF TRILOGUES**

There is a growing literature on trilogues. This literature has contributed rich insights into the phenomenon of trilogues. Our initial understanding of trilogue seclusion is shaped by two main debates in this literature, both framed in a democratic perspective. The first debate focuses on the ‘efficiency-transparency trade-off’ (Héritier and Reh 2012; Novak and Hillebrandt 2019). It is embedded in a view of the lawmaking parties, particularly Council, as motivated by the goal of reducing transaction costs, following the legislative empowerment of the EP in the consecutive treaties of the 1990s, starting with the Maastricht Treaty. Trilogues are a form that suits the Council well because it can speed up the process, the argument goes. At the heart of this debate is whether

trilogues actually have paved the way for a more efficacious process, and whether this has taken place at the expense of transparency (Stasavage 2004; Settembri 2005; Novak and Hillebrandt 2019). Evidence shows some efficiency gains: in the lifetime of trilogues, the EU has not only legislated more on a broader range of issues, it has also increasingly used first-reading agreements or early second-reading agreements (Reh *et al* 2013; Dionigi and Koop 2017)--all of this thanks to the flexible form of trilogues, as an informal and secluded process. The literature also shows that trilogues have been a source of opacity in the EU legislative process, for reasons ranging from: characteristics of trilogue themselves (no or little public information on trilogue proceedings), to features of trilogue preparatory bodies in the respective lawmakers, through composition effects due to the superimposition of trilogues and first-reading agreements (see Table 1).

*Insert table 1 here*

The second big debate focuses on how trilogue seclusion affects the accountability of EU lawmakers. Researchers have argued that, by empowering a narrow set of actors in the respective lawmaking institutions, trilogues give these actors incentives to develop opportunistic behavior. This claim, known as the ‘relais actor empowerment’ thesis (Farrell and Héritier 2004), has two implications: it implies a loss of accountability insofar as pivotal actors in the Council and the EP were able to manipulate information and eschew monitoring from their respective constituencies; it also implies a loss of inclusiveness since smaller parties in the EP were marginalized or even excluded from the political negotiations. This thesis, however, probably better reflects the early years of trilogues, when the advent of early agreements had ‘accelerated the informalization of relations between Council and Parliament’ (Farrell and Héritier 2004, 1198), than recent practice. Trilogues have gone through a considerable institutionalization, going from largely *ad hoc*

negotiations, centered on critical bilateral contacts between the EP rapporteur and the Council presidency, to institutionalized negotiations, embedded in a *de jure* multilateral format at all stages of the negotiations in the EP, and following a more predictable script of EP-Council interactions (Roederer-Rynning and Greenwood 2015 and 2017). There are also more extensive requirements for reporting back to institutional constituencies, if not always through public channels (Brandsma 2018). This reduces the risk of opportunistic behavior, which is why it has been difficult to find evidence in support of the relais actor thesis (Costello and Thomson 2011; Rasmussen and Reh 2013; Brandsma 2015).

In sum, trilogues have become an important theme in the scholarly debate on the EU lawmaking process, and research shows that their contribution to the EU's democratic quality is ambiguous. In part, the assessment of the democratic contribution of trilogues is related to how one weighs the role of input and output in democratic legitimacy (Scharpf 2003; Schmidt 2013). Those highlighting output legitimacy find in the trilogue process a positive contribution since it has contributed to a more efficient lawmaking process. Conversely, those highlighting political participation find the trilogue process problematic given that it is secluded and it renders the EU lawmaking process invisible to the broader public. Looking into the organization of the process itself (throughput legitimacy), the research findings are ambiguous, too, depending on what attribute of throughput legitimacy one focuses on (Schmidt 2013). If one focuses on transparency, there is no question that trilogues have been detrimental to democracy. We have identified four ways in which they contribute to the opacity of EU lawmaking (see Table 1). If one focuses on accountability, instead, we cannot draw such general and simple conclusion for the issue of accountability because the institutionalization of trilogues, at least in the EP, has promoted a more inclusive and rule-like process--even though discrepancies between public commitments and practice exist (Brandsma 2018). We know very little on the Council side.



## **AN INTERPRETIVE APPROACH**

Discrepancies between formal rules and practices are not unique to the EU. In an insightful interpretation of the role of the World Trade Organization (WTO) in the global trading system, Wolfe (2005) argued that the WTO ‘may be “rule-based”, but officials do not “make” the rules; participants in the trading system make the rules’ (Wolfe 2005, 340). To understand the rule-based character of the WTO, the most important piece of information, he argued, is ‘not the WTO treaty or the decisions of the Appellate Body’ but ‘the way in which traders think about reciprocity and non-discrimination’ (Wolfe 2005, 340). Similarly, in the EU, where it is common to view Lisbon’s OLP as an integral part of ‘a rule-based logic’ of EU lawmaking, it would be naive to expect that the practice of EU lawmaking is identical to formal Treaty rules. The rule-based quality of EU lawmaking system is to be probed in the daily life, from the way participants puzzle out the meaning of their actions and seek to find concrete solutions to concrete dilemmas. The interesting question to analyze is thus not whether there is a discrepancy between formal rules and practice, but rather how, in concrete dilemmas or ‘problem-situations’, EU lawmaking participants encounter ‘treaty rules’ and decide, more or less consciously and rationally, and by drawing on prior webs of beliefs, ‘that a certain amount of variance around the central limit is acceptable’ (Wolfe 2005, 348; drawing on Chayes and Chayes 1995, 26-7).

What makes the EU different from other organizations (such as the WTO), however, is its hybrid and novel institutional character. Observers have drawn attention to this ‘fact’ since the 1980s (Wallace 1983). The novelty of the EU results from the merger of different, and to a great extent competing, paradigms of political order. This merger is a ‘living’ process combining accommodation and domination; and it often manifests itself in institutionalized contradictions. Our argument is that these institutionalized contradictions permeate the EU lawmaking process, just as

they permeate individual EU institutions and organizations (see for example Christiansen 1997 on the European Commission; see Lewis 2003 on the Council of Ministers; see Christiansen and Neuhold 2013), and that the search for answers to these contradictions gives rise to organizational dynamics that are unforeseen.

In the remainder of the article, we develop an interpretation (or ‘world-making’ reconstruction) of trilogues as politicized diplomacy in an actor-based interpretive analysis (Bevir and Rhodes 2015). Our approach is very much in line with recent calls within the institutionalist scholarship to bring back in the role of actors and agency into constructivist or sociological accounts of EU institutions and processes (Jenson and Mérand 2010; Ripoll Servent and Busby 2013; Saurugger 2013 and 2016). We borrow from Bevir and Rhodes (2015) to specify what this means, both in terms of the worldview underpinning our analysis and in terms of the explanatory tools of ‘world-making’.

Concerning the worldview underlying the analysis or the ontological premises of the analysis, our main assumption is that individuals are shaped by their context while also being able to transform them (situated agency). This is possible because, while never experiencing social reality from a ‘pure’ perspective free from priori beliefs, individuals develop their own interpretation of common beliefs and norms, and can change their beliefs and meanings through experience and their reflexive capacity. The corollary of this is the assumption that reasoning is always contextual-- or ‘local’--in the sense that reasoning ‘occurs in the context of agents’ existing webs of beliefs’ (local reasoning) (Bevir and Rhodes 2015, 15). Together, the assumptions of situated agency and local reasoning suggest that a lot of social activity can be expected to cluster in regular and stable patterns of actions, which are labelled ‘practices’. Practices are somewhere between institutions and actions. They are less constraining and more flexible than institutions, which are larger and more constraining structures; and they are more stable than actions, which are individual and blend

beliefs together with individual motivations (Bevir and Rhodes 2015, 15).

As for explanatory concepts, we are engaging in a form of explanation, which relies on the crafting of ‘narratives’. Narratives are ‘a form of explanation appropriate to an interpretive theory of politics’, which ‘work[s] by relating actions to the beliefs and desires that produce them and by situating these beliefs and desires in particular historical contexts’ (Bevir and Rhodes 2015, 17). Narratives are both concrete, historical, and realist in the sense that: they are embedded in concrete situations, show the connections between beliefs and actions in time, and typically aim at producing a fine-grained picture of what is happening. A particularly interesting moment in interpretive narratives is the moment of change. From an actor-centered perspective, change can be interpreted as the result of a confrontation between ‘tradition’, i.e., the received set of beliefs, and actors’ lived experience (filtered by these beliefs). This confrontation culminates in ‘dilemmas’, which actors can resolve by reassessing their beliefs and changing their strategies. Dilemmas are ‘any experience or idea that conflicts with someone’s beliefs and so forces them to alter the beliefs they inherit as a tradition’ (Bevir and Rhodes 2015, 17).

## **SOAKING AND POKING**

Interpretive analysis requires a great deal of what Fenno (1978) once called ‘soaking and poking’. Ideally, we would have soaked and poaked in the world of trilogues by participating and observing, but this is not possible given the *in camera* setting of the negotiations and our status as ‘outsiders’. Our access to sources is through interviews with trilogue participants: we use a form of interview, which is sometimes called ‘ethnographic’ (Spradley 1979) or ‘conversational’ (Rubow 2003). Unlike other types of interviews, such interviews are relatively long and aim at bringing the ‘implicit’ to the surface. Unlike ordinary life conversations, the ethnographic interview is a concentrated and focused conversation, and it is more asymmetric ‘because the interviewees’ story

is at the center' (Rubow 2003, 235). The interviewee is both a 'native speaker' and an 'informant', as we aim to become conversant in the language of trilogues as well as acquire specific pieces of information (Spradley 1979, 25; see also Rubow 2003, 239). For example, we use interviews to understand how much variation there is between the logic of public lawmaking and the practice of seclusion (interviewee as informant); but also how participants decide what deviation between formal rules and informal practice is acceptable (native speaker). Given the rather sensitive topic and the risk of manipulation, a high number of interviews is a definite advantage, since it gives us a better sense of regularities and variation and more possibilities for cross-checking content. Our interviews typically started by identifying the position, and experience with trilogue files, and then seeking to understand how actors keep track of the trilogue negotiations, and whether a surprise had ever been encountered. It then looked in detail at trilogue mechanisms in each of the EU institutions, and how organized civil society actors engage with the process. Finally, we sought to understand why we have the system of trilogues, and to go through cases which illustrated aspects of the trilogue process.

Specifically, we carried out 86 in-depth interviews, of which 82 were conducted in Brussels and four in Strasbourg (see Table 2 here). 31 interviews were conducted jointly, which gave us the possibility to exchange reflections, discuss themes and puzzling information, and formulate follow-up questions. All interviewees were guaranteed anonymity. Our interviewees fell in two groups: 'insiders', who attend trilogues and meetings of trilogue preparatory bodies; 'outsiders' or civil society actors in the broadest sense, who do not attend trilogues or meetings of the preparatory bodies, but whom we know from the extensive EU policy literature that they are a key part of the policy-making process and are often considered as a proxy for broader societal interests.

*Insert Table 2 here*

We did not audio-record the interviews. Given the sensitive nature of trilogue negotiations, audio-recording would have prevented open and detailed conversations on the topic. Audio-recording and verbatim transcriptions are also very time-consuming, and, given the number of interviews that we planned to conduct, this would have delayed the process of data analysis, and removed us unduly from the fieldwork.

In line with the qualitative method guidelines (Loubere 2017; Vogel and Funck 2017), however, we documented each interview with the help of detailed interview minutes, which we computer-typed during the interviews. Where we jointly interviewed, we thus had two sets of minutes on which to base our interpretations. The entire interview material (minutes) was then subject to a three-step process of data reduction and analysis which we describe, together with interview selection and access. This process is critically important given the richness and complexity of the data material. For further methodological detail, please consult the appendix at the end of this article.

## **TRILOGUES AS ‘POLITICIZED DIPLOMACY’**

A consensus exists across Council and the EP in support of trilogues. In this section, we explore the beliefs upon which this consensus rests, the dilemmas it engenders, as well as the practices which have developed as a result of these contradictions. This explanatory narrative is encapsulated in the concept of ‘politicized diplomacy’. Politicized diplomacy is poised between the diplomatic and parliamentary traditions of politics, and it is shaped in practice by a permanent flow of exchanges between ‘insiders’ and ‘outsiders’.

### *A tradition arises*

Trilogues are underpinned by a merger between different traditions of politics and political

conflict resolution, and therefore also rest upon different justifications. In the Council, seclusion is justified in light of three main beliefs: first, the belief that, without trilogues, the formal procedures would take too much time (efficiency); second, the belief that trilogues are a key device for neutralizing EP politics (depoliticization); and finally, the belief that, without trilogues, compromises could not be hammered out (space to think; Hillebrandt and Novak 2016). In the EP, likewise, seclusion is justified in light of two main beliefs: first, the belief, without trilogues, the EP would yield less power over EU legislation (empowerment); and second, the belief that, without trilogues, it would be difficult to conduct real negotiations (space to think). These beliefs are spelled out in greater detail in display form (see Figure 1). Extensive interview referencing can be found in the figure directly in the numbers in parentheses at the end of each sentence.

*Insert Figure 1 here*

There are three main insights to be derived from this list. First, a ‘tradition’ of seclusion has arisen across the EP and Council around the core belief of promoting a ‘space to think’ (Hillebrandt and Novak 2016). Both EP and Council actors refer to this belief extensively. Both describe this ‘space to think’ as an alternative to: 1) grandstanding on the one hand; and 2) the descent into informal politics on the other hand. ‘Space to think’ means that compromises are difficult to achieve when the cameras are on. Both legislators highlight the temporal dynamics of compromise-crafting: compromises develop over time, requiring different concessions from different actors. This is not a linear or symmetric process. While the overall result may be balanced, it builds on a series of partial touchstone agreements, which might seem unbalanced if they were publicized in real time. Public pressure would thus stiffen positions, making it very difficult to move forward towards a compromise. Both EP and Council actors highlight two different types of pressures

arising from the ‘public gaze’. One pressure is clearly identifiable. It is related to the power of vested interests: more transparency give powerful interests more influence especially if the political process is skewed in the first place, according to both EP and Council legislators. Another pressure is more diffuse and less clearly identifiable. It is the pressure of ‘public opinion’: more transparency means more public messaging and public relations work (grandstanding, face-saving, and posturing) aimed at placating public opinion rather than solving specific problems.

Second, important differences exist below the surface. We note the importance of efficiency as a prominent value in the Council, as expressed in the belief that trilogues are a superior form of ‘conciliation’. EP actors may value efficiency, but they do not articulate it, which indicates a lesser prominence than in the Council. More importantly, we note the basic and fundamental contradiction between a Council viewing trilogues as a neutralizing and depoliticizing device and an EP intent to use trilogues to project its power and politicize EU legislation. There are several ways in which trilogues are believed to depoliticize negotiations: 1) by creating asymmetries of information: as a ‘discrete’ and ‘secretive’ Council can control an open, attention-craving, and talkative EP; 2) as a result, by enabling Council to fragment EP opposition by dividing and ruling strategies; and finally, 3) by enabling Council to exchange symbolic political points against mastery and domination through technical arrangements.

In the EP, by contrast, trilogues have very much become synonymous with empowerment. There are many aspects of empowerment. For the large EP parties, empowerment means sitting at the table with the big boys (35). For the smaller parties, empowerment means reducing the domination of larger EP groups. The alternative to trilogues is an informal politics of ‘deals’ between Council and the large groups. For the EP as a whole, trilogues as a process and a construction helps forge and designate Council as a collective opponent. EP actors clearly perceive and articulate this effect as a political advantage. This explains the sense of ownership that many

MEPs have developed for a practice which could at first glance appear foreign to the political repertoire of parliamentary politics.

In sum, a consensus exists across Council and the EP in support of trilogues. This consensus is centered on the belief that trilogues afford lawmakers the ‘space to think’ which is necessary for crafting complex compromises in a political environment characterized by often polarized opinion and skewed political interests. This consensus institutionalizes a basic contradiction, between an EP intent on politicizing EU lawmaking at the heart of power, and Council viewing trilogues as a tool of conflict deflection and legislative efficiency. This consensus, forms the ‘tradition’ within which trilogues are validated as an appropriate form of decision-making.

#### *Seclusion dilemmas: the cost and limits of tradition*

The tradition of seclusion has not gone unchallenged. Pockets of opposition exist, which are nurtured by ideological opposition and ambiguous lessons from MEPs’ lived experiences. In the EP, much of the contestation about trilogues has developed on ideological grounds. Trilogues were from the outset a controversial topic, and the fire is smouldering under the lid of EP empowerment. The radical left party GUE/NGL (Confederal Group of the European United Left/Nordic Green Left) has long expressed its opposition to a system that it deemed untransparent, and it continues to do today. For instance, at the time of writing GUE/NGL MEPs on the ECON committee systematically opposed any committee decision to enter into trilogue negotiations on the ground of transparency and accountability (Interview 31). Given GUE/NGL’s confederal structure, this decision was not applied across all EP committees; it nonetheless suggests that EP reform of trilogues remains an unfinished business. In the Greens, an MEP raised the lack of transparency of the EP’s preparatory bodies as a problematic issue, referring to the untransparent role of the shadows’ meetings in the process of elaboration of the EP trilogue mandate (Interview 15). The rise



of Euroskeptical parties adds yet new voices of discontent as these parties are often excluded from the trilogue process (Interview 26). Recent research shows that ‘only soft Eurosceptics are seen as legitimate partners in intra-institutional negotiations, while mainstream MEPs exclude hard Eurosceptics from trilogue negotiations in order not to give them a platform to propagate their views’ (Ripoll Servent and Panning, 2019).

In addition to ideological tensions, tradition is also challenged on the ground of EP empowerment. A sticking point for the EP is to maintain access to high-quality advice and expertise under the trilogue process. The EP has developed considerable in-house resources, with significant growth in staff for the European Parliament Research Service (EPRS), the Directorate General for Internal Policies (DGIPol), Secretariat staff of committees, and assistants for MEPs (Greenwood and Roederer-Rynning 2019). And at least one member state reported facing a technically superior EP team (Interview 12). However, a widespread experience is that Council exploits the EP’s relative technical weakness by shifting issues into ‘technical’ trilogues (Interview 15). One member state contrasted Council’s independence from external sources of technical input in trilogues, with EP dependence on external advice and expertise (from NGOs) (Interview 2). Some member states viewed the EP’s relative lack of expertise as leading it to concede many points of ‘technical’ details and reinforcing its eagerness to score ‘political’ points (Interviews 10, 11). Thus, in addition to ideological tensions and political exclusion, the lived experience of some lawmakers clashes with the belief of empowerment, bringing the tradition of trilogue seclusion under pressure.

The tradition of seclusion has faced its own dilemmas in the Council. One dilemma focuses on the trade-off between efficiency and Council power. Some member states view the EP as the big winner of trilogues and threaten to go back to the Treaty framework if the EP becomes too difficult- this is clearly based on a belief that the formal rules of EU lawmaking would be advantageous to Council (Interview 1). Sometimes, member states also experience that Council makes too large

concessions to the EP, or concessions they did not fully understand, in its eagerness to compromise (Interview 12). Finally, speed can also be detrimental to the quality of legislation (Interview 2). Sometimes, speed is just not that attractive.

An equally important dilemma revolves around the decreasing internal transparency that some experience in the Council. Member states regularly described the Presidency as the only ‘insider’ in trilogues, being the only member state participating in the trilogues. While presidencies are widely aware that their power depends to a large extent on the trust that Member States place in them (Interview 7; Interview 29), many member states highlighted the difficulty of keeping track of the negotiations. The Presidency often keeps member states informed through oral debriefings of very short duration and uninformative nature. The presence of the Commission sometimes constrained the reporting (Interview 1). No minutes are circulated, although the secretariat keeps minutes (which it does not circulate) and some working groups might circulate ‘outcomes of proceedings’ (Interview 3). Sometimes papers with procedural content may be circulated, but they remain of little interest. It is therefore up to the member states to keep track of the process--a difficult task considering the need to monitor 27 positions and complex details. Compounding the difficulty is the fact that the traditional system of footnote annotations, by which member state positions are recorded in internal documents, is not used across the board in the Council (Interviews 3, 7, 10, 11, 12). This makes it even more difficult for member states to track one another’s positions in the negotiations. As a result, member states report having difficulty reading the political landscape and the thrust of coalition-building in the Council (Interview 3), and there is a certain sense of unease vis-à-vis the asymmetric position of the Presidency. One member state, for example, described the Presidency as not always reporting what really happened in trilogues and playing with votes behind the scenes (Interview 9). All member states acknowledge the need to rely on multiple sources of information to stitch together their understanding of the trilogue process and coalition opportunities.

### *Practices of seclusion: The permeability of trilogues*

Institutionalized contradictions and dilemmas arising from ideological trade-offs and the lived experiences of EU lawmakers have fueled a constant flow of exchanges across the boundaries of trilogues. Trilogues are not sealed off; they are permeable. Permeability has two dimensions. A first dimension is inter-institutional: it brings in contact institutional actors at both EU and national levels. The Commission is regularly mentioned as a key source of information. EP and Council interviewees also provide ample evidence of ongoing contacts across the two institutions. Member states often consider MEPs from their countries as ‘their’ MEPs, though there might be national variation regarding the density of contacts between Perm Reps and national MEPs (contrast interviews 5 and 6). In turn, MEPs are often dependent on their Perm Reps for accessing trilogue documents (Interview 26). National governments and parliaments play a role too, in this circulation of information (Interviews 2, 4, 5,6).

A second layer of contacts spanned the institutional - extrainstitutional domains. This layer of contacts involved all institutional actors. Some member states claimed relying only or mostly on inter-institutional contacts (Interview 2 and 6). But they too were open to societal actors, stressing the gap between Council’s self-understanding as an institution which does not leak (Interview 2) and the entrenched practice of open door policy and information exchange between Perm Reps and their societal environments. At least six patterns of disclosure, and their associated justifications, emerged:

1. *expertise sharing* was about acquiring technical knowledge necessary for EU legislation. This deviation from seclusion was seen as appropriate when lawmakers did not have the relevant expertise in house to address the highly detailed and complex nature of legislation at the supranational level. Trilogues did not mark the end of the

need for expertise; in fact, the acceleration of the negotiations during trilogues highlighted the need for insiders to get swift and reliable access to expertise, sometimes to be provided overnight (Interview 82). The EP was conventionally viewed as being more in need of external input on technical issues, although this assertion was occasionally disputed from outside observers (Interviews 5 and 64). The ‘Noise at Work’ directive was a good example of this, where you needed input from outside organizations about what different decibel levels meant (Interview 15).

2. *intelligence gathering*: was about understanding the processual side of EU lawmaking, specifically how the ‘lay of the land’ evolved during trilogues, in an environment often very difficult to ‘read’. All types of CSOs could be involved. Consultancies were sometimes singled out as a good source of information (Interview 5 and 27). Besides monitoring the position of other actors, intelligence gathering during trilogues also involved shaping one’s own position. Occasionally, EP or Council actors had not worked out their strategy and used intelligence gathering to develop their last minute game plan (Interview 44).
3. *inter- and intra-institutional lobbying*: was about building coalitions, usually across the EP and Council, and often (but not always) indirectly, i.e., with an outsider as an intermediary. Sometimes, the EP encouraged NGOs or producer associations to lobby the member states (Interviews 56, 60, 68, and 74). Other times, some member states might do the same, either to influence the EP or other member states (Interview 1, 8, 66). For member states, this type of lobbying was appropriate when national interests were at stake. Most stressed the hold of the ‘no naming and shaming’ norm. Finally, sometimes, it was the Commission, which was trying to build support for its proposal with the lawmakers, using civil society organizations (Interviews 67, 76, and 77).

4. *politicization*: was about breaking trilogue negotiations out to the broader public, either directly through leaks, or indirectly through civil society organizations (typically NGOs) as an intermediary. For an EP interviewee, reaching out to NGOs to create public pressure was appropriate when other means of leverage were not available. If they could obtain information at the right time and in a way that would capture media attention, then an NGO could make a difference, and it would even be possible to embarrass the Presidency (Interview 35). *Politico* was repeatedly cited as an important source of leakage, perhaps a game-changer in this respect, creating a tremendous amount of frustration with some member states but welcomed by others (a contrast between interviews 1 and 6, vs 4).
5. *domestic provisions on parliamentary scrutiny*: depending on the domestic procedures for parliamentary control of EU affairs, national parliaments were more or less well-informed of the ongoing trilogues negotiations, with the Dutch, German, and Danish parliaments better informed. Some information on trilogues was occasionally leaked out to the broader public via national parliaments. Other times, the information circulating between Perm Reps and their capital was considered legally subject to all transparency requirements in domestic law.
6. *normative pressure*: on some files, it was simply not normatively defensible not to inform the broader public about the national positions. The ‘Trade Secrets’ file was one such file, on which member states experienced that they were morally compelled-- due to the nature of the topic--to break out of the secrecy bubble of the trilogues.

As a result, both the industry and NGOs are very well-informed, sometimes better informed!, than institutional actors (interview 5). At least one NGO reported almost negotiating on behalf of the negotiators (interview 50). The EP is regularly portrayed as a very open (the most open – but

see Settembri 2005) institution. MEPs often have ‘their’ team of CSO advisors (Interview 15), who provide them with advice and expertise *during* the trilogue process (Interview 28). All EP interviewees claimed having regular contacts with a broad and pluralistic set of societal and institutional interests *during* trilogues.

In sum, trilogues in practice take place in a very dense web of ongoing contacts between institutional actors and societal actors. These contacts take place through very different channels and methods; and they are initiated for a variety of reasons ranging from the need for expertise to references to the national interest through normative reasons.

## CONCLUSION

The EU institutions have not yet responded to the European Ombudsman’s report, and a request for clarification of the ruling is now pending (interview 79). Yet, clearly the Ombudsman’s 2016 report and the Court’s 2018 ruling can change the trilogue process, paving the way for more systematic and public access to trilogue information. While concrete implications are currently being worked out in EU institutions, our study generates original and systematic insights into the reasons why EU lawmaking has taken the form of secluded decision-making (trilogues), and how trilogue practices have evolved to a point where it makes better sense to talk about the permeability, rather than the seclusion, of trilogues.

We have argued the following. In line with the EU’s hybrid political nature, the EU lawmaking process can be interpreted as *politicized diplomacy*, i.e., a hybrid and unstable fusion between: an intergovernmental paradigm of politics, emphasizing negotiation between sovereign representatives and promoting the quiet and consensual method as a mechanism of conflict resolution; and a parliamentary paradigm, emphasizing competition between elected representatives, and open and public debates as a mechanism of conflict resolution. The trilogue

process, with seclusion as its defining feature, is a compromise between these traditions, and to some extent it reflects the crafting of a new, albeit unstable, tradition, forming together around the shared belief of the need to create a ‘space to think’. This new tradition has not gone unchallenged. Ongoing ideological rumblings and the ambiguous lessons of lawmakers’ lived experiences have raised dilemmas in both the EP and Council. These dilemmas are the primary reason why a steady flow of exchanges exists between ‘insiders’ and ‘outsiders’ during trilogues, in spite of commitments from EP and Council actors to protect the ‘space to think’. We have thus come full circle: from treaty declarations of the EU lawmaking process as open and public, to trilogue seclusion and trilogue permeability, and now also to renewed, authoritative public calls for an open and public process..

Our contribution is threefold. First, regarding the trilogue literature, our study coins the concept of ‘politicized diplomacy’ to make sense of trilogues, as an institution unsteadily poised between the diplomatic and the parliamentary traditions, and evolving as a result of ongoing tensions between different sets of beliefs and real-world dilemmas encountered by EU policy-makers. This is a distinctive contribution given the predominant interpretation of trilogues as a depoliticizing device. We know that ‘when a policy decision point approaches, but clashes between rival advocacy coalitions cause impasse, the EU’s natural propensity is to depoliticize issues and “push” them back to the sub-systematic level for quiet resolution’ (Peterson 2001, 309). While Peterson had expert committees and professional networks in mind, trilogues also lend themselves perfectly well, in appearance, to defusing political conflict in a quiet and largely technical context. In this article, we argue that understanding trilogues as a depoliticizing device, however, is too simple because this overlooks the intrinsic conflicts upon which trilogues are based and which keep flaring up. At bottom, trilogues are based upon a clash between the diplomatic and the parliamentary traditions; this clash remains an living fault line, fuelling tensions and contradictions.

Where Council hoped to shape trilogues in conformity with its own working method, it has been faced with MEPs viewing trilogues as, in essence, a tool of bicameral conflict resolution--an opportunity to bring politics to the heart of the EU legislative process.

Second, in making this argument, we contribute to the emerging scholarly focus on the politicization of the EU (De Wilde and Zürn 2012; De Wilde et al. 2016). While this literature has mainly focused on the citizen and intermediary spheres (Baglioni and Hurrelmann 2016), we show how insiders politicize trilogues by negotiating under the shadow of public opinion, and bringing salient issues for a broad range of societal interests to the very heart of legislative deals. Our contribution in this regard is to trace the dense and variegated pattern of exchanges between trilogue insiders and a very broad range of civil society organizations. This punctures the myth of trilogues as quiet politics dominated by producer interests.

Third, with regard to the interpretivist literature in EU studies, our work shows the relevance of interpretivism to explore EU informal governance and politicization of the EU (Wiesner et al. 2017), and particularly, the fruitfulness of explanatory concepts like ‘traditions’, ‘dilemmas’, and ‘narratives’. At the same time, our methodological approach to ‘soaking and poking’ provides concrete solutions to classic problems that researchers face when dealing with informal processes and relying on (a large number of) qualitative interviews.

Looking ahead, we need to explore how civil society organizations engage with trilogues, and what implication this has on their identities, mobilization strategies, organizational form and resource management. Furthermore, given the hybrid character of trilogues as politicized diplomacy, we need to pursue and deepen the normative reflection on trilogues (Stie 2013; Reh 2014) to assess the conditions under which we can accept lawmakers’ own justifications of (dis)closure, evidenced in this paper, as acceptable. Where do we draw the line between ‘making formal rules work in practice’ and ‘anything goes’?



**All interviews conducted in Brussels unless otherwise indicated**

**Interview 1** with the permanent representation of a large member state, 25.09.2017

**Interview 2** with the permanent representation of a large member state, 10.01.2018

**Interview 3** with the permanent representation of a medium-sized member state, 25.9.2017

**Interview 4** with the permanent representation of a medium-sized member state, 26.9.2017

**Interview 5** with the permanent representation of a medium-sized member state, 28.9.2017

**Interview 6** with the permanent representation of a medium-sized member state, 28.9.2017

**Interview 7** with the permanent representation of a medium-sized member state, 28.9.2017

**Interview 8** with the permanent representation of a medium-sized member state, 29.9.2017

**Interview 9** with the permanent representation of a medium-sized member state, 12.10.2017

**Interview 10** with the permanent representation of a small member state, 26.9.2017

**Interview 11** with the permanent representation of a medium-sized member state, 29.9.2017

**Interview 12** with the permanent representation of a small member state, 29.9.2017

**Interview 14** with an MEP from the EPP, Strasbourg, 14.9.2017

**Interview 15** with an MEP from the Greens, 28.9.2017

**Interview 16** with an MEP from ALDE, 10.10.2017

**Interview 17** with an MEP from ALDE, 12.10.2017

**Interview 18** with an MEP from S&D, 5.12.2017

**Interview 21** with an MEP from ECR, 6.12.2017

**Interview 22** with an MEP from GUE/NGL, 6.12.2017

**Interview 24** with an MEP from ECR, 9.4.2018

**Interview 26** with a policy advisor from the S&D, Strasbourg, 13.9.17

**Interview 27** with a policy advisor from ALDE, Srasbourg, 13.9.2017

**Interview 28** with a policy advisor from the ECR, 26.9.2017

**Interview 29** with a party policy advisor, ALDE, 29.9.2017

**Interview 31** with a party policy advisor, GUE/NGL, 12.10.2017

**Interview 35** with a party policy advisor, Greens-EFA, 7.12.2017

**Interview 39** with an assistant to an S&D MEP, 13.2.2018

**Interview 43** with an NGO, 25.9.2017

**Interview 44** with an NGO, 25.9.2017

**Interview 50** with an NGO, 29.9.2017

**Interview 56** with an NGO, 17.1.2018

**Interview 60** with a national trade union confederation, 6.12.2017

**Interview 64** with a business association, 27.2.2018

**Interview 66** with a business association, 4.6.2018

**Interview 68** with a business association, 5.6.2018

**Interview 74** with a business association, 7.6.2018

**Interview 76** with a business association, 7.6.2018

**Interview 77** with a business association, 7.6.2018

**Interview 79** with a national business association, 8.6.2018

**Key to party acronyms:**

**ALDE** Alliance of Liberals and Democrats for Europe

**ECR** European Conservative and Reformists Group

**EPP** European People's Party

**Greens-EFA Greens** – European Free Alliance

**GUE/NGL** European United Left/Nordic Green Left

**S&D** Progressive Alliance of Socialists and Democrats

## REFERENCES

- Berthier, A (2016) 'Transparency in EU Law Making', *ERA Forum*, 17:423-436.
- Bevir, M and Rhodes R A W (2015) 'Interpretative political science: mapping the field', in Mark Bevir and R A W Rhodes (eds.), *Routledge Handbook of Interpretative Political Science*. London: Routledge, 3-28.
- Brandsma, G J (2015) 'Co-decision after Lisbon: The politics of informal trilogues in European Union lawmaking', *European Union Politics*, 16: 2, 300-319.
- Brandsma, G J (2018) 'Transparency of Informal Trilogues through public feedback in the European Parliament', *Journal of European Public Policy*, DOI: 10.1080/13501763.2018.1528295 accessed on 3 June 2019.
- Chayes, A and Chayes, A (1995) *The New Sovereignty: Compliance with International Relations Norms*. Cambridge (MA): Harvard University Press.
- Christiansen, T (1997) 'Tensions of European governance: Politicized bureaucracy and multiple accountability in the European Commission', *Journal of European Public Policy*, 4: 1, 73-90.
- Christiansen, T and Neuhold, C (2013) 'Informal politics in the EU' *Journal of Common Market Studies*, 51: 6, 1196-1206.
- Costello, R and Thomson, R (2011) 'The nexus of bicameralism: Rapporteuris' impact on decision outcomes in the European Union', *European Union Politics*, 12: 3, 337-357.
- Curtin, D and Leino, P (2017) 'In search of Transparency for EU Law Making: Trilogues on the Cusp of Dawn', *Common Market Law Review* 54:1673-1712.
- Dietz, T (2015) 'European Politics' in Mark Bevir and R A W RHods (eds.), *Routledge Handbook of Interpretative Political Science*. London: Routledge, 268-81.
- Dionigi, M K and Koop, C (2017) *Investigation of informal trilogue negotiations since the Lisbon*

*Treaty – Added value, lack of transparency and possible democratic deficit*, Contract No. CES/CSS/13/2016 23284, <https://app.researchfish.com/portfolio/0/publications?filter=ESRC-ES/N018761/1&zone=portfolio> , accessed on 3 June 2019.

European Ombudsman (2016) *European Ombudsman strategic inquiry on the transparency of trilogues: follow up and first results*,

<https://www.ombudsman.europa.eu/en/correspondence/en/88698> accessed on 3 June 2019.

Farrell, H, and Héritier, A (2004) ‘Interorganizational negotiation and intraorganizational power in shared decision-making: early agreements under codecision and their impact on the European Parliament and Council’, *Comparative Political Studies* 37,10: 1184-1212.

Fenno, R.F. (1977) ‘US House Members in their Constituencies: An Exploration’, *American Political Science Review*, 71:3, 883-917.

Finlayson, Alan. 2004. ‘The Interpretive Approach in Political Science: A Symposium1.’ *British Journal of Politics and International Relations* 6, 2: 129-164.

General Court of the European Union. 2018. Ruling of 22 March (Seventh Chamber). Emiliano De Capitani v European Parliament. Case T540/15.

Greenwood, J and Roederer-Rynning, C (2019) ‘Power at the Expense of Diffuse Interests? The European Parliament as a Legitimacy Seeking Institution’, *European Politics & Society*,

Heinelt, H and Münch, S (2019) (eds.) ‘Handbook of European Policies: Interpretative approaches to the EU’, *European Policy Analysis*, 4, 1, 166-167.

Héritier, A and Reh C (2012) ‘Codecision and its Discontents: Intra Organisational Politics and Institutional Reform in the European Parliament’, *West European Politics*, 35:5, 1134-1157.

Hillebrandt, M and Novak, S (2016) ‘Integration without transparency? Reliance on the space to think in the European Council and Council’, *Journal of European Integration*, 38: 5, 527-540.

- Jenson, J and Mérand, F (2010) 'Sociology, Institutionalism and the European Union', *Comparative European Politics*, 8: 1, 74–92.
- Leino, P (2017) 'Secrecy, Efficiency, Transparency in EU Negotiations: Conflicting Paradigms', *Politics and Governance*, 5:3, 6-15.
- Lewis, J (2003) 'Informal Integration and the Supranational Construction of the Council', *Journal of European Public Policy* 10 (6): 996-1019.
- Loubere, N (2017) 'Questioning transcription: The case for the systematic and reflexive interviewing and reporting (SRIR) method', *Forum Qualitative Sozialforschung*, 18:2.
- Novak, S (2013) 'The Silence of Ministers: Consensus and Blame Avoidance in the Council of the European Union', *Journal of Common Market Studies*, 51, 6, 1091-1107.
- Novak, S and Hillebrandt, M (2019) 'Analysing the Trade-off between transparency and efficiency in the Council of the European Union', *Journal of European Public Policy*,
- Panning, L (2019) 'The European Commission s the honest broker: Evidence from informal trilogue negotiations', paper presented at the 2019 European Union Studies Association International Biennial Conference, 9-11 May 2019, Denver, Colorado
- Peterson, J. (2001) 'The choice for EU theorists: Establishing a common framework for analysis', *European Journal of Political Research*, 39, 3, 289-318.
- Rasmussen, A and Reh, C (2013) 'The consequences of concluding co-decision early: trilogues and intra institutional bargaining success', *Journal of European Public Policy*, 20, 1006-24.
- Reh, C (2014) 'Is Informal Politics Undemocratic: Trilogues, early agreement and the selection model of representation', *Journal of European Public Policy*, 6, 822-841.
- Reh C, Héritier A, Bressanelli E, and Koop, C (2013) 'The Informal Politics of Legislation: Explaining Secluded Decision Making in the European Union', *Comparative Political Studies*, 46:9, 1112–1142.

- Ripoll Servent, A (2017) *The European Parliament*. Basingstoke: Palgrave Macmillan.
- Ripoll Servent, A and Busby, A (2013) 'Introduction: Agency and Influence inside the EU Institutions', *European Integration Online Papers (EIoP)*, 17: Special Issue 1, 1–22.
- Ripoll Servent, A and Panning, L (2019), 'Eurosceptics in Trilogue Settings: information and contestation in the European Parliament', *West European Politics*, forthcoming.
- Roederer-Rynning, C and Greenwood, J (2015) 'The Culture of Trilogues', *Journal of European Public Policy*, 22:8, 1148-1165.
- Roederer-Rynning, C and Greenwood, J (2017) 'The European Parliament as a developing legislature: coming of age in trilogues?' *Journal of European Public Policy*, 24:5, 735-754.
- Rubow, C (2003) 'Samtalen: Interviewet som deltagerobservation'. In K. Hastrup (ed.) *Ind i verdun: Grundbog i antropologisk metode*. København: Hans Reitzels, 227-46.
- Saurugger, S (2013) 'Constructivism and Public Policy Approaches in the EU: From Ideas to Power Games', *Journal of European Public Policy*, 20: 6, 888–906.
- Saurugger, S (2016) 'Sociological Approaches to the European Union in Times of Turmoil', *Journal of Common Market Studies*, 54:1, 70–86.
- Scharpf, F (2003) 'Problem-Solving Effectiveness and Democratic Accountability in the EU', MPIfG Working Paper 03/1. February 2003, <http://www.mpifg.de/pu/workpap/wp03-1/wp03-1.html> accessed on 9 September 2019.
- Schmidt, VA (2013) 'Democracy and Legitimacy in the European Union Revisited: Input, Output and Throughput'. *Political Studies*, 6 (1): 2-22.
- Schwartz-Shea, P and Yanow, D (2012) *Interpretative Research Design: Concepts and Processes*. London: Taylor & Francis
- Settembri, P (2005) 'Let He Who is Without Sin Cast the First Stone', *Journal of Common Market Studies*, 43, 3, 637-54.

- Spradley, J.P. (1979) *The ethnographic interview*. Belmont, CA: Wadsworth Cengage Learning.
- Stasavage, D (2004) 'Open-Door or Closed-Door? Transparency in Domestic and International Bargaining', *International Organization* 58: Fall, 667-703..
- Stie, A E (2013) *Democratic Decision Making in the EU: Technocracy in Disguise?* Routledge: Abingdon.
- Vogel, D and Funck, B J (2017) 'Immer nur die zweitbeste Lösung? Protokolle als Dokumentationsmethode für qualitative interviews', *Forum Qualitative Sozialforschung*, 19, 1.
- Wallace, W (1983) 'Less than a federation, more than a regime: the Community as a political system', in H. Wallace et al. (eds), *Policy Making in the European Community*, 2nd edn, Chichester: Wiley, pp. 403–36.
- Wiesner, Claudia, Taru Haapala, and Kari Palonen. 2017. *Debates, Rhetoric and Political Action: Practices of Textual Interpretation and Analysis*. London: Palgrave Macmillan UK.
- Wolfe, R (2005) 'See you in Geneva? Legal (Mis)Representations of the Trading System', *European Journal of International Relations*, 11:3, 339-65.



## **METHODOLOGICAL APPENDIX**

### *Interviewee selection and access*

A division was made between trilogue ‘insiders’ and ‘outsiders’. ‘Insiders were those who participated in trilogues, or who were involved in institutional preparation for trilogues, whereas outsiders were those who had no official access to the trilogue process. As Schwartz-Shea and Yanow (2012, 70) write, ‘the language of “case selection” [used by positivist researchers] implies considerable researcher control ... but is not appropriate to interpretive research design’, which is why interpretivists prefer to speak of access rather than case selection. Of the outsiders, only two organisations refused to meet with us, or could not be reached. Of the insiders, almost half of the permanent representations responded positively to an invitation to interview, with only one outright refusal. Most of the remainder later responded positively to a subsequent research enquiry. This is notable, because traditionally permanent representations have been hard to reach in research enquiries. There was slightly less success in gaining interviews with MEPs, with many proving hard to reach. Nonetheless, there was the previous enquiry to draw upon where necessary.

Insiders: All the Permanent Representations were contacted, with the responses enabling interviews with a range of large, medium and small countries. In the European Parliament, the input of a spread of parties and committees were sought where there was recent experience with trilogues, in selecting interviewees from amongst MEPs. Two assistants substituted where appointments with Members had to be cancelled, but these were individuals with active experience of working on a recent trilogue file. Two members of the EP Secretariat were interviewed, who were well placed to comment on a case-study of the trilogue process. A previous project, in which trilogues had formed one line of enquiry, had involved interviewing a much wider range of MEPs.

Outsiders: All organisations contributing to the European Ombudsman’s public consultations

on trilogues were invited for interview. The remaining ‘outsider’ organisations were selected from the EU transparency register, so as to achieve a spread of perspectives from the range of civil society organisations present in Brussels, using the criteria of small, medium sized and large organisations. A future study could include companies with offices based in Brussels, and national associations with offices in and outside of Brussels, in order to develop the line of enquiry that a Brussels base provides for access to information about the trilogue process. Nonetheless, we managed to interview three national organisations with a Brussels office; a producer association, a trade union, and an NGO.

#### *Process of data reduction and analysis*

The process of data reduction and analysis involved the following complementary steps: a) writing up reports by category of interviewees, in order to extract the most significant points, convergences as well as contradictions; these reports helped us identify relevant classification categories, to be used in a more systematic analysis of the data. Originally 27 codes were identified; b) we then wrote up more detailed individual interview reports (called case reconstructions) citing for each category, the key passage of the interview minutes; and c) finally, we created a searchable interview database in Excel, on the basis of these individual reports and finer coding dimensions, which enabled us to filter relevant parts of the interview material across analytical dimensions.

#### *Guide to individual interview detailed reporting (case reconstructions)*

This document regroups all the individual case reconstructions, which have been uploaded individually to the folders on Sharepoint. In cases where there were two sets of notes, only one case reconstruction was done, with both sets used therein. Quotes from the notes, when relevant, have

been entered under different coding dimensions. These dimensions are explained below in detail. Interviewees, references to other interview subjects, specific – e.g. sectoral – organisations connected to the interview subject, opinions attributed to other persons etc. have been anonymised. Whenever an interview subject refers to another one in the notes, this is referenced by case reconstruction ID number and actor code. The acronyms used for the actor codes are noted subsequent to the coding dimensions. References include cases where the quote in the notes has not been judged relevant enough to be included in the case reconstructions. Between the coding dimensions linked to a quote in the summary and the categorisation in the case reconstruction, there might be differences as the context of the full interviews can have induced a change. The summary document has not been updated as it has been considered a temporary working base as regards the links between quotes and categories therein.

**Table 1 - Four types of trilogue-related sources of opacity of the EU lawmaking process**

<i>Source of opacity</i>	<i>Description of the effect</i>
<b>Design of trilogues</b>	There is no or little public information about the calendar of trilogues meetings, no official and publicly available minutes, and the famous four-column documents--i.e., the document that trilogue negotiators work on, where the first three columns identify the position of each three institutions, and a blank fourth column is filled out during the process to reflect the inter-institutional agreement reached in the trilogue meetings--remain for the most part unpublished (European Ombudsman 2016).
<b>Preparatory bodies</b>	There is a lack of transparency around the work of the preparatory bodies of trilogues in the EP (Settembri 2005; Stie 2013; Ripoll Servent 2017), in the Council (Stasavage 2004; Settembri 2005; Berthier 2016), or in the Commission (Panning 2019 ).
<b>Composition effect</b>	There is an unfortunate composition effect due to the superposition of trilogues <i>and</i> early agreements (first-reading agreements in particular). This combination allows EU legislators to eschew the core transparency obligations linked to public deliberations on first-reading positions in the EP and common positions in the Council (Berthier 2016).
<b>Implementation of ‘access to documents’</b>	There is a regulatory gap on ‘access to documents’ at the EU level (Settembri 2005), particularly as it pertains to the trilogue process: the regulatory framework is outdated and does not take into account the reality of trilogue lawmaking; agreement on revising it has been long stalled due to diverging national views in the Council; in the absence of a reform, the regime has been left to the discretionary purview of EU institutions, which

---

have adopted a minimalist interpretation of access in relation to trilogue proceedings (Curtin and Leino 2017; Leino 2017).

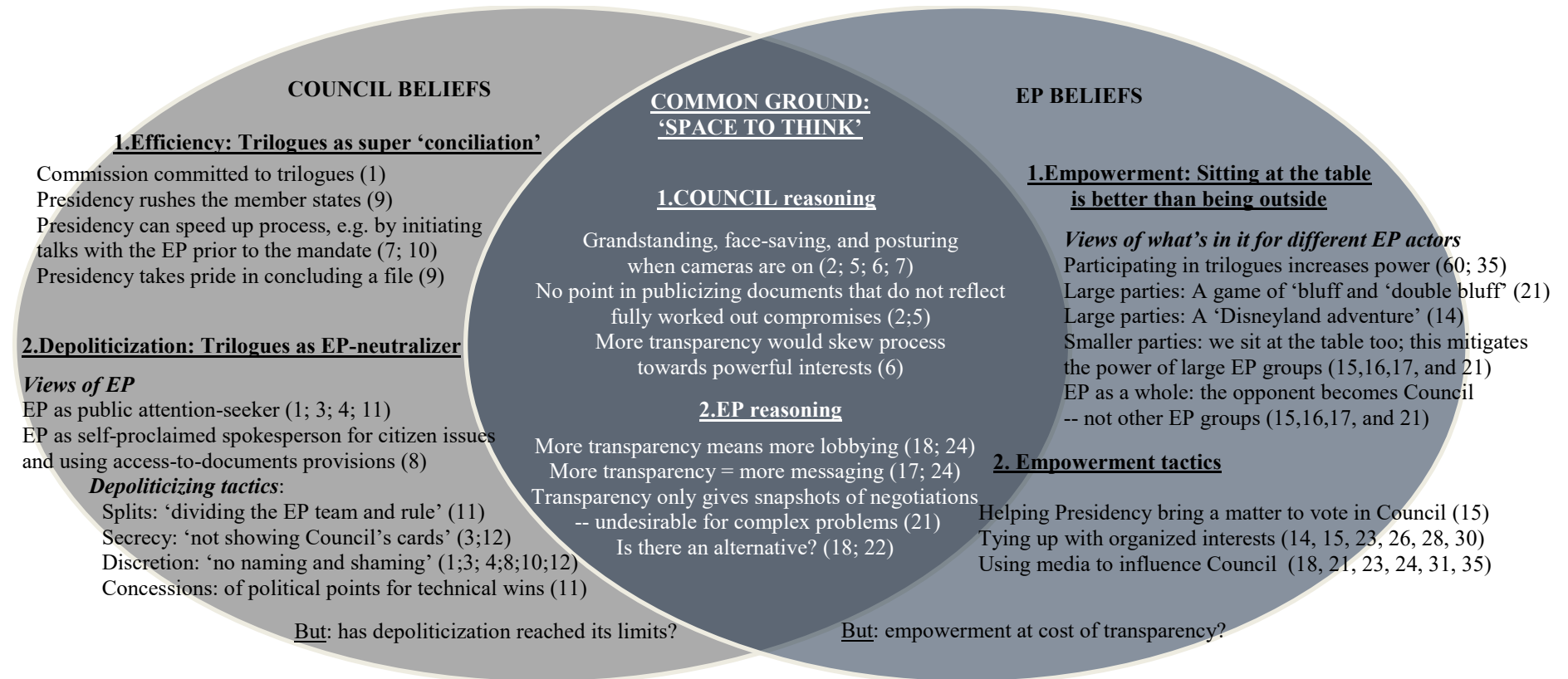
---

**Table 2: Interviewees**

<b>Trilogue insiders</b>		<b>Trilogue outsiders</b>	
Permanent Representations	<b>12</b>	Civil Society Organisations*	<b>38</b>
Large countries	2	NGOs	16(15)
Medium countries	7	Trade Unions	2 (1)
Small countries	3	Producer Associations	20
			(19)
European Parliament:	<b>30</b>	Other	<b>7</b>
MEPs (5 parties, 7 committees)	13	Public Affairs Consultancies	3
Party Advisors (same affiliations as MEPs)	11	Speakers at trilogue conferences	2
Assistants to MEPs	4	European Ombudsman's office	1
Secretariat	2	Territorial governmental representative organisation	1
<b>Total</b>	<b>42</b>		<b>44</b>

\* In parenthesis: figure of Civil Society Organizations at EU level.

**Figure 1: Council and EP beliefs on trilogues**



Source: Own interviews. Numbers in parentheses refer to interview identification number.