

The effect of trilogues on the European Commission's success in legislative negotiations: a reappraisal

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1. Introduction

Since the early 2000s legislative negotiations in the European Union (EU) have become increasingly characterised by 'trilogues'; informal, secluded meetings between representatives of the Commission, the Council and the European Parliament. Through successive revisions of treaties, co-decision (now Ordinary Legislative Procedure [OLP]) has become the norm for adopting legislation. Co-decision confers a monopoly over legislative initiative upon the Commission, but grants the European Parliament and the Council co-legislative power. This means the latter may modify the Commission's proposals, but for legislation to be adopted, they must both agree on a common text. To facilitate the negotiations between them on amendments, the co-legislators developed the system of informal meetings known as trilogues (Laloux 2020) which are neither procedurally inscribed in, nor regulated by, the EU treaties (Bressanelli et al. 2016). In trilogues, representatives of the three legislative institutions are tasked to negotiate a compromise that can then be formally adopted in the form of so-called early agreements - legislation adopted early on the basis of an informal compromise. The use of trilogue negotiations is now the norm in EU decision-making (Kluger Dionigi and Koop 2017).

Trilogues have not only provided new opportunities to the actors involved in EU legislation, but has also elicited constraints, giving rise to studies of their effect on the balance of power between, and within, the co-legislators (Hoppe 2020).ⁱ Whilst increased clarity has been discerned over their effect on the European Parliament and the Council, it is less clear how informal negotiations have affected the Commission

(Kreppel 2018). This is puzzling since it is commonly recognized as an important actor in the EU legislative process (Nugent and Rhinard 2019; Rauh 2021) and likely to have been affected by informalization. In particular, existing studies yield contradictory findings as to whether trilogues result in greater modifications to Commission proposals by the co-legislators (Laloux 2020). While Cross and Hermansson (2017) found that the probability of successful amendments to a proposal significantly increases in the case of informal negotiations, Kreppel (2018) found no robust effect. This leaves the impact of trilogues on the Commission's success – i.e., its ability to maintain the content of its proposals during the legislative process – an unresolved empirical question.

This puzzle is tackled by assessing whether informal negotiations have resulted in more amendments to commission proposals. Applying a finer grained measure than previous research (see e.g., Reh et al. 2013; Cross and Hermansson 2019), I argue that examining the effect of informal negotiations demands more than measuring whether or not informal negotiations occurred in a binary way. Rather, account needs to be taken of the proposals where inter-institutional disagreements are absent (Laloux 2020), and proposals can thus be adopted in first reading with no negotiations taking place (de Ruiter 2013; Häge and Naurin 2013). Despite the fact that these so called “trivial agreements”, constitute a specific category of cases alongside formal and informal negotiations (Toshkov and Rasmussen, 2012; de Ruiter 2013; Häge and Naurin 2013), they are commonly conflated with other types of cases in the extant literature on trilogues. In this respect, they must be considered of significance to the study of informal negotiations and their consequences.

This article makes a dual contribution to the existing literature. The first is methodological, while the second provides a more nuanced understanding of the Commission's power in EU decision-making. Attending to methodical questions first, I show that the binary measurement of early agreements used hitherto, can lead to

biased or spurious results, Indeed, due to the absence of conflict, Commission proposals adopted as trivial agreements are only slightly amended by the co-legislators, the resulting legislation remaining thus very close to them (Kluger Dionigi and Koop, 2017). This is likely to create a bias towards fewer amendments for the category into which they fall (Laloux 2020). For example, if they are not measured as early agreements (EAs) because they are not the result of informal negotiations, it is very likely that EAs will be less modified on average than other files and, conversely, if they are measured as EAs because they are adopted on first reading. However, this effect would not be due to the differences between informal and formal negotiations, but to trivial agreementⁱⁱ. Therefore, considering trivial agreements as a specific category enables the assessment of the true effect of informal negotiations on co-legislators' modification of the Commission's proposals. More broadly, this highlights the need to take a more refined account of the different types of paths through which EU legislation is adopted, and reflect more thoroughly on the effects of informal negotiations.

Whilst informal trilogues are now the standard form for negotiating legislation in the EU, the Commission's ability to leverage its formal agenda-setting power to shape EU policies is the subject of ongoing debate (Nugent and Rhinard 2016; Kreppel and Oztas 2016; Rauh 2021). In particular, the extant scholarship has questioned whether this capacity has diminished over recent decades as a result of formal treaty revisions and informal changes (Crombez and Vangerven 2014; Cross and Hermansson 2017). This brings me to the second contribution: the development of a better understanding of EU decision-making processes, and in particular the Commission's power within it. By showing that trilogues did not negatively affect the Commission's capacity to maintain its proposals, I can offer a better assessment of this decline.

My main dependent variable is the quantity of amendments made to Commission proposals. This is measured using the Rauh (2021) dataset, which contains such a

measure using quantitative text analysis for all EU legislation up to 2016. On this basis, to test the effect of informal negotiations in trilogue, regression analyses are used to discern if the number of amendments differs significantly across different types of adoption. Namely, I distinguish between first-reading adoption based on informal compromises (“early agreements”), trivial agreements, adoption at second reading on the basis of an informal compromise, adoption at second reading, and adoption at third reading. I also control for several variables used in similar studies.

2. Informal negotiations in the EU ordinary legislative procedure

The main procedure to adopt legislation in the EU is known as the ordinary legislative procedure (OLP, formerly the co-decision procedure). It was introduced with the Treaty of Maastricht under its original name, and was subsequently modified and simplified by the Treaty of Amsterdam. The legal bases to which the procedure applies has increased considerably through the various treaties until it was renamed the “ordinary legislative procedure” by the Treaty of Lisbon. It now applies to the vast majority of EU legislation (Crombez and Vangerven, 2014). The functioning of the OLP is defined in Article 294 of the Treaty on the Functioning of the European Union (TFEU). The procedure begins with a proposal made by the Commission, which enjoys a monopoly of legislative initiation. Then, subject to any amendments, the Council and the European Parliament (EP) jointly adopt the commission’s proposals as EU legislation. This means that both co-legislators must approve the same texts and agree on similar amendments. The formal amendment procedure consists of two sequential readings during which the Council and the EP formulate amendments on the initial proposal, starting with the EP. A legislative act is adopted once the EP and the Council have agreed on the same text. If agreement cannot be reached, a Conciliation Committee is convened for representatives to directly negotiate a compromise, which is voted on after a third reading.

As it became the standard procedure for adopting legislation in the 2000s, co-decision has also known a progressive “informalization”. In order to fast-track the legislative process, and avoid having to go through two independent readings, the co-legislators gradually developed a system of informal meetings called “trilogue negotiations” (Farrell and Heritier 2004, Laloux 2020). As defined by Reh et al. (2013), trilogues are informal in the sense that they “[involve a] restricted and uncodified set of actors operating in an isolated setting; negotiation [being] structured by informal rather than codified, specific, and enforceable rules; and [that] any prior agreement must be formalised”. They bring together representatives of the three legislative institutions, who negotiate a compromise between the co-legislators (Roederer-Rynning and Greenwood 2015). The main role of the Commission’s representatives is to facilitate the search for a compromise between the co-legislators (Burns 2014; Nugent and Rhinard 2019). The compromise text can then be voted on at the first or early second reading which, when approved, is known as an “early agreement” (Rasmussen 2011; Reh et al. 2013). Since their development, the use of trilogues has continuously increased to be now the standard procedure by which co-legislators negotiate (Brandsma et al. 2021, Kluger Dionigi and Koop 2017).

The use of trilogues and the way they are conducted has evolved. The first trilogues were characterized by a high degree of informality (Farrell and Héritier 2003), however, after two decades they have become routinised and institutionalized aspects of the decision making process (Roederer-Rynning and Greenwood 2015; Brandsma et al. 2021). The co-legislators have adopted internal standards and rules to regulate trilogue negotiations. Although not completely uniform practices, trilogues now constitute ‘an elaborate and ritualized process of aggregation and negotiation of preferences involving a wide range of actors who meet’ (Roederer-Rynning and Greenwood, 2015: 1161).

3. Trilogues and the Commission's capacity to defend its proposals

Much of the extant literature strongly suggests that the development and evolution of co-decision has impacted upon the Commission's ability to play a role in the legislative process (Thomson 2011; Crombez and Vangerven 2014). Some have even argued that the Commission's lack of decision-making power has rendered it insignificant once its proposal has been published (Crombez and Vangerven 2014; Kreppel and Oztas 2016). However, for others the Commission remains an important actor in legislative negotiations, with its own preferences, and formal and informal resources to defend the content of its proposalsⁱⁱⁱ (Thomson 2011; Becker et al., 2016; Nugent and Rhinard 2016). Empirical research tends to confirm this view, suggesting that, while being a less important actor than the co-legislators, the Commission retains a significant capacity to shape the outcome of negotiations (Konig et al. 2007; Thomson 2011; Franchino and Mariotto 2013).

In this respect, the literature recognizes two types of resources that may enable the Commission to defend the texts it proposes against modifications. First, the Commission's formal agenda-setting position may enable it to strategically select options it favours from the co-legislators' anticipated win-set to improve their chances of acceptance^{iv} (Hodson 2013; Hartlapp et al., 2014). In addition, policy preparation, including stakeholder consultation, yields an informational advantage which backs up its policy choices as the co-legislators draw on its expertise and knowledge (Bunea and Thomson 2015; Nugent and Rhinard, 2019). Secondly, the Commission can deploy specific tactics to defend the content of its legislative proposals during the negotiation. It can threaten to withdraw a proposal if the Parliament and the Council make amendments that distort its original rationale (Following Article 293(2) TFUE,

see case C-409/13 CJUE). Such a threat may encourage them to resist significant modifications of the proposal if they want to see a legislative text adopted. (Thomson and Hosli 2006; Nugent and Rhinard 2016). The Commission can also deliver a negative opinion on EP amendments, which obliges the Council to adopt them unanimously rather than by a qualified majority (Article 293(1) TFUE), making it more difficult to adopt these amendments (Fuglsang and Olsen 2009). Furthermore, the Commission often acts as a mediator between the co-legislators, this intermediary position enables it to preserve its preferences during negotiations (Tsebelis et Garrett 2001; Thomson and Costello 2013, Nugent and Rhinard 2019).

The debate is still not settled over whether and how the development of trilogue negotiations has affected the Commission's resources and therefore its ability to shape legislation. It has been largely ignored in one strand of the literature which implicitly, or explicitly, takes the view that the informalization of legislative negotiations has had no effect on the Commission, notably because it has always lacked decision-making power (Kreppel and Oztas 2016). Another strand assumes that trilogues have disadvantaged the Commission. The main argument here, is that the possibility of direct contact between the two co-legislators reduces the need for the Commission as mediator, and by definition removes the advantage linked to it (Grøn et al. 2008; Kreppel and Oztas 2016). This enables the co-legislators to collude on amendments to the proposals more easily (Cross and Hermansson 2017; Kreppel 2018). A factor particularly true for negotiation before the first reading as the formal conditions for amending Commission proposals are less strict at this stage^v (Cross and Hermansson 2017). Finally, Fuglsang and Olsen (2009) argued that Commission representatives lack the political skills to negotiate effectively in trilogues.

In contrast, some argue that informal negotiations are more favourable to the Commission, and result in fewer modifications to its proposals. First, the Commission loses some of its formal powers in later stages of the procedure, for example, the ability

to withdraw its proposals and reject the EP's amendments. This means that it likely carries more weight in early negotiations (Thomson and Hosli 2006; Nugent and Rhinard 2016). In addition, after the first reading, the co-legislators officially adopted their amendments, making a return to the Commission's text more complicated (Fuglsang and Olsen 2009). For some, trilogues might also strengthen the Commission's mediating role by positioning it as a neutral facilitator from the beginning of the negotiation process, which 'often enable [it] [...] to preserve its own preferences and interests in doing so' (Nugent and Rhinard 2016). Finally, shorter negotiations could benefit the Commission, as prolonged decision-making increases the likelihood of amendments to the initial text (Costa et al. 2011; Burns 2014).

4. Empirical strategy

My dependent variable is the Commission's legislative success, i.e., its ability to maintain its proposals unchanged during the legislative process. It is measured by the number of amendments to Commission proposals; that is, the extent to which co-legislators modify Commission proposals in the legislation they adopt. In practice, I use the dataset developed by Rauh (2021). This dataset contains a measure of amendments to all Commission proposals issued between 1983 and 2016. In my case, the sample is limited to post 1999 co-decision (then OLP) files when early adoption was made possible by the Amsterdam Treaty.

Rauh compares all the files to the final legislation using text-mining techniques, and more specifically a minimum edit distance algorithm – in this case the 'Damerau-Levenshtein minimum edit distance'. Such algorithms measure changes in consecutive versions of different texts by counting the number of editing operations (here at the level of individual words) required to transform one text into another. Rauh then normalises this count according to the length of each text in order to

compare texts of different sizes, so that “the resulting metric ranges between 0 and 1 and can be roughly interpreted as the probability that an individual word in the original Commission proposals [changes] during the Council and EP negotiations” (Rauh 2021: 9) This way of measuring legislative success is common in the literature (e.g., Laloux and Delreux 2018; Tacea 2021; Gava et al. 2023). More importantly, the validity of similar algorithms^{vi} has been confirmed for the EU legislative procedure by the replication of existing studies on amendment tracking (Hermansson and Cross 2016) and comparing it with the results of qualitative case studies on the EU legislative decision-making process (Laloux and Delreux 2018).

The central question for this article is whether informal negotiations affected the number of amendments passed by co-legislators compared to the formal procedure underlined in the treaties. My main independent variable is therefore the way in which the co-legislators’ negotiated agreements on a common text. I classify files into four groups: (1) Files adopted early on the basis of an informal agreement negotiated in trilogues (“early agreements”); (2) Files adopted by the Council’s second reading after a compromise was reached following the formal procedure;^{vii} (3) Files adopted at the third reading, after an agreement was reached in the conciliation committee; and (4) Files adopted at the first reading because no negotiation was required to find an agreement (“trivial agreement”). As mentioned earlier, considering trivial agreements as a specific category is necessary to assess the true effect of informal negotiations, compared to the formal way of resolving disagreements between co-legislators (Laloux 2020).

By adding the category of trivial agreements, my operationalization differs from those based on Reh et al. (2013), who simply distinguish between (1) Files adopted early on the basis of an informal agreement negotiated in trilogues (“early agreements”) and (2) other files; that is, not adopted on the basis of an informal agreement reached in trilogue negotiations (the latter conflating second-reading adoption and trivial

agreements); to which the third category (3) “adoption in third reading” is often added, (Cross and Hermansson 2017; Kreppel 2018), and results in more amendments on average. In addition, I tested the effect of adding one category to my independent variable. This distinguished between informally negotiated legislation regardless of their adoption at the first or early second reading – thus splitting category (1) into two, to examine whether the effect of informal agreements is due to more favourable (or unfavourable) conditions on the first or second reading. If it is for other reasons, the effect should be broadly similar between the two types of informally negotiated legislation.

To measure this variable, I combined the dataset of Reh et al. (2013), which contains, all co-decision files adopted between 1999 and 2009, the stage of adoption and whether it resulted from an informal compromise between the co-legislators, with my own data, which complements the information for the files adopted after 2009. The stage of adoption is available on the EP website, and information on whether it resulted from an informal compromise was collected in the same way as Reh et al, by searching official documents and websites for mentions of informal negotiations and/or compromises and collecting the stage of adoption.

I have also included a series of control variables that have been identified as affecting the number of amendments to Commission proposals; namely, the level of disagreement within the co-legislators and the Commission, the complexity of a proposal, the year of adoption, the type of legislation (directive, regulation or decision), and whether it is new or amending legislation. These have been added following the argument of Rauh (2021) and Cross and Hermanson (2017) that they could affect the cost to the Commission of effectively identifying the preferences of co-legislators. This would lower the Commission’s anticipation of what is acceptable for the co-legislators and thereby lead to more amendments on average. Consistent with Cross and Hermanson, the level of disagreement within the EP is measured by

the time taken for the EP to adopt an internal decision. For the Council, Rauh's operationalization is employed, i.e., the variance of Member State preferences within the Council with regard to left-right and pro-anti EU positions. I also use Rauh's data for my measure of preference heterogeneity within the Commission, i.e., whether proposals were adopted by the college via an oral or written procedure, with the use of oral procedures indicating a higher level of intra-institutional conflict (Killermann 2018).

The complexity of a proposal is also measured by the number of recitals added. Two reasons motivate the addition of a time trend: first, Rauh (2021) has shown that the number of amendments has increased, and secondly, this variable also assesses the evolution of trilogues practices and their progressive institutionalization (Roeder-Rynning and Greenwood 2015). As a robustness check, I also ran models with a fixed effect for the DG responsible for the file, to reveal potential differences related to DG characteristics or work habits.

Two different dependent variables were used in the analysis. In addition to Rauh's normalised distance, other models were run with the total number of changes as dependent variable while controlling for proposal duration, which corresponds with Cross and Hermansson (2017). In addition, for both dependent variables, models were run with only the Reh et al. sample files - i.e., those up to 2009 - and with the full data set, in order to control for potential differences due to sampling or measurement of the independent variable. Finally, I ran models with different independent variables; namely, (1) with the operationalization based on that of Reh et al.; (2) including trivial agreements as a specific category; (3) with the distinction between early/first and early/second reading agreements. I thus performed 12 models in total (2*2*3).

5. Results: trivial agreements do matter whilst trilogues likely do not

Table 1 displays the distribution of cases among the different types of adoption. It confirms that the number of trivial agreements is significant. They account for 19% of the sample, a higher proportion than that of second-reading adoption. It should be noted, however, that this is not the case in the Reh et al. dataset, where the proportions are 23% and 28%, respectively. Nevertheless, this confirms that trivial agreements are not negligible for analyses of the EU legislative process, regardless of the time period considered. It also shows that the number of early second reading adoptions has steadily increased since 2009, as they only constituted 3% of Reh et al. sample, as compared to 7% in the full sample.

Sample	Trivials	Early Agreements	Early Second Reading	Second Reading	Third Reading
Full Sample (1999–2016)	0.19	0.5	0.07	0.18	0.06
Reh and al. Sample (1999–2009)	0.23	0.36	0.03	0.28	0.09

Table 1: Distribution of the independent variables.

Do informal negotiations affect the extent to which the co-legislators modify Commission proposals, with and without trivial agreements as a specific category? Firstly, Figure 2.1 shows the difference in normalized distance between the EA and non-EA agreements above, and EA, secondary and trivial agreements below. Table 2 presents the results of the models. The results of both are quite clear: when trivial

agreements are considered as non-EAs, the Commission's proposals are modified significantly more than when legislation is based on an informal compromise. This confirms the results of Cross and Hermansson (2017). However, as I have argued, when trivial agreements are measured as a separate category, this effect disappears as there is no longer a greater number of amendments adopted in the case of informal negotiations. With the normalized distance, the informally negotiated proposals are significantly less amended than the one adopted on second reading. However, even when it is significant, the overall effect of informal negotiation is weak. Furthermore, the inclusion of trivial agreements also renders the effect of the third reading insignificant, which contrasts with existing results. These results remain when a fixed effect for the DG responsible is included.

The comparison of the different models shows that those with "trivial agreements" as a specific category perform substantially better than their counterparts, according to several measures of relative model quality. For each pair, the explained variance is higher, and the BIC and AIC are lower.^{viii} Furthermore, the ANOVA and likelihood ratio tests confirm that this difference between models is significant.^{ix} This confirms the effect of the trivial agreements and the bias they may have induced in previous studies. This suggests that, overall, the informalization of legislative negotiations in the EU through trilogues did not actually affect the Commission's ability to defend its legislative proposals – nor did it give the Council and the Parliament an opportunity to agree on more amendments – than in the formal procedure. It should also be noted that the effect of informal negotiations is fairly similar between the two samples, which suggests that the evolution of trilogue negotiations over time has had no impact on the number of amendments adopted by the co-legislators.

[Figure 1 near here]

Figure 1: Differences in normalized distances between proposals and legislation for different types of adoption

	Reh et al. Dataset (1999–2009)		Full Sample (1999–2016)	
	Normalized distance <i>OLS</i>	Number of amendments <i>NB</i>	Normalized distance <i>OLS</i>	Number of amendments <i>NB</i>
Trivial cases as non-EAs				
	(1)	(2)	(3)	(4)

Reference:

Council 2nd Reading

EAs 0.05** (0.02) 0.24*** (0.08) 0.12*** (0.02) 0.57*** (0.07)

Third reading 0.15*** (0.03) 0.51*** (0.13) 0.17*** (0.03) 0.56*** (0.12)

Control Variables Yes Yes Yes Yes

Observations 684 684 1,192 1,192

R² 0.16 0.18

Adjusted R² 0.15 0.17

Trivial cases as a specific category

(5) (6) (7) (8)

Reference:

Council 2nd Reading

EAs -0.06*** (0.02) -0.14 (0.09) -0.04** (0.02) 0.01 (0.08)

Third reading 0.07** (0.03) 0.19 (0.12) 0.06** (0.03) 0.10 (0.12)

Trivial -0.23*** (0.02) -1.15*** (0.10) -0.28*** (0.02) -1.48*** (0.09)

Control Variables Yes Yes Yes Yes

Observations	684	684	1,192	1,192
R ²	0.27		0.30	
Adjusted R ²	0.25		0.29	

Note: * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$. Following Rauh (2022) and Cross and Hermansson (2017) respectively, ordinary least squares (OLS) regressions were used for the normalized distance, while negative binomial (NB) regressions were used for the total number of changes.

Table 2: Regression analyses with and without trivial as a specific category (full models in appendix).

Taking the analysis one step further, Table 3 displays the results of the models with early second reading as a specific category. It shows that where informal negotiation results in first-reading adoptions, texts are not modified significantly less than those resulting in early second-reading adoptions. On the contrary, model 7 (full sample with standardized distance) even suggests that, regardless of whether or not they are based on an informal compromise, second-reading adoptions result in more amendments than first-reading early agreements. This suggests that the negotiations at first reading are no less favourable to the Commission. Conversely, they might even be more favourable, which would be in line with several arguments put forward in the literature. Yet, again, the coefficients are small, suggesting that, either way, there are not substantial differences between the different kinds of agreements.

Reh et al. Dataset (1999–2009)		Full Sample (1999–2016)	
Normalized distance	Number of amendments	Normalized distance	Number of amendments
<i>OLS</i>	<i>NB</i>	<i>OLS</i>	<i>NB</i>
Early Second Reading as a specific category			
(5)	(6)	(7)	(8)

Reference:

Council 2nd Reading

EAs	-0.07*** (0.02)	-0.17* (0.09)	-0.05*** (0.02)	0.002 (0.08)
Early Second	-0.01 (0.05)	-0.09 (0.19)	0.05* (0.03)	0.07 (0.12)
Third reading	0.07** (0.03)	0.18 (0.12)	0.06** (0.03)	0.10 (0.12)
Trivial	-0.23*** (0.02)	-1.17*** (0.09)	-0.28*** (0.02)	-1.49*** (0.09)
Control Variables	Yes	Yes	Yes	Yes
Observations	684	684	1,192	1,192
R ²	0.26	0.26	0.31	
Adjusted R ²	0.25	0.25	0.30	

Note: * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Table 3: Regression analyses with early second reading (full models in appendix)

6. Conclusion

The last two decades have witnessed the normalisation of informal procedures and practices in EU legislative negotiations, with trilogues becoming the standard means of reaching a compromise between the Council and the European Parliament. This article has been attentive to the effects of this change on the European Commission, specifically on its ability to defend the content of its proposals from modifications by the co-legislators. I use Rauh's (2021) dataset to empirically measure the degree of change the Commission's proposals have undergone during inter-institutional negotiations. The effect of informal negotiations was examined by comparing legislation based on informal compromises with those following the formal procedure, those negotiated in the conciliation committee and those where no negotiations were necessary (trivial agreements). The inclusion of the latter cases constitutes a crucial departure from the existing literature on the Commission, which has tended to group them with formal negotiations despite their differences.

As expected, I found that when trivial agreements are included as a specific category in the model, files adopted on an informal basis do not lead to greater proposals for amendments than those adopted at first reading following the formal procedure. This is true both for adoption at first reading and the early second reading. Some models even indicate that the proposals are in fact modified fewer times in the case of informal negotiations. This suggests that the informalization of EU legislative negotiations has no greater adverse effect on the Commission's ability to maintain the content of its proposals than the formal procedures provided for in the Treaties. On the contrary, those who argue that this may have benefited the Commission may be ever so slightly right.

There are two explanations for the negligible effect of trilogues, each with very different implications for the debate over the Commission's power in the EU. On the one hand, informal negotiations have not undermined the Commission's role and it has remained an influential actor in legislative negotiations. If so, the Commission is as capable of defending the content of its proposals as it was under formal procedures. On the other hand, the Commission's ability to maintain its proposals has not been affected by informal negotiations, for the simple reason that it had no such capacity even before trilogues. In the latter case, the introduction of informal negotiations did not increase the extent to which the co-legislators could modify the Commission's proposals; they were already free to do so, and the Commission was unable to hinder them. This would suggest that the Commission is indeed merely a technical agenda-setter, whose position is insignificant once it has published its proposal. Either way, these two concurrent possibilities call for further study of the Commission's role in informal negotiations.

This article also contributes to a broader literature, giving a greater nuance to studies of trilogue negotiations and their effect on EU legislative politics. Indeed, existing

research has already called into question several claimed effects of trilogues, for instance on the influence of the negotiators vis-à-vis their institutions (Häge and Naurin 2013; Rasmussen and Reh 2013), or on the speed of the decision-making process (Toshkov and Rasmussen 2012). Similarly, Roeder-Rynning and Greenwood (2015) have shown that although informal trilogues were not without rules and procedures in constraining the different actors involved. Taken together these results indicate that trilogues have not disrupted legislative decision-making in the EU as much as initially feared. To a large extent, legislative actors have adapted to these new practices without affecting their constraints and opportunities to shape legislative decision-making in the long term.

Finally, my results strongly suggest the methodological importance of taking trivial agreements into account in quantitative studies of the European legislative process. Trivial agreements are common and differ from other types of adoptions which require negotiations between co-legislators, whose divergent preferences must be reconciled. Whilst they are commonly mixed with other file types, this study shows that they can distort results when not properly accounted for in measurements. Therefore, in some cases, it may be necessary to include them in a specific category when analysing EU legislative decision-making processes. The findings presented here call not only for more serious awareness of trivial agreements in the EU legislative process, but also further research into trivial agreements *per se*. For example, when, and under what circumstances, do co-legislators decide that it is not necessary to negotiate? How does this type of file differ from others? And what are their consequences beyond the effect of the trilogues on the modifications made to the Commission's proposals by the co-legislators?

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ⁱ In particular, inter-institutionally, existing studies tend to show that the informalization of negotiations has strengthened the European Parliament (EP) to the detriment of the Council (Costello and Thomson 2011; Broniecki, 2019). The argument is 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 agreement (Häge and Kaeding 2007). Moreover, it makes the EP less transparent vis-à-vis the Council, increasing its bargaining power (Broniecki 2019). **However, see Andlovic and Lehmann (2014) or Kreppel (2018) for another perspective.**

ⁱⁱ This impact of trivial adoptions is likely since their number is far from negligible; they represent 23% of the files in the Brandsma sample (2015). Moreover, existing research shows that they tend to differ in several ways from other files, whether early adoptions through trilogues or following the formal

procedure (de Ruiter, 2013; Kluger Dionigi and Koop, 2017). For instance, they require significantly less time to be adopted (Toshkov and Rasmussen, 2012).

iii Yet, acknowledging that the Commission can only maintain policies insofar as they are acceptable to the respective majorities required in the Council and/or the European Parliament.

iv Obviously this requires knowing what the win-set is, which co-decision, by adding the EP to the equation, has made more complex.

v The co-legislators have no time limits or amendments, and the EP only needs a simple majority to adopt its position.

vi Noteworthy is that the different algorithms result in largely similar outputs (Rauh 2022) .

vii The literature often assumes that no informal trilogue took place in cases 2 and 3 – and this is generally the case (Laloux 2020). However, it should be noted that it is in fact possible that, in these cases, the co-legislators attempted to negotiate in trilogues, but were unable to reach agreement that way.

viii The Akaike Information Criterion (AIC) and the Bayes Information Criterion (BIC) are measure of the relative quality of statistical models compared with each other for a given set of data. They are therefore criteria for selecting models from a finite set of models. Models with a lower BIC/AIC are generally preferred.

ix It should be noted that this difference is principally true for the normalised distance. This is due to the fact that, in the models with the total number of changes, the length of the proposals explains a large part of the variation in the dependent variable, which blurs the effect of the other variables and therefore the difference between models. As a result, the comparison between models with the normalised distance is more reliable.