



How much do agents in trilogues deviate from their principals' instructions? Introducing a deviation index

Thomas Laloux and Tom Delreux

UCLouvain, Institut de sciences politiques Louvain-Europe, Louvain-la-Neuve, Belgium

ABSTRACT

This article presents a newly developed 'deviation index' to measure, in a quantitative and standardized way, the extent to which the negotiators in trilogues (the rapporteur and the rotating Presidency) deviate from the instructions of the institutions they represent (respectively, the EP and the Council). Based on text-mining techniques, the index is applied to the entire set of trilogue decision-making processes in the 2012–2016 period ($N = 111$). The article then presents three examples of how the index can generate new insights about legislative policy-making in the EU. These empirical applications show that agents deviate more than minimally required to reach an inter-institutional compromise; that rapporteurs deviate in general more than Presidencies do; and that deviation is not affected by the support for the mandate or by the size of the agent.

KEYWORDS Deviation index; early agreements; ordinary legislative procedure; principal–agent; text-mining; trilogues

1. Introduction

Delegation lies at the very heart of the current European Union (EU) legislative policy-making. The co-legislators usually delegate the authority to negotiate an inter-institutional compromise on a legislative act to a small group of negotiators. The Council delegates inter-institutional deal-making authority to the rotating Presidency; the European Parliament (EP) to a negotiating team led by the rapporteur. These representatives meet in the secluded setting of trilogues, which have progressively become the main forum for legislative policy-making in the EU. Consequently, a vast majority of EU legislation is today concluded as an 'early agreement', i.e., a legislative act concluded in the first reading stage of the ordinary legislative procedure (OLP) and based on an informal compromise negotiated between representatives of the co-legislators.

Given that the negotiators in trilogues are representing their institutions, the dynamics of trilogue negotiations can be conceptualized as two parallel

CONTACT Thomas Laloux  thomas.g.laloux@uclouvain.be

© 2018 Informa UK Limited, trading as Taylor & Francis Group

principal–agent relationships, one between the Council and the Presidency, the other between the EP and the rapporteur. The agents act on the basis of instructions by their principal. Once a deal is reached in trilogues, it must be approved by the principals before it is formally adopted as a legislative act. This approval follows a take-it-or-leave-it logic.¹ As result, the agents not only have to reach an informal agreement with each other, but they also have to maintain the support of their institutions.

Principals expect their agent, first, to reach an agreement with the other agent and, second, to represent their instructions. Whereas the first expectation implies that the agent makes concessions and consequently deviates from the principals' instructions, the second expectation suggests that such deviation should be kept to a minimum. In other words, on the one hand, agents have to deviate to find an inter-institutional compromise, but, on the other hand, they cannot deviate too much as that compromise needs to be ultimately accepted by the principals. Delegation of authority in EU legislative policy-making thus inherently implies deviation by the agents, but it puts limits on deviation too. This raises the question of how much trilogue negotiators deviate from the instructions of the co-legislator they represent.

To answer this question, we propose a newly developed 'deviation index' to measure, in a quantitative and standardized way, the distance between the initially expressed position of the co-legislators and the final trilogue compromise negotiated by their agent. The paper applies the index to the entire set of trilogue decision-making processes in the 2012–2016 period ($N = 111$) and presents three examples of how the index can be applied and how it can generate new insights about legislative policy-making in the EU. These empirical applications show that agents deviate more than minimally required to reach an inter-institutional compromise. We also find that rapporteurs deviate in general more than Presidencies do. Counter-intuitively, neither the deviation by the rapporteur nor the deviation by the Presidency is affected by the support for their mandate by the principals or by the size of the agent.

The paper is structured as follows: the next section reviews the literature on trilogue negotiations; section 3 presents the deviation index and the data; section 4 demonstrates with three empirical examples how the index can be applied; and section 5 sets forth the conclusion.

2. The relationship between trilogue negotiators and their legislative institutions

Informal trilogue negotiations were developed to facilitate the contacts between the co-legislators and to 'fast track' the policy-making process under the OLP. They have transformed the OLP into a *de facto* single-reading procedure (Roederer-Rynning and Greenwood 2015). For the

Council, the representative in trilogues is the rotating Presidency, whereas the EP is formally represented by a 'negotiating team' led by the rapporteur, but also including shadow rapporteurs and the chair of the responsible committee. Nevertheless, the rapporteur is still seen as the major EP actor in trilogue negotiations (Brandsma [2015]; Reh [2014]), as a result of which we consider the rapporteur as the EP's agent in our principal-agent conceptualization. To enter trilogue negotiations, both agents need to receive an authorization and a mandate from their principals, which includes the latter's instructions for the agent.

The existing literature on trilogues has paid little attention to studying variations between trilogue negotiations. Instead, it mainly compared policy-making in informal trilogues with policy-making following the formal OLP. The literature that links trilogues with what happens within the co-legislators (which we model as a principal-agent relation) focuses on two kinds of questions.

First, the literature explains the occurrence of trilogues and the resulting early agreements. It has been argued that the preference homogeneity between agents and principals as well as between agents are important factors in explaining the occurrence of early agreements (Rasmussen [2011]; Reh *et al.* [2013]). Brandsma (2015) showed that the number of trilogue meetings required to negotiate an agreement depends on, *inter alia*, the political group of the rapporteur and the intra-institutional contestation towards both agents.

Second, the consequences of the informalization of the OLP on intra- and inter-institutional politics are assessed in the literature. As part of the consequences, the early literature on trilogues developed the 'relais actors' thesis, arguing that trilogues have empowered the representatives of the institutions, especially in the EP (Farrell and Héritier 2004). The restricted and secluded nature of trilogues allows these 'relais actors' (or 'agents', in our terminology) to use their 'brokerage position to their advantage' (Costello and Thomson 2010: 223). Accordingly, agents in trilogues are seen as able to act autonomously and thus to deviate from their institution's instructions. In sum, the relais-actor thesis supposes a high level of deviation in trilogues.

By contrast, the relais-actor thesis has been nuanced in subsequent studies, which did not find evidence for the claim that early agreements empower the rapporteur and the Presidency *vis-à-vis* their respective institution (Häge and Naurin [2013]; Judge and Earnshaw [2011]; Rasmussen and Reh [2013]). A similar debate on whether agents in legislative policy-making are loyal representatives of their institutions can be found in the literature on negotiations in the Conciliation Committee. Whereas Rasmussen (2008) found that negotiators in conciliation do not deviate substantively, others suggest that deviation occurs (Franchino and Mariotto [2013]; König *et al.* [2007]). These different

accounts in the literature indicate that the deviation of negotiators in inter-institutional forums varies between different policy-making processes. However, the actual deviation of agents has not been measured yet in a way that allows for a systematic comparison between multiple policy-making processes, and ultimately for a better understanding of the reasons behind low or high levels of deviation.

Shedding light on the agents' deviation in trilogues also contributes to the debate on the democratic legitimacy of EU legislative decision-making. Being secret and secluded in nature, trilogue negotiations have indeed raised several normative concerns (Lord 2013). They are criticized for shifting the core of EU policy-making from the legislative institutions as a whole to a restricted group of people who operate behind closed doors and with low levels of transparency. The institutional design of trilogue negotiations and the crucial role of delegation therein indeed bear a potential risk that members of the European Parliament (MEPs) and member states lose their grip on the policy-making process and that the actual power shifts to the trilogue negotiators. While the mere existence of deviation may be problematic, it is also an unavoidable consequence of the practice to negotiate legislation in trilogues. As the aim of trilogues is finding an inter-institutional compromise, deviation from initial instructions is inherent to them. Hence, it is less the existence of deviation, but rather the degree and the reasons of deviation that are a potential matter of concern. In this regard, deviation from the co-legislators' mandates potentially warrants legitimacy concerns for two reasons.

First, trilogues are attended by only a small number of policy-makers. Yet, it is the entire institutions that are collectively representative of their constituency and that bring legitimacy to the legislation (Lord 2013). Trilogues thus raise a problem of representativeness. Whereas decisions from the institutions, such as the mandate, are considered legitimate, deals concluded by the trilogue negotiators may not be, or to a smaller extent. The more trilogue negotiators deviate from the instructions given by the legislators, the more powerful they are *vis-à-vis* their institution, yet also the less representative and less inclusive policy-making becomes, and the more the legitimacy concerns about trilogue decision-making seem to be valid.

Second, deviation may be problematic from the perspective of public scrutiny of the policy-making. Indeed, the democratic legitimacy of EU policy-making is also rooted in the public control of the procedure and in the resulting accountability of the EU legislators *vis-à-vis* their constituents (Lord 2013). Yet, secrecy and informality make trilogue decision-making less controllable than the formal process, both for the EU citizens (Reh 2014) and for the national parliaments (Jensen and Martinsen 2015). Deviation in trilogues may thus also undermine the accountability chain on which the legitimacy of the EU legislative procedure is partly based.

3. Measuring agent deviation: the deviation index

3.1. Deviation

We conceptualize the relationship between the co-legislators and their trilogue negotiators as two parallel principal–agent relationships. A key assumption of the principal–agent model is that agents do not always follow the preferences of the principals in executing their task and that, in other words, ‘slack’ can occur. Slack is the ‘independent action by an agent that is undesired by the principal’ (Hawkins *et al.* 2006: 8). It is generally assumed to be the result of opportunistic behaviour by the agent, who seeks the maximization of its own interests at the expense of those of the principal (Shapiro 2005).

We shift the focus from ‘slack’ to ‘deviation’, which is defined as the distance between the initially expressed position of the principal and the final outcome delivered by the agent, irrespective of its sources or reasons. In other words, deviation is simply the difference between what the principal asks and what the agent delivers, without any other consideration. Deviation is related to slack, but it differs in two ways. First, deviation is not necessarily induced by the opportunistic behaviour of a self-interested agent, but may equally be induced by ‘the institutional structure in which the agents perform the delegated task’ (Delreux and Adriaensen 2017). For instance, deviation may be inspired by a pressure to compromise or by calls from other trilogue participants ‘to take responsibility’. Second, deviation is not entirely undesired by the principal. In trilogues, the principal is fully aware that its agent will have to deviate to reach an inter-institutional compromise. In other words, whereas principals seek to avoid slack, they know that some deviation cannot be avoided.

In this article, we present a methodological tool to measure deviation in a systematic way: the deviation index. The index enables researchers to conduct large-N comparative studies on the relationship between the agent and the principal, including on the factors that affect agent deviation. This is a notable methodological contribution to the principal–agent literature. Studies on the relationship between the principal and the agent during the execution of the delegated task are generally conducted with case study designs. Indeed, it is difficult to conduct large-N studies on how agents behave once they are acting on behalf of their principal – for instance, in terms of deviation – because a standardized, quantitative measurement of post-delegation agent behaviour is lacking (Adriaensen and Delreux 2017). The deviation index fills that gap.

Systematic measurements, often by means of indexes, have been applied in principal–agent studies (e.g., Epstein and O’Halloran 1999; or specifically on the EU: Franchino 2007). Yet, what all these indexes have in common is that

they assess the degree of authority delegated by the principal to the agent, but they do not grasp what the agent ultimately does with that authority. In other words, whereas existing 'delegation indexes' operationalize the delegation of authority *in the delegation stage*, our deviation index quantifies the relationship between the principal and the agent *in the post-delegation stage*. As the deviation index allows for quantitative approaches that can identify the conditions under which the agent deviates from its principal's instructions, it is an important complement to the existing literature on post-delegation dynamics between the principal and the agent, which is based on qualitative case studies.

3.2. Constructing the deviation index

Comparing the principal's mandate with the compromise negotiated by the agent, the deviation index computes the difference between these texts and it standardizes that difference. Hence, for each agent in each policy-making process, the index presents a score of the distance between what the principal initially asked and what the agent ultimately did in the execution of its task. Importantly, the index does not allow testing of the source of deviation (why does the agent accept something other than what the principals want?). Similarly, the index does not reveal the consequences of the agent's deviation for the content of the final legislative act. While these limitations must be taken into account, the index has the major advantage that it enables us to standardize and systematically measure deviation in different negotiation settings. This measure can then, for instance, be used to test hypotheses regarding the sources or the consequences of deviation.

The deviation index is calculated in three steps. First, we compare the mandate with the compromise and compute the difference between these texts. This is done by means of the 'DocuToads algorithm', a text-mining technique developed by Cross and Hermansson (2017) to detect changes between two versions of a legislative text. DocuToads is a specific 'minimum-edit distance algorithm' which aims to quantify how (dis)similar two texts are. On the basis of four kinds of editing operations (deletion, insertion, substitution and transposition of words), the algorithm calculates the 'minimum number of editing operations required to change one [text] into another' (Hermansson and Cross 2016: 10). The minimum number of editing operations needed to turn one text into the other indicates the 'substantive amount of amendments made between version of texts' (Hermansson and Cross 2016: 1).

This first step is preceded by pre-processing the documents, which is a requirement for text-mining techniques (Kobayashi *et al.* 2017). Aiming to 'reduce complexity without any severe loss of information' (Meyer *et al.* 2008: 24), pre-processing reduces as much as possible the risk that the deviation index is contaminated by spelling errors or other noise. Following the

recommendations by Kobayashi *et al.* (2017), our pre-processing consists of the removal of all punctuation; the conversion of the text to lower case; the deletion of all 'stopwords', i.e., 'words that are so common in a language that their information value is almost zero' (Meyer *et al.* 2008: 25) (e.g., 'the', 'from'); and the stemming of the remaining words, which means that they were reduced to their root form (e.g., 'conformed' and 'conformation' are transformed into 'conform').

Second, because the agent has to deviate to deliver its task, we subtract from that difference the minimum deviation needed to reach an inter-institutional agreement considering that both co-legislators have to agree on a legislative act under the OLP. The minimum level of deviation that is needed to reach a trilogue compromise depends on how much the co-legislators' preferences differ. The more their preferences differ, the more agents must minimally deviate. The 'minimum level of deviation needed to reach an inter-institutional compromise' is computed by comparing the difference between the mandate of the EP and the mandate of the Council, also using DocuToads, and dividing that number by two (considering that both agents deviate equally to arrive at a compromise).

Third, we divide the result of this subtraction by the total number of words in the mandate. This operation allows us to compare the agent's deviation on early agreements of different length.² Hence, the formula of the deviation index is:

$$Da, i = \frac{|Ma - T| - |Ma - Mb|/2}{Wa}$$

D is the deviation score; a the co-legislator for which the deviation is calculated (EP or Council); i the policy-making process on a particular legislative file; M the mandate of the principal; T the trilogue compromise reached by the agent; b the other co-legislator (Council or EP, respectively); and W the number of words in the mandate. The higher the deviation score, the more the agent deviates from the principal's instructions. When the deviation score is positive, it indicates that the agent deviated more than minimally needed; when it is negative, the agent deviated less than necessary.

3.3. Data

Three kinds of documents are employed to calculate the deviation index for both agents: the mandate of the EP principal, the mandate of the Council principal, and the final trilogue compromise. First, the EP mandate is the report adopted by the responsible committee before the trilogue negotiations start, as stated in the 2012 EP Rules of Procedure (Art. 74): 'the mandate shall consist of a report adopted in committee and tabled for later consideration by Parliament'. Importantly, this report should not be confused with the

EP's first reading position. Committee reports are publicly available via the EP Legislative Observatory website. If several reports are issued on a single file, we use the first one, which reveals the original instruction of the principals.³

Second, the Council mandate is the position adopted by the Committee of the Permanent Representatives (COREPER) before the first trilogue meeting.⁴ Most Council mandates are available via either the public register of Council documents or access to documents procedures. Both for the EP and the Council mandates, we opt to measure the principal's instructions as early as possible in the legislative process because this maximizes our chances to measure 'sincere' instructions as opposed to instructions that are influenced by the trilogue process (Brandsma and Blom-Hansen 2016).⁵

Third, for the trilogue compromise, we use the formal first reading position of the EP, which is by definition the trilogue compromise in the case of early agreements. It is also publicly available via the EP Legislative Observatory website.

3.4. Validity

In order to make a real methodological contribution to the principal-agent literature, we need to test whether the deviation index is a valid measurement tool. In other words, it is important to check whether the deviation score adequately reflects the political phenomenon we are interested in – i.e., deviation by agents from the instructions by principals in the post-delegation stage – and not just random occurrences of something else. One way of assessing the validity of findings based on text-mining is to compare these findings with other data and to verify whether the text-mining results are correlated with insights on the same phenomenon based on other data sources (Kobayashi *et al.* 2017).

We compared the deviation score with the qualitative, in-depth assessment of deviation as it is reported in a few case studies on trilogue negotiations from which it is possible to deduce how loyally the trilogue negotiators represented their institutions (e.g., whether the former made considerable concessions in the trilogue negotiations or not). We found three case studies which provide some indications on whether (and to what extent) the agents deviated, and for which all the documents needed to calculate the deviation index are available.⁶ The comparison between the quantitative deviation score and the qualitative narrative suggests that our deviation index is indeed a valid and reliable proxy of the political phenomenon we want to grasp.

The analysis by de Ruiters and Neuhold (2012) of the trilogue negotiations on the Animal Testing Directive (2008/211) shows that the rapporteur made considerably more concessions in the trilogues than the Presidency – and thus that the rapporteur deviated more than the Presidency. This qualitative

observation corresponds with our quantitative findings (deviation score rapporteur = 0,50; deviation score Presidency = -0,03), indicating that the deviation score is a valid measurement for deviation as it was observed in this single case study.

A similar image of a rapporteur who deviates more than the Presidency arises from the study by Brandsma and Hoppe (2017) on the trilogue negotiations on the 4th Railway Package, which consists of multiple legislative acts. The outcome of the trilogue negotiations on two acts was much closer to the Council's preferences than to the EP's. Again, this observation, based on in-depth case studies, corresponds to the deviation scores. In the negotiations on the PSO Regulation (2013/0028), the rapporteur's deviation score is 0,62 and the Presidency's deviation score is -0,08. Similarly, in the negotiations on the Governance Directive (2013/0029), the rapporteur's deviation score is 0,55 and the Presidency's deviation score is -0,31.

Finally, in a case study on the trilogues on the Market Stability Reserve Decision (2014/0011), Delreux and Laloux (2018) reconstruct how the rapporteur and the Presidency, who both made several concessions on the initial instructions by the principals (confirmed by deviation scores of, respectively, 0,63 and 0,58), succeeded in preserving the support from the principals. Particularly, the rapporteur and the Presidency were constantly checking bilaterally with, respectively, key MEPs and pivotal member states on how far they could go (i.e., how much he could deviate) so that the principals would remain on board.

These three comparisons reveal a strong correspondence between the image that derives from in-depth case studies and findings obtained with the deviation index. They show that the index is a valid quantitative measurement of deviation by agents from the principals' instructions and that the index indeed grasps the phenomenon it intends to grasp.

4. Application: deviation by trilogue negotiators in 2012–2016

In this section, we illustrate the use of the deviation index by applying it to all 111 early agreements negotiated and adopted in first reading between December 2012 and 2016. The choice for this time period is prompted by the fact that the EP Rules of Procedure were reformed in these two months, but remained constant in the four years in between. Both the reform of 2012 and of 2016 modified the control mechanisms at the disposal of the EP principal and changed the rules about which MEPs could attend trilogues. As it is not unlikely that these reforms affected the EP agent's deviation, we opted to keep the formal rules of procedure constant in our sample. Hence, variation in deviation cannot be reduced to changes in the intra-institutional rules.

In the selection of our cases, we distinguish early agreements from 'trivial' adoption, i.e., when the early adoption results from the lack of controversy

rather than from informal negotiations (Häge and Naurin 2013). We only include policy-making processes in our analysis for which trilogues or informal negotiations are mentioned in official documents. Moreover, we exclude cases where trilogues were organized but no mandate was adopted by at least one institution (mostly on a very consensual file, such as a technical amendment of a legislative act).

The policy-making processes on the 111 early agreements in our dataset all cover 'codecision' policy fields. The distribution of early agreements between these policy fields in the period 2012–2016 is similar to the distribution in the periods 2004–2009 and 2009–2014. Taken together, approximately 40 per cent of the cases were dealt with in the Committee on Environment, Public Health and Food Safety (ENVI), the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Economic and Monetary Affairs (ECON) of the EP. Likewise, the fact that we only have a few cases originating in the Committee on Regional Development (REGI) the Committee on Budgets (BUDG), the Committee on Culture and Education (CULT), the Committee on Development (DEVE) and the Committee on Budgetary Control (CONT) is representative of the types of legislation adopted by the EU since the early 2000s. There is one exception, however: our dataset includes considerably fewer files from the area of the Legal Affairs (JURI) committee than in the past. But apart from that exception, our dataset is representative for the EU's 'normal' legislative activity covered by the OLP.

The deviation scores of both agents in these 111 cases confirm that the extent to which the trilogue negotiators deviate from the instructions of their institutions varies between different policy-making processes (see Figure 1). In 5 per cent of the cases ($N = 10$), the agent did not deviate more – sometimes even less – than minimally needed to reach a compromise

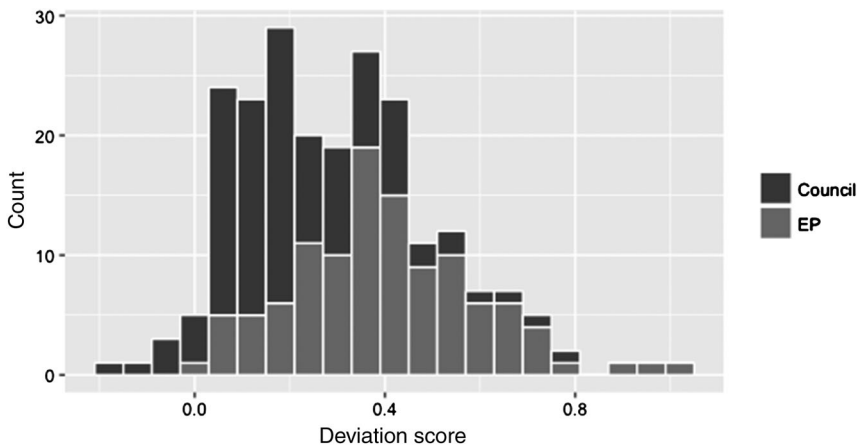


Figure 1. Distribution of deviation scores ($N = 2*111$).

(i.e., cases with a deviation score lower or equal to 0). Yet in the vast majority of the cases, the deviation score is higher than 0, the mean being 0.303. This means that agents mostly deviate more than necessary to obtain a compromise deal, and that without being sanctioned by the principals.

We now explore the data by presenting three examples of how the deviation index can be applied. The three applications, respectively, analyse differences in deviation between the EP's agent and the Council's agent; the link between the expressed support by the principals for the mandate and deviation; and the impact of agents' capabilities on deviation. Whereas the first example focuses on the difference between the two principal-agent relationships, the second one examines the effect of a feature at the principal side of the principal-agent dyad and the third example concentrates on an agent characteristic. The three applications are mostly descriptive, but can nevertheless be considered as a first explorative analysis on why the deviation scores vary between different policy-making processes.

4.1. Example 1: difference between institutions

The first application of the index examines whether there are differences in deviation between the Council and the EP. In other words, do we find evidence in the data that one agent, the Presidency or the rapporteur, deviates more than the other? There are diverging views in the literature on whether the Council's agent is likely to deviate less or more than the EP's agent. Whereas studies considering that the Council dominates legislative negotiations suggest less deviation by the Presidency than by the rapporteur (Costello and Thomson 2013), other studies argue that the EP benefits from informal negotiations, suggesting less deviation by the rapporteur (Häge and Kaeding 2007).

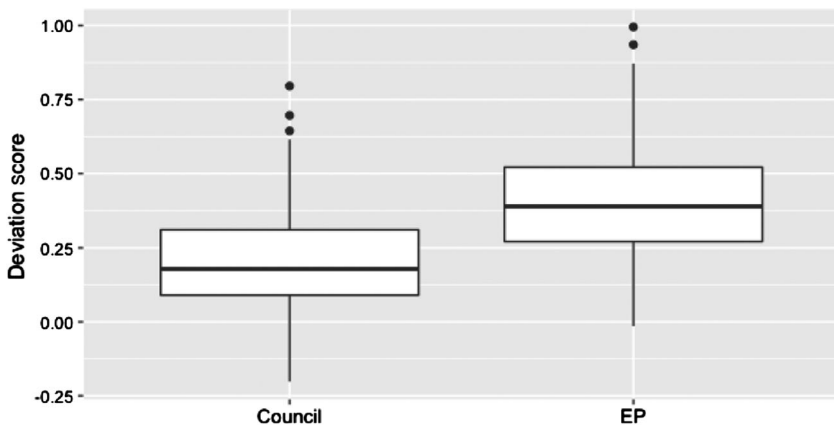


Figure 2. Deviation scores for the agents of both institutions.

The boxplots in [Figure 2](#) allow comparison of the deviation of the two agents. They show that rapporteurs deviate more than Presidencies do. More precisely, the average deviation score of the EP's agent is 0.4, which is almost twice as high as the deviation score of the Council's agent (0.21). An independent-samples t-test shows that this difference in means is significant at the 0.001 threshold.⁷ Hence, the EP's agent deviates significantly more than the Council's agent does.

That rapporteurs on average deviate more than Presidencies might be explained by two institutional features of EU legislative policy-making. First, as the Council mostly adopts its mandate after the EP, the former enjoys an information advantage when the trilogue negotiations start. The Council can take into account the EP's position when formulating the Council mandate and include more precise instructions on what the agent can and cannot accept, which makes deviation more difficult. Second, the threshold to reject the trilogue compromise in first reading is lower in the Council, where a blocking minority suffices, than in the EP, where a simple majority is needed. This makes the likelihood of ex-post sanctioning higher in the Council than in the EP (Franchino and Mariotto 2013), which diminishes the agent's ability to deviate.

Interestingly, this finding also reveals that the presence of other MEPs in the EP negotiating team during trilogues may even incite deviation, instead of preventing deviation by the rapporteur. As the major political groups are represented in the negotiation team, the rapporteur can consult on the spot to ensure that he can count on a sufficiently large majority that will not reject the trilogue compromise. This broadens the possibilities for the rapporteur to deviate from the initial mandate, whereas the Presidency does not dispose of such an 'on the spot' consultation opportunity. In other words, the presence of principals does not function as a control mechanism that reduces deviation by the agent, but rather as a consultation opportunity that increases deviation.

4.2. Example 2: expressed support by the principals

The second application shows that the index can also be used to analyse variation within the two principal-agent relationships. It examines whether the level of the principal's expressed support for the mandate affects the agent's deviation in trilogues. The expressed support by the principal for the mandate is likely to affect the negotiation behaviour of the agent in trilogues, as the latter needs to preserve a sufficiently large support within the principal to avoid ex-post rejection of the trilogue deal.

It is plausible to expect that in cases of a broad majority for the mandate within the collective principal – which means that there is a strong support by the principal for the mandate – the agent is likely to deviate more than

in cases where the expressed support for the mandate is smaller. In the latter case, it is indeed riskier for agents to deviate. Losing a coalition member might jeopardize the intra-institutional adoption of the inter-institutional deal. Moreover, in cases of low expressed support, agents can convincingly play a tied-hands strategy and refer to the precarious coalition within their principal as a reason why they cannot deviate to reconcile with their counterpart in trilogues (Delreux and Laloux 2018). Conversely, when the expressed support is broad, we expect that agents can permit themselves to lose some members of the initial coalition, which makes deviation less costly – and thus more likely.

However, these expectations are not confirmed by our empirical data. The principal’s expressed support for the mandate was measured differently in the two institutions. The percentage of votes supporting the adoption of the report is the measurement for the expressed support of the EP principal.⁸ As there is no formal vote on the COREPER mandate in the Council, we measure the principal’s support of this institution by counting the number of comments from member states that contest points of the mandate. We assume that the number of comments is inversely related to the support for the mandate among the member states. The number of comments can be retrieved in the public register of Council documents.

The scatter plots in Figure 3 show that neither the votes in the EP nor the number of comments in the Council are significantly correlated with the agent’s deviation at the 0.05 threshold (correlation for the EP: -0.13

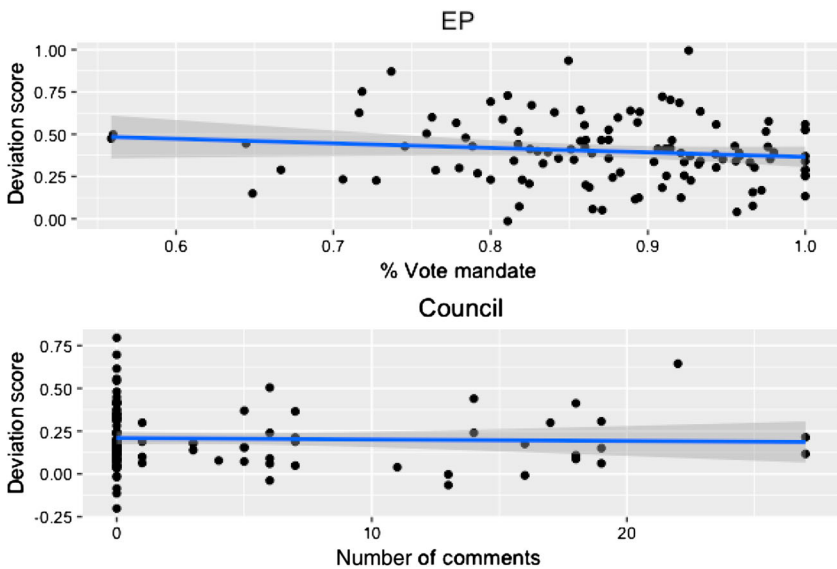


Figure 3. Effect of expressed support by principals on agent deviation.

(p -value: 0.17); for the Council: -0.03 (p -value: 0.73)). In other words, whether the agent enjoys a broad intra-institutional support from his principal or not does not significantly affect the former's deviation in the inter-institutional negotiations. Although our theoretical expectations are not confirmed here, this is an interesting finding in itself because it suggests that, in general, neither constructing narrow majorities (and applying a tied-hands strategy) nor building broad majorities (and demonstrating how strong the support for its position is) seem to be helpful for agents in the context of trilogues.

4.3. Example 3: size of the agent

Our last example examines whether the deviation scores vary with the size of the agent. As the Presidency and the rapporteur are also members of the collective principal on whose behalf they are negotiating, the extent to which they can deviate without being sanctioned by the principal is likely to be related to their capabilities, such as voting power or administrative resources, inside the principal. These capabilities depend on the size of the member state holding the Presidency and the size of the political group of the rapporteur. In other words, do trilogue negotiators from big member states or from big political groups deviate more than trilogue negotiators from smaller member states or political groups?

Figures 4 and 5 demonstrate that the deviation score does not depend on the agent's size. Rapporteurs from the Group of the European People's Party (EPP Group), the Group of the Progressive Alliance of Socialists and Democrats in the EP (S&D), the Group of the Alliance of Liberals and Democrats for Europe (ALDE) and the European Conservatives and Reformists Group (ECR) have a rather similar distribution of deviation and, even more importantly, these distributions do not differ from those of the smaller groups. Likewise, the

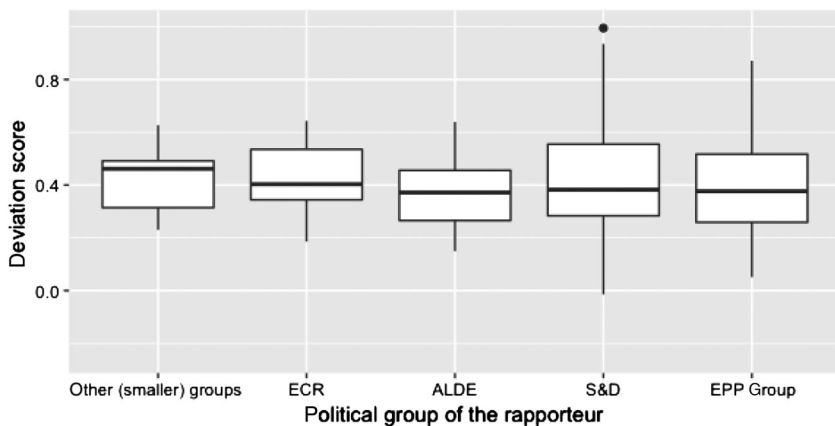


Figure 4. Deviation scores of the EP's agent per political group.

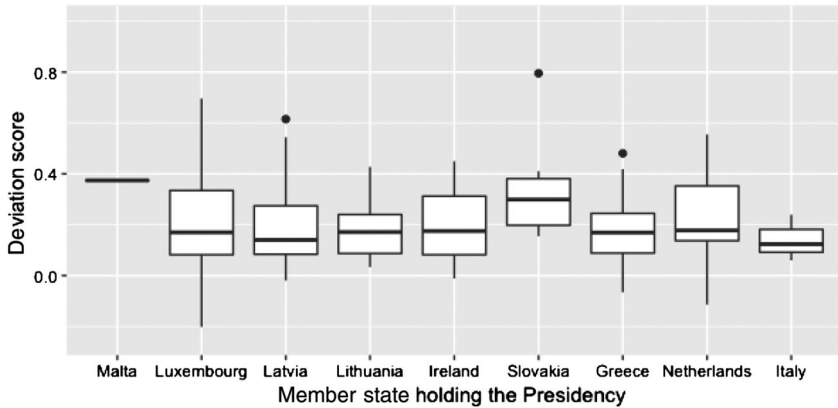


Figure 5. Deviation scores of the Council's agent per member state holding the Presidency.

deviation scores of Presidencies from smaller member states (like Malta, Luxembourg or Latvia) do not significantly differ from deviation scores of Presidencies from bigger member states (like Greece, the Netherlands or Italy). Hence, there is no evidence that big member states are less loyal agents when they hold the Presidency than small member states, or that rapporteurs from big political groups will be less representative in trilogues than rapporteurs from smaller groups.

5. Conclusion

This paper presented a new tool to measure the extent to which agents (in this case, trilogue negotiators) deviate from the instructions of their principals (in this case, the co-legislative institutions of the EU). Calculated by means of text-mining techniques, the deviation index is the result of a comparison between the mandate adopted by the principal and the final compromise negotiated by the agent, whereby the minimally required deviation to fulfil the agent's task is taken into account. As it allows to measure the deviation of the agent *vis-à-vis* the instruction given by its principal regardless of the delegation contexts (under the condition that the mandate of the principal and the result of the agent's delegated tasks are available in text format), the deviation index is likely to be applicable in large-N principal-agent analyses beyond trilogues. In that regard, the index can contribute to the development of principal-agent scholarship, where large-N studies have been scarce until now, particularly because of the lack of a standardized and comparable measurement of what the agent achieves on behalf of the principals (Adriaenssen and Delreux 2017).

Applying the index to 111 early agreement policy-making processes, we explored the deviation pattern and demonstrated how the index can be

used in future research. One of our main findings is that there is more deviation in the principal–agent relationship in the EP than in the Council. In other words, rapporteurs generally deviate more from the instructions than Presidencies do. However, both agents deviate, and they even deviate more than what is minimally required to reach an inter-institutional deal. This means that trilogue compromises are not simple ‘meet-me-in-the-middle compromises’ between the two co-legislators. Instead, trilogue negotiators enjoy discretion that goes beyond the mere execution of what the legislative institutions ask them to do. Our tentative empirical contribution to the normative debate about legitimacy and accountability in trilogue decision-making is thus that we have demonstrated that trilogue negotiators – or ‘relais actors’, or ‘agents’ – indeed use their room for manoeuvre to deviate more from what the entire co-legislators want than is strictly necessary.

We see three ways in which the deviation index and the resulting deviation scores can be used in subsequent analyses. First, the deviation patterns could be further studied and explained. Treating the deviation score as the dependent variable in a large-N design will allow the identification of the factors that explain a particular level of deviation. As trilogues are now conducted for the vast majority of legislative files, the study of the relationship between principals and agents in trilogues is crucial to fully understand EU policy-making. In this perspective, the second and third empirical application we presented in section 4 revealed that deviation is not affected by the support of the principals nor by the size of the agent, but variation in deviation should be caused by other factors. The deviation index offers the required measurement tool to conceive a large-N analysis aiming to explain deviation.

Second, the deviation score can also be used as an – until now understudied – independent variable to explain another phenomenon. For instance, it opens a venue in compliance research to test whether a high deviation score of the Presidency – i.e., the Presidency agreeing upon a trilogue deal that to a large extent differs from what the member states initially preferred – makes transposition problems in the implementation stage more likely.

Third, the index can be used as a tool to identify and select cases with a high or low level of deviation, which are subsequently analysed as in-depth case studies. This way, the index has a strong potential to serve as the necessary bridge between the quantitative and qualitative part of a mixed-method research design on the relationship between trilogue negotiators and their institutions.

Notes

1. If the legislative institutions wish to amend the trilogue deal, the OLP continues to second reading and it no longer results in an early agreement.
2. We divide by the total number of words in the mandate because the entire mandate has to be considered as the principal’s preference and not only the

amendments to the Commission proposal. If a principal does not amend a sentence in the proposal, it means that this sentence corresponds to its preference. Consequently, if the agent accepts a modification on this sentence in the trilogue negotiations, the agent deviates from the principal's preferences.

3. In two specific scenarios, we use other kinds of documents for the EP mandate. First, when a new report is adopted following European elections, we use that new report only when no trilogue agreement was reached before. This new report more adequately measures the instructions of the principals to whom the agent has to defend the final trilogue deal. Second, when the EP plenary is asked to adopt a position before the first trilogue, we use the report adopted by the plenary instead of the committee report.
4. To identify the COREPER position adopted before the first trilogue meeting, we consult various Council documents, such as the COREPER analysis of the final compromise, where the reference or date of adoption of the mandate for the first trilogue is mentioned. In the few cases where there is no reference to a COREPER position, we use the general approach adopted by the Council before the first trilogue.
5. The mandates of the EP and the Council either contain only a list of amendments to the Commission proposal, or they present the amendments *and* the non-modified part of the Commission proposal. When only the amendments are presented in the mandate, we manually adjust the Commission proposal by adding the proposed amendments in order to construct texts with the same format and structure. This is a necessary operation to adequately compare the mandates mutually, as well as the mandates with the trilogue deal.
6. Comparing deviation scores between different cases is not possible with this method, as the assessments of deviation that we can deduce from qualitative case studies are too dissimilar. As mentioned before, such unsystematic – and thus incomparable – assessment of deviation is the main weakness of studying post-delegation principal–agent relationships by means of qualitative case studies. It is precisely this issue that the deviation index aims to address.
7. This is confirmed by a non-parametric Wilcoxon test.
8. In the limited number of cases ($N = 9$) where the EP plenary also voted on the mandate, we used the percentage of votes in plenary.

Acknowledgements

We would like to thank the participants of the panel, 'The Politics of Trilogue Negotiations', at the 2017 EUSA Conference, the editor and the two anonymous referees for their helpful comments and encouragements.

Disclosure statement

No potential conflict of interest was reported by the authors.

Notes on contributors

Thomas Laloux is a PhD candidate at the Institut de sciences politiques Louvain-Europe (ISPOLE) of the University of Louvain (Louvain-la-Neuve), Belgium.

Tom Delreux is professor of EU politics at the Institut de sciences politiques Louvain-Europe (ISPOLE) of the University of Louvain (Louvain-la-Neuve), Belgium.

References

- Adriaensen, J. and Delreux, T. (2017) 'Conclusion. Opportunities and challenges for the principal-agent model in studying the European Union', in T. Delreux and J. Adriaensen (eds), *The Principal Agent Model and the European Union*, London: Palgrave MacMillan, pp. 283–99.
- Brandsma, G.J. (2015) 'Co-decision after Lisbon: The politics of informal trilogues in European Union lawmaking', *European Union Politics* 16(2): 300–19.
- Brandsma, G.J. and Blom-Hansen, J. (2016) 'Controlling delegated powers in the post-Lisbon European Union', *Journal of European Public Policy* 23(4): 531–49.
- Brandsma, G.J. and Hoppe, A. (2017) 'Trained for compromise? A reappraisal of the relais actor thesis', Paper prepared for the ECPR General Conference, Oslo.
- Costello, R. and Thomson, R. (2010) 'The policy impact of leadership in committees: rapporteurs' influence on the European Parliament's opinions', *European Union Politics* 11(2): 219–40.
- Costello, R. and Thomson, R. (2013) 'The distribution of power among EU institutions: who wins under codecision and why?', *Journal of European Public Policy* 20(7): 1025–39.
- Cross, J.P. and Hermansson, H. (2017) 'Legislative amendments and informal politics in the European Union: A text reuse approach', *European Union Politics* 18(4): 581–602. doi:10.1177/1465116517717071
- de Ruiter, R. and Neuhold, C. (2012) 'Why is fast track the Way to Go? Justifications for early agreement in the co-decision procedure and their effects', *European Law Journal* 18(4): 536–54.
- Delreux, T. and Adriaensen, J. (2017) 'Introduction', in T. Delreux and J. Adriaensen (eds), *The Principal-Agent Model and the European Union*, London: Palgrave MacMillan, pp. 1–34.
- Delreux, T. and Laloux, T. (2018) 'Concluding early agreements in the EU: a double principal-agent analysis of trilogue negotiations', *Journal of Common Market Studies*, 56(2): 300–17.
- Epstein, D. and O'Halloran, S. (1999) *Delegating Powers. A Transaction Cost Politics Approach to Policy Making Under Separate Powers*, New York: Cambridge University Press.
- 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): 1184–212.
- Franchino, F. (2007) *The Powers of the Union: Delegation in the EU*, Cambridge: Cambridge University Press.
- Franchino, F. and Mariotto, C. (2013) 'Explaining negotiations in the conciliation committee', *European Union Politics* 14(3): 345–65.
- Häge, F. and Kaeding, M. (2007) 'Reconsidering the European parliament's legislative influence: formal vs informal procedures', *Journal of European Integration* 29(3): 341–61.
- Häge, F.M. and Naurin, D. (2013) 'The effect of codecision on council decision-making: informalization, politicization and power', *Journal of European Public Policy* 20(7): 953–71.

- Hawkins, D.G., Lake, D.A., Nielson, D.L. and Tierney, M.J. (2006) 'Delegation under anarchy: states, international organizations and principal agent theory', in D.G. Hawkins, D.A. Lake, D.L. Nielson, and M.J. Tierney (eds), *Delegation and Agency in International Organizations*, New-York: Cambridge University Press, pp. 4–31.
- Hermansson, H. and Cross, J.P. (2016) 'Tracking amendments to legislation and other political texts with a novel minimum-edit-distance algorithm: DocuToads', *arXiv Preprint arXiv:1608.06459*.
- Jensen, M.D. and Martinsen, D. (2015) 'Out of time? National parliaments and early decision-making in the European Union', *Government and Opposition* 50(02): 240–70.
- Judge, D. and Earnshaw, D. (2011) "'Relais actors" and co-decision first reading agreements in the European Parliament: the case of the advanced therapies regulation', *Journal of European Public Policy* 18(1): 53–71.
- Kobayashi, V.B., Mol, S.T., Berkers, H.A., Kismihók, G. and Den Hartog, D.N. (2017) 'Text mining in organizational research', *Organizational Research Methods*, doi:10.1177/1094428117722619
- König, T., Lindberg, B., Lechner, S. and Pohlmeier, W. (2007) 'Bicameral conflict resolution in the European Union: an empirical analysis of conciliation committee bargains', *British Journal of Political Science* 37(2): 281.
- Lord, C. (2013), 'The democratic legitimacy of codecision', *Journal of European Public Policy* 20(7): 1056–73.
- Meyer, D., Hornik, K. and Feinerer, I. (2008) 'Text mining infrastructure in R', *Journal of Statistical Software* 25(5): 1–54.
- Rasmussen, A. (2008) 'The EU conciliation committee: one or several principals?', *European Union Politics* 9(1): 87–113.
- Rasmussen, A. (2011) 'Early conclusion in bicameral bargaining: evidence from the co-decision legislative procedure of the European Union', *European Union Politics* 12(1): 41–64.
- Rasmussen, A. and Reh, C. (2013) 'The consequences of concluding codecision early: trilogues and intra-institutional bargaining success', *Journal of European Public Policy* 20(7): 1006–24.
- Reh, C. (2014) 'Is informal politics undemocratic? Trilogues, early agreements and the selection model of representation', *Journal of European Public Policy* 21(6): 822–41.
- 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): 1112–42.
- Roederer-Rynning, C. and Greenwood, J. (2015) 'The culture of trilogues', *Journal of European Public Policy* 22(8): 1148–65.
- Shapiro, S.P. (2005) 'Agency theory', *Annual Review of Sociology* 31(1): 263–84.