Reconsidering the European Parliament's Legislative Power:
Formal vs. Informal Procedures

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Abstract

More and more legislative decisions are reached in early stages of the codecision procedure through informal negotiations among representatives of the EU institutions. This study argues that the European Parliament has an advantage in such negotiations relative to the Council due to the latter's limited organisational resources to handle the increased legislative workload under the codecision procedure. The main implication of this theoretical argument is that the Parliament's impact on the content of legislation should be higher when informal negotiations are conducted rather than when agreement is reached at the end of the procedure in conciliation. To examine this claim, we conduct a quantitative comparative study of the success of the Parliament's amendments in two legislative decision-making processes in the field of Transport. The results reveal that the EP's influence during codecision is indeed larger in the case of an early agreement.

Keywords

Codecision, Council of Ministers, European Parliament, informal institutions, institutional choice, legislative decision-making.

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I. Introduction

The legitimacy of democratic political systems can be assessed through a number of criteria. As discussed by Holzhacker and Thomassen (2007) in the introduction to this special issue, liberal democratic theory includes a number of standards. Amongst the most important classic, liberal democratic principles are the representativeness and accountability of political decision-makers. These norms refer to the input side of the political system. However, part of the legitimacy of a political system derives also from its output (Scharpf, 1999). Indeed, the efficiency of policy production and the effectiveness of policies resulting from decision-making are important factors that are often considered in evaluating the legitimacy of political decisions. Although in principle not mutually exclusive, many authors argue that, in practice, there are often trade-offs involved between output- and input legitimacy (see e.g. Héritier, 2003; Rhinard, 2002; Shackleton & Raunio, 2003). As the European Union (EU) has grown into a full-blown political system (Hix, 2005), it also faces this basic dilemma in its institutional design of day-to-day decision-making.

This study focuses on one specific instance of this general trade-off: the organization of the interaction-process of the European Parliament (EP) and the Council of Ministers in legislative decision-making under the codecision procedure. The codecision procedure grants the EP equal legislative rights next to the Council. A main rationale of member states for granting the EP such powers was to increase the legitimacy of EU decision-making by increasing its representativeness, particularly in

policy areas where qualified majority voting replaced the unanimity rule in the Council and hesitant governments could now be overruled. In terms of the distinction made above, the goal was to enhance the input legitimacy of the EU by giving the only institution whose members are directly elected more powers to shape EU policies. But besides empowering the EP, the codecision procedure also introduced a somewhat cumbersome formal decision-making process, consisting of three readings by both the EP and the Council. The result was a considerable prolongation of the legislative process (Golub, 1999). To counter-act these tendencies, the three main EU institutions started to engage in informal negotiations before and between their formal readings (Farrell & Héritier, 2003; Shackleton & Raunio, 2003). While these so-called trilogue negotiations increase EU output legitimacy in terms of decision-making efficiency, the opaqueness of these processes and the disproportional influence of the few actors that are directly involved in the negotiations endanger the original goal of fostering the input legitimacy of the EU.

While decision-making in the Council has always been a rather secretive process, trilogue negotiations now also introduce an element of obscurity into EP proceedings (Shackleton & Raunio, 2003). Thus, it seems particularly interesting to investigate the consequences of engaging in trilogue negotiations for the legislative influence of the EP. Are there incentives for the EP in terms of policy gains to engage in such negotiations that might outweigh the losses occurred in terms of input legitimacy? It is argued that the Parliament, particularly in the form of the actors directly concerned with a certain dossier, such as the rapporteur and the Committee chairman, has a short-term interest to engage in informal negotiations to reach an early agreement since it is better able to extract policy concessions from the Council

in this stage than later on in the Conciliation Committee. This is so not because of some feature inherent in the informal institution of trilogue negotiations itself. Because of its very limited resources in terms of personnel and time (Farrell & Héritier, 2003; Shackleton & Raunio, 2003), the Council is simply keener to avoid conciliation. Although an early agreement is beneficial to both institutions in terms of efficiency, the Council has more incentives to come to an early agreement than the Parliament. Unless the salience of an issue for the Council outweighs its anticipated costs of engaging in conciliation, it will agree to participate in informal trilogues and make policy concessions to avoid conciliation. In contrast, the Parliament has no special incentive to favour trilogues over conciliation. Regarding the outcomes of trilogue negotiations, more influence of the Parliament is expected than under conciliation.

This claim and related implications of the theory are examined through a controlled comparison of the outcome of two legislative decision-making processes. The influence of the Parliament is compared across two legislative proposals in the field of transport, which were matched on important characteristics to keep alternative explanatory factors constant. The first case concerns a directive on minimum conditions for the implementation of social legislation relating to road transport activities, which was only agreed in the conciliation committee. The second case regards the directive on driving licences, which was formally adopted by the Council in second reading after an informal agreement with the Parliament had been reached. As in previous research, amendment adoption rates are used to measure the EP's influence, but also some novel indicators are employed to increase the leverage of the theory test. In general, the empirical evidence of the case studies is consistent with the

theoretical argument. The claim that Parliament's influence on legislative outcomes is larger when agreement has been reached early in the procedure through informal negotiations is broadly corroborated. However, it is also maintained that informal trilogue negotiations are not the causal factor enhancing the Parliament's influence, since the decision to conduct such informal negotiations in the first place is not independent of the preferences, the salience attached to an issue, and the organizational resources of the actors involved.

The remainder of the paper is structured as follows: First, the development and the relevance of the codecision procedure and the informal practices related to it are discussed in more detail. Then, a brief overview of existing theories that make claims regarding the influence of the different actors involved in the procedure is given. This is followed by a description of the theory to be tested in the remainder of the study. In the third part, the research design is discussed. Special attention is given to the case selection, the measurement and coding of Parliament's influence, as well as the derivation of testable hypotheses. The results of the analysis are presented in section four. Finally, the paper concludes with a brief discussion of the findings in terms of the legitimacy of the EU and some suggestions for future research on the topic.

II. The Codecision Procedure and Informal Negotiations

The codecision procedure was first introduced in the Treaty of Maastricht and consists of three reading stages. In the first two readings, the Council and the EP consider each other's amendments to the Commission proposal. If no agreement is reached in these stages, the issue is referred to a Conciliation committee composed of representatives of the two institutions. It is then the task of the conciliation committee to agree on a

‘joint text’. Subsequently, this joint text has to be endorsed by both institutions in their third readings. The codecision procedure was significantly changed through the Amsterdam treaty. According to the Maastricht provisions, the Council could reintroduce its common position in the third reading when no agreement had been reached on a joint text in the conciliation committee. The EP could then only accept or reject but not amend the reintroduced common position. In the Amsterdam treaty, it was stipulated that the law would fail if no agreement could be reached in the conciliation committee. Thus, under the Maastricht provisions, the Council could make a take-it-or-leave-it proposal to the EP in the last stage of the procedure when conciliation failed. In contrast, according to the Amsterdam rules, the EP has equal formal powers to influence the decision-making outcome.

Since its introduction in 1993, the codecision procedure has steadily grown in relevance. With the entry into force of the Amsterdam Treaty in May 1999, the procedure was not only changed to guarantee more EP influence, but also its applicability was significantly widened. This is reflected in the subsequent increase of the number of laws adopted according to this procedure. A total of 403 legislative acts were enacted under the codecision procedure between 1 May 1999 and 30 April 2004 (European Parliament 2005, p. 10). The total number of codecision files adopted is two and a half times higher than the number of proposals concluded through codecision during the previous five-year period from 1994 to 1999 under the Maastricht provisions. The annual average number of codecision reports rose from 33 under the Maastricht Treaty to 80 under Amsterdam.

In response to practical necessities and the growing legislative workload under codecision, the formal decision-making procedure was complemented with informal

practices that soon became institutionalized. Informal trilogues, consisting of representatives of the three main institutions, were originally used after the second reading stage to prepare the Conciliation Committee meetings (Shackleton, 2000). The Council is usually represented by the deputy permanent representative and the working group chairman of the state holding the rotating Council presidency. The Parliament's delegation is made up of the chairman of the relevant committee, rapporteur and possibly shadow-rapporteurs from other political groups. Also, a director or director-general participates as a representative of the Commission. Given the benefits of these meetings in terms of faster and more effective decision-making, they soon became established practice for the interaction of the Council and the Parliament under codecision (Farrell & Héritier, 2003). A new provision in the Amsterdam treaty, allowing for early agreements already in the first reading, further spurred the extension of these arrangements. In general, it was the Council that sought to extend the trilogue negotiations 'backwards' to the second and first reading, in order to keep the increased workload manageable (Farrell & Héritier, 2003).

--- Table 1 here ---

Table 1 clearly shows the accompanying increase in early agreements over time. Under the Maastricht provisions, 40% of the files still required conciliation. The overall figure for the 1999 to 2004 period has gone down to 22%. Indeed, 50% of the acts were passed at second and 28% even at first reading. Overall, only 22% of all laws under Amsterdam rules were adopted following conciliation. Whereas the proportion of conciliation meetings has dropped steadily, early agreements have become more frequent and important, highlighting the relevance of informal rules and procedures next to formal institutions.

III. Theoretical Perspectives on Legislative Decision-Making under Codecision

Since the introduction of the codecision procedure in the Maastricht treaty, there is a burgeoning field of research investigating the role of the EP in EU policy-making. A detailed review of this literature is beyond the scope of this paper and has been conducted extensively elsewhere (Hörl, Warntjen, & Wonka, 2005; Kasak, 2004; Rittberger, 2000). Instead, the literature is summarized according to the type of causal factors that are deemed most relevant in accounting for the power of different actors under codecision. Two approaches are identified: first, the 'legalistic' approach stresses the constitutional rules as codified in the treaties as determining actors' influence. In contrast, the 'negotiation' approach emphasizes the importance of actual practices that developed along the formal treaty provisions.

The formal empowerment of the EP in EU legislative politics has created a rich formal-theoretic literature on its effect on policy outcomes and the institutional balance of power between the Commission, the Council and the EP (e.g. Crombez, 1996; Crombez, 1997; for a review, see Dowding, 2000; Steunenberg, 1994; George Tsebelis, 1994; George Tsebelis & Garrett, 2000). Although considerable differences between these works exist (see e.g. Crombez, Steunenberg, & Corbett, 2000; Garrett, Tsebelis, & Corbett, 2001), a common feature is that they take the constitutional provisions of the treaties as their starting point for modelling the behaviour of different actors. The legalistic approach emphasizes the importance of formal institutions such as the right of initiative, the right to amend or veto proposals, and the voting rule applicable to make decision within the Council and the Parliament. Furthermore, the formal decision-making procedures such as codecision are supposed to reflect the actual sequence of decision-making. In sum, this approach stresses

formal rules and procedures as affecting the influence of different actors on policy outcomes in the EU. In contrast to the second approach, it largely ignores rather informal behavioural practices. However, it is questionable whether a focus on constitutional rules and procedures alone can form a solid basis for explaining and understanding current decision-making under the codecision procedure.

Particularly practitioners such as Shackleton (2000; Shackleton & Raunio, 2003) and Corbett (Crombez *et al.*, 2000; Garrett *et al.*, 2001) have long maintained that the codecision procedure consists of more than just the rules implied by the treaty. Recently, also Farrell and Héritier (2003) have argued that the introduction of the codecision procedure has given rise to a "plethora of informal institutions", and that these, in turn, have affected subsequent treaty negotiations. All of these studies argue that informal negotiations have become an important mode of decision-making under codecision. In another related work, Farrell and Héritier (2004) study the changes in the relationship between the Council and the EP under codecision and its implications for intraorganizational processes. In particular, they argue that the move from formal sequential to informal simultaneous interaction between the EP and the Council has empowered so-called "relais actors" (Farrell & Héritier, 2004), such as the rapporteurs of the EP and the presidency of the Council, mainly at the expense of actors that do not participate directly in informal negotiations.

To sum up, we argued that research on the EP's influence in EU policy-making under the co-decision procedure can be grouped into two broad classes: work stressing the constitutionally prescribed decision-making process and work stressing informal bargaining processes. But neither the legalistic nor the negotiation perspective discusses the conditions under which one or the other mode of decision-

making prevails. Since actual decision-making follows very different patterns, this is a clear omission in the literature. Sometimes the decision-making process follows neatly the sequence outlined in the treaty, while at other times an act is already adopted in first or second reading after an agreement has been reached in informal trilogue negotiations. As the statistics above show, none of these trajectories can be neglected. What is needed then is not only a theory of decision-making that has implications for the influence of different actors under one or the other mode of decision-making, but also a theory of institutional choice that elaborates on the conditions under which actors will agree to interact in one or the other mode. We describe a simple version of such a model in the next section.

IV. Endogenous Institutional Choice and its Consequences

The basic building blocks of the model are actors that make conscious and strategic choices about the precise rules governing their interaction, within the constraints set by higher-level rules (see also Jupille, 2004). The relevant actors are the EP, the Commission and the Council. For the purpose of this study, they are treated as unitary actors[1]. Corresponding to legal reality, it is assumed that the default rules are the legislative procedures laid out in the treaties. If no agreement on the application of other rules can be reached, the constitutional procedures are the 'fall-back' rules. However, the three collective actors can effectively supplement constitutional procedures through other rules set up by mutual consent and these informal rules can fundamentally change the nature of the decision-making process.

Political actors are assumed to be primarily concerned with realizing their most preferred policy outcome. However, they also have a tight schedule and

therefore have to prioritize. In their decision on whether or not to engage in informal negotiations, each collective actor compares the expected outcome of the decision-making process following the codecision procedure against the expected outcome of the trilogue negotiations. In line with previous research (Crombez, 2000; Tsebelis & Garrett, 2000), it is assumed that the conciliation committee is the crucial stage during the codecision procedure. In the conciliation committee, Parliament and Council determine the final outcome of the proposal, each institution having the same prerogatives and powers. As a result, a compromise outcome exactly in the middle between the most preferred outcomes of the actors can be expected. In an environment of perfect information, where the actors know each other's preferences with certainty, the Commission would start the procedure by making a proposal that already reflects this outcome, the Parliament and the Council would see no need for changes, and the proposal would be adopted by the Council without amendments in the first reading. If the preferences of actors are not commonly known, however, the haggling might last until the last stage of the procedure, the conciliation committee.

At each stage of the procedure, the actors then ask themselves whether the expected outcome of the conciliation committee is still better than the expected outcome of trilogue negotiations. Trilogue negotiations can be characterized similar to bargaining in the conciliation committee. The Council and Parliament have equal powers: both can make offers and counter-offers and both have to agree to the final result. One distinction to conciliation committee negotiations is that the Commission also has to agree to the final outcome; otherwise it can withdraw the proposal. In practice, this is most likely an irrelevant feature of trilogue negotiations, since the Commission usually favours some change in policy to none at all, otherwise it would

not introduce a proposal in the first place. Thus, the position of the Commission is practically irrelevant in trilogue negotiations. A more crucial characteristic of trilogue negotiations is that interactions among the institutions continue according to the codecision procedure when negotiations break down. Thus, the proposal does not fail with the failure of negotiations, but continues its progress through the formal procedure until renewed negotiations are started in the conciliation committee.

Although the Parliament and the Council are officially equal partners in trilogue negotiations, it is argued that the 'de facto' bargaining power of an organization depends crucially on its willingness to prolong the decision-making process and, particularly, to engage into conciliation committee negotiations. The less 'afraid' a collective actor is of the threat point constituted by the conciliation committee negotiations and the associated policy outcome, the more concessions can it extract from its bargaining partner. With regard to the European Parliament and the Council, the latter is assumed to be more eager to avoid conciliation than the former. The resources in terms of personnel and time on the side of the Council are much more restrictive than on the Parliament's side. The Council is represented in conciliation mainly by the deputy ambassadors of the Committee of Permanent Representatives (Bostock, 2002), which are at the same time responsible for overseeing and coordinating the work of dozens of working groups and preparing the minister meetings in six policy areas covering the bulk of Community legislation. Given the limited resources in terms of time and personnel, the Council cannot afford to pursue all files through the whole procedure, but has to restrict its attention to issues that it considers most important. In contrast, the Parliament's work is divided among its 20 standing committees, each with a larger number of members and its own

supporting staff. Of course, this does not mean that the Parliament is always indifferent between an early agreement and a conciliation agreement, only that it is generally more patient than the Council in this respect and therefore has a bargaining advantage.

To summarize, it is argued that neither a focus on constitutional rules nor on informal conventions produces a satisfying explanation of legislative decision-making under the codecision procedure. Instead, a theory was proposed that incorporates both features into a common framework. In this theory, actors decide strategically about whether or not to engage in informal trilogue negotiations. They weigh the benefits of an 'early agreement' against the outcome of conciliation negotiations. While all actors value policy as such, they also incur opportunity costs when having to hold conciliation talks. The opportunity costs of conciliation are higher for the Council than for the Parliament, equipping the latter with a bargaining advantage in trilogues. In effect, the Parliament's willingness to come to an early agreement is 'bought' with policy concessions by the Council. It is this last implication of the theory that is tested in the current paper: other things equal, the legislative influence of the Parliament should be higher if agreement is reached by trilogue than if it is reached by conciliation negotiations.

V. Research Design

To test this claim empirically, a comparative case study was conducted according to the most similar systems design. The cases were selected in such a way as to approximate an experimental study. The aim was to select cases that are identical in as many potentially influential characteristics as possible, except for the explanatory

factor of interest. Any differences in the outcome variable that corresponds to the variation of the explanatory factor among these cases can then be attributed to the explanatory factor.

Case Selection

As a result of this approach, two legislative proposals in the field of Transport were selected for the analysis: one directive relating to the implementation of legislation on driving time limits for road transport and another directive effectively establishing a Europe-wide driving license[2]. They match with regard to a multitude of characteristics. Firstly, it took a relatively long period of time for both dossiers to be adopted and the Parliament proposed a relatively large number of amendments to both proposals, pointing to an equally high level of preference divergence among actors. Secondly and more importantly, the proposals relate to the same policy subfield and are discussed during almost the same time period. The proposals for the driving licences directive and the driving time implementation directive were both adopted by the Commission on 21 October 2003. Agreement on the former was officially reached in the third reading on 2 February 2006 and on the latter in the second reading on 27 March 2006. Both dossiers deal with topics of land transport.

Overall, the correspondence in time and subject means that the directives were discussed while the same people were in power in the Council and the Parliament, respectively. In Parliament, the same committee was concerned with the acts, and when the composition of the plenary and the committee changed in 2004, it did so in both cases. Similarly, the acts were discussed in the Council by the same working party, the same Coreper formation, and the same ministers, even when national

governments changed during the time period under study. Thus, the design controls for a host of alternative explanations for varying EP influence which stress the importance of ideological distance between the institutions, be it in terms of support for regulatory activity (left-right) or for European integration (pro-contra supranationalism). Indeed, on a macro-level, when considering the EU political space as structured by one fundamental conflict dimensions both within and between institutions and the EP and the Council as unitary actors represented by their pivotal voters, the current design allows in principle for sound inferences about the effect of informal institutions on the relative influence of actors.

Parliament's Influence and its Measurement

But of course, the practical problem of how to measure an actor's influence remains. First of all, it is necessary to circumscribe the concept to be measured more closely. The EP's overall influence on European integration is not of interest here. Nor is the EP's overall influence on the quantity and content of EU legislation. In line with the focus on the effects of the choice of institutional arrangements, this study focuses on the Parliament's impact on the content of a proposal during and through the Codecision procedure. Note also that the intention of this study is not to produce conclusions about the EP's impact in comparison to the other collective EU actors, only about the EP's relative impact under different institutional rules. Therefore, the main dependent variable for the analysis is broadly defined as the change brought about in the content of a proposal by intentional activities of the EP after the codecision procedure has been initiated by the Commission. The procedure starts with the transmission of a proposal by the Commission to the other institutions and usually

ends with the publication of the adopted act in the EU's official journal. Any changes in the text of the proposal that occurred during the procedure and can be attributed to the preferences and behaviour of the Parliament are considered to be manifestations of its impact on legislation.

In line with previous research on the EP's influence (Kasak, 2004; Kreppel, 1999, 2002; Tsebelis, Jensen, Kalandrakis & Kreppel, 2001; Tsebelis & Kalandrakis, 1999), the adoption rate of EP amendments is used to measure this variable. Under the assumption that the Parliament's public demands for changes in the proposal reflect its sincere policy preferences, the proportion of amendments adopted to the number of amendments proposed is a relatively unambiguous measure of EP influence. Of course, it is questionable whether all amendments are of equal importance. An obvious difference exists between those amendments that propose changes to the recitals and those amendments that refer to actual articles of the legal act. In contrast to articles, recitals are not part of the legally binding text of an act, and it is straightforward to draw a distinction between these two types of amendments. But in the absence of a clear definition of what constitutes an important provision and a method to identify these provisions a priori, the second-best solution for the remaining amendments is to treat them all as being of equal importance[3].

Data Collection and Coding

The data for the analysis was collected from documents released by the EU institutions. The fate of all amendments to the Commission proposal suggested by Parliament was observed throughout the decision-making process and the degree of adoption of amendments coded according to a five-point scale ranging from

'adopted', 'largely adopted', 'partially adopted', and 'modified' to 'adopted'[4]. In the case of the drivers' licence directive, the common position of the Council was accepted by Parliament without amendments in the second reading. Hence, it was sufficient to compare the text of the common position with the EP amendments and to make an assessment in how far the amendments were incorporated into the Council's text.

In contrast, the proposal for the driving time implementation directive went through all three official stages of the codecision procedure, which meant that the Parliament reintroduced old or made new amendments to the Council's common position. In this case, the coding of the EP's influence followed a three-step procedure. First, as for the drivers' licence directive, it was examined to what degree the Council's common position included Parliament's first reading amendments. Then, a similar comparison was made between the Parliament's second reading amendments and the final legislative act. Finally, taking into account in how far the second reading amendment was a reintroduced or a new one, an overall score of amendment acceptance was derived from the amendment acceptance scores for the first and second reading. While reintroduced amendments were not counted towards the denominator of the influence measure, newly drafted amendments were taken as additional independent observations[5].

Note that this last step in the coding rule differs from practice in previous empirical work on amendment success which takes second reading amendments as independent observations no matter whether they were reintroduced old amendments or newly drafted ones. Since we are not primarily interested in the influence of the EP in a certain stage of the codecision procedure, but rather in the EP's influence during

the procedure as a whole, the coding scheme proposed here is more appropriate. For example, the nonsensical situation is avoided that one and the same amendment is counted twice and once coded as ‘not adopted’ (in the Council’s common position) and once as ‘adopted’ (in the final legal act). Considering the legislative process as a whole, the rejection by the Council of first reading amendments does not matter when the same amendments are subsequently reintroduced by Parliament in its second reading. In this situation, only the degree of adoption of the last amendment is relevant. Similar reasoning applies to situations where amendments were ‘largely’ or ‘partially’ incorporated into the common position. If the original amendment was completely reintroduced in the second reading, the EP had an influence on the final policy, even if the second reading amendment was formally rejected by the Council and not incorporated into the final legal text. These examples make clear that amendments have to be traced through the complete legislative process. In identifying Parliament’s impact, the whole history of an amendment has to be taken into account.

Hypotheses

Given the theoretical discussion, the available data and the operationalization of the main variables, several hypotheses can be tested. As mentioned above, the main empirical implication of the theory is that the EP’s influence should be higher in the case of early agreements than in the case where the interaction process followed the formal rules more closely. Given the operationalization of the EP’s influence and the case selection, the first empirically testable hypothesis can then be stated:

> *H1a: The rate of EP amendments adopted is higher in the case of the drivers’ license directive than in the case of the driving time implementation directive.*

However, not only the overall rate of adoption should be higher, the differences across the two cases should also increase with a higher degree of adoption. A larger proportion of amendments should be totally accepted during trilogues than during conciliation negotiations. This reflects the assumption that 'partially' or 'largely adopted' amendments are the result of difficult compromise solutions which should be more common under conciliation.

> *H1b: The difference between the two cases in the rate of EP amendments adopted is larger for higher categories of the degree of adoption scale.*

Furthermore, assuming that concessions on recitals are often made to reach a compromise where concessions on the substance of the legal text are not possible for an actor, a prediction on the amendment success can also be derived for the different types of amendments. In such a situation, the adoption ratio of recitals relative to articles should be lower in conciliation than in trilogue negotiations:

> *H1c: The proportion of recitals among the amendments adopted is lower in the case of the drivers' licence directive than in the case of the driving time implementation directive.*

While these three hypotheses concern the expectations with regard to the content of the final agreement, which is mostly a result of the behaviour of the Council towards Parliament, there are also several implications with regard to the Commission's behaviour. In line with previous research, the rates of amendments accepted by the Commission can be examined to test these predictions. It was argued that the Commission has hardly any influence on the outcomes of trilogue negotiations, but even less so on the outcomes of conciliation committee bargaining. Thus, like the Council, the Commission has an incentive to avoid conciliation and will therefore be

more lenient towards Parliament's demands in the case of trilogue negotiations. The next hypothesis states this claim more precisely:

> *H2a: The rate of EP amendments accepted by the Commission is higher in the case of the drivers' license directive than in the case of the driving time implementation directive.*

Another implication of the assumption that the Commission is eager to avoid conciliation is that the proportion of amendments accepted by the Commission should increase the closer the codecision procedure approaches the conciliation committee stage. Therefore, more amendments should be supported by the Commission in second reading than in first reading:

> *H2b: In the case of the driving time implementation directive, the rate of EP amendments accepted by the Commission is higher after the second than after the first reading.*

Since the Commission is supposed to be less obstructive during informal trilogues to avoid conciliation, another observable implication regards the level of conflict between the Commission and the Council as measured by the number of EP amendments fully or partially adopted by the Council and accepted to a lesser degree by the Commission. It is predicted that, to facilitate the bargaining process, the Commission will refrain more consistently from making stronger claims than the Council during informal negotiations.

> *H3a: There is less conflict between the Council and the Commission in the case of the drivers' license directive than in the case of the driving time implementation directive.*

Finally, to induce the other actors to reach an early agreement, the Commission is expected to be more conciliatory towards EP's second reading amendments than to its first reading amendments.

> *H3b: In the case of the driving time implementation directive, there will be less conflict between the Council and the Commission after the second than after the first reading.*

Having identified a number of empirically testable implications of the theory outlined earlier, the next section presents the analysis and discusses the results in the light of these expectations.

IV. The Impact of the European Parliament on Legislation

In how far are the predictions outlined in the previous section borne out by the data? Table 2 lists the number and proportions of EP amendments by their degree of adoption for each of the two cases[6]. In the case of the implementation of driving time directive, only one of the thirty-eight first reading amendments of Parliament were fully incorporated into Council's common position and the overwhelming majority of amendments were completely rejected (see column 1). In the second reading, fourteen old amendments were not reintroduced, of which two had been totally or largely incorporated into the common position. However, there were also twelve completely new amendments made by the Parliament in response to changes introduced by the Council. Ten of them simply demanded a return to the Commission's original text, but the remaining two constitute compromise suggestions.

Compared to the first reading amendments, a much larger proportion of the thirty-six second reading amendments were eventually accepted by the Council (column 3). Indeed, the adoption rates of second reading amendments are very similar

to the overall adoption rates of the amendments in the case of the drivers' licence directive (column 5). However, as argued earlier, reintroduced second reading amendments cannot be considered to be independent observations. Therefore, reintroduced amendments are treated as single observations in the calculation of the overall success rate in the case of the driving time implementation directive (column 4). Taking into account the degree of adoption in first reading, the extent of reintroduction in second reading, and the degree of adoption of the second reading amendment for the final act, this measure is arguably a better indicator of EP's overall impact on legislation.

--- Table 2 here ---

Comparing the overall success rates of EP amendments, the evidence seems to be somewhat in favour of our first two hypotheses. Indeed, if an amendment has to be at least 'largely adopted' to be counted as success, as in previous research (Kasak, 2004; Kreppel, 2002), there is a clear corroboration of the main hypothesis (1a). The overall success rate of EP amendments is higher in the drivers' licence which was agreed early than in the driving time implementation case which was agreed not until the conciliation procedure. Considering the distribution of the degree of adoption across the two cases, there is also some evidence supporting hypothesis 1b. The proportion of partially or largely adopted amendments is higher in the case with conciliation negotiations than in the trilogue case. Overall though, these conclusions depend crucially on the cut-point one considers to be sensible for counting an amendment as successful and should not be overstated.

The third hypothesis with regard to the legislative outcome (H1c) states that the concessions made to the EP in the case of the driving time implementation

directive should concern to a larger extent less important recitals rather than substantially binding legal text in form of articles. This hypothesis is corroborated by the data as can be seen from table 3. Showing roughly the same division between articles and recitals, the two cases differ significantly in the proportion of amendment types adopted. As expected, the proportion of article amendments fully or partially adopted is considerably higher in the case of the drivers' licence directive than in the driving time implementation directive.

--- Table 3 here ---

Turning now to the behaviour of the Commission, table 4 gives an overview of the rates of EP amendments accepted by this institution. The data are also in line with the two corresponding hypotheses 2a and 2b. In the case of the driving time implementation directive, the proportion of amendments accepted by the Commission is significantly larger in the second (column 3) than in the first reading (column 2). But at the same time, overall support of the Commission is higher in the case of the drivers' licence directive (compare columns 4 and 5).

--- Table 4 here ---

However, the picture is less clear-cut with regard to the conflict hypotheses 3a and 3b. Again, the proportion of amendments on which the Commission and the Council show different opinions decreases from the first to the second reading of the driving time implementation directive. This is in line with the prediction, although the very small number of conflict instances do not allow for firm conclusions here. However, the proportion of non-conflictual amendments is somewhat lower in the case of the drivers' licence as compared to the driving time implementation directive, which stands in contrast to the expectation generated by hypothesis H3a.

--- Table 5 here ---

To summarize the results, most findings are consistent with the hypotheses. EP influence seemed to be higher in the case of the drivers' licence directive than in the case of the driving time implementation directive. More EP amendments were more fully adopted in the drivers' license case and the differences between the adoption rates were larger for fully adopted amendments than for largely or partially adopted amendments. Similarly, among the adopted amendments, more referred to the articles of the directive rather than to its recitals in the case of the drivers' license directive. Most of the theoretical implications with regard to the behaviour of the Commission were also observable. It too accepted more EP amendments in the case of the drivers' licence directive than in the case of the driving time implementation directive. Furthermore, the closer the procedure came to conciliation in the latter case, the more lenient became the Commission's behaviour towards Parliament's amendments. The number of instances of conflict between Council and Commission also decrease from first to second reading in the driving time implementation case. The only exception was the obstructive behaviour of the Commission in the driving license case, which was, contrary to expectations, stronger than in the conciliation case. While many of the empirical patterns are not very clear-cut, the overall balance of the results lends support to the theoretical argument.

VII. Discussion and Conclusions

The study argued that the EU institutions make conscious decisions about whether to be bound in their interactions by informal institutional rules or follow the formal constitutional paths prescribed by the treaty. Regarding the incentives faced by actors

making this decision, the basic idea was that the Council's opportunity costs regarding conciliation negotiations are generally higher than those of the EP. Given its limited resources in terms of time and personnel available to handle the increasing legislative workload of codecision proposals, the Council is expected to focus its attention only on those issues that it perceives to be of utmost importance. In contrast, given its extensive committee system, Parliament is less adversely affected by a breakdown of trilogue negotiations then the Council. As a result, it can extract more concessions in terms of policy from its counterparts in informal negotiations. The comparative case study lent support to this implication of the theoretical argument. The EP's influence during codecision was indeed found to be larger when agreement was reached at early stages in informal trilogue negotiations than when agreement was reached through the formal mechanism of conciliation. However, according to the theoretical argument, this bargaining advantage is not due to some feature inherent in trilogue negotiations, but rather a result of the same factors that lead the actors to engage in informal negotiations in the first place.

The results of the study report rather good news for the proponents of increased Parliament influence, and indeed, for the Parliament itself. If the findings can be generalized, then first and second reading trilogue negotiations are not only more efficient but also allow the Parliament to extract more concessions from the Council than through conciliation committee negotiations. But again, if the theory is correct, this is not primarily a consequence of the informal institutions governing interactions in trilogues, but rather a result of the Council's incentives to avoid conciliation, which are supposed to be stronger than those of Parliament's. Thus, informal trilogues per se are not of advantage to Parliament, but rather the relative

impatience of the Council. This means that other formal or informal procedures might 'do the job' of reaching an early agreement just as well as trilogues while at the same time avoiding at least some of the negative consequences in terms of decreased transparency of the EP's proceedings. Demands in this direction were already made, with some actors in Parliament demanding the 'presence of Council in committee' (Shackleton & Raunio, 2003). If the theory presented here is correct, the Parliament should be in a relatively good position to also gain considerable concessions from the Council in the meta-game concerning the rules governing informal negotiations.

At first sight, this result indicates an increase in the democratic legitimacy of EU decision-making, because the Parliament as the most representative institution gains additional influence. At the same time, the informal meetings are very effective in reaching timely agreements between the institutions However, these positive tendencies are outweighed by other negative effects of trilogue negotiations: First, the secrecy of these informal negotiations reduces the transparency of EU decision-making. The Parliament derives its input legitimacy not only from the fact that it is directly elected by citizens, but also from the openness of its proceedings. This legitimacy 'advantage', particularly as compared to the workings of the Council, is at least partly lost when the EP negotiates and reaches agreement with the Council in private settings. Thus, while increasing the output legitimacy through more efficient decision-making, informal trilogues are counterproductive in terms of input legitimacy (Héritier, 2003). Given that the Parliament is one of the main proponents of transparency and regularly pressuring the other institutions and particularly the Council to open up their proceedings to the public, it seems odd that it should engage in such opaque practises.

Second, informal negotiations empower particular actors and groups within the EP, such as party group coordinators (Corbett *et al.*, 2005) and rapporteurs (Kaeding, 2004), at the expense of others. In this case, the representativeness gained through the increased influence of the EP is at least partly lost because of the biased distribution of influence within the EP. The EP as a whole might want to benefit further from its image as the most representative and transparent institution in the EU, but the potentially larger influence achieved through informal negotiations presents incentives to individual members or party groups that have a private interest in specific issues to renegade and engage in these negotiations if they have the opportunity to do so. The only way out of this dilemma might be a firm self-commitment by the Parliament to rule out such practices in the form of an amendment to its rules of procedure. However, such an amendment presupposes a general interest in the EP to change the current situation. This is questionable in the light of recent research that showed that some actors within the EP, in particular the larger party groups, benefit systematically from these new arrangements (Farrell & Héritier, 2004). Thus, future research should not only examine the generalizability of the current results and further investigate the empirical plausibility of the advanced causal mechanism, but also give more attention to the possible effects of informal procedures on the relative influence of different actors inside the EU institutions.

Appendix

--- Table A1 here ---

--- Table A2 here ---

--- Table A3 here ---

Notes

[1] The model focuses on inter-institutional decision-making; the aggregation of preferences within institutional actors is of less concern. However, with regard to the legitimacy of EU decision-making, exactly whose preferences stand for the Parliament's or the Council's position is of great importance. This issue of representation is discussed in more detail in the conclusion. As a reviewer pointed out, the assumption of unitary actors could be questioned, as the negotiation literature suggests effects of the internal preference heterogeneity of collective actors on their bargaining power. Given that the study considers two cases that are matched with regard to the individual actors involved and the type of issue discussed, the empirical analysis largely controls for such a potential effect.

[2] The precise titles of the two laws are: Directive of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities and repealing Directive 88/599/EEC; and Directive of the European Parliament and of the Council on driving licences (recasting).

[3] Note, however, that in some cases there is an implicit weighting of important changes. For example, the scope of the legal act is often referred to in several parts of the proposal, thus one and the same substantial change enters the analysis as several observations.

[4] See table A1 in the appendix. This scale is widely used in previous work on amendment success (Kasak, 2004; Kreppel, 1999; G. Tsebelis et al., 2001; George Tsebelis & Kalandrakis, 1999).

[5] See tables A2 and A3 in the appendix. Table A2 describes the coding of the degree of reintroduction of amendments at second reading and table A3 describes the procedure to derive the overall degree of amendment success for the case where several readings had been held.

[6] The hypotheses are examined through simple descriptive statistics based on the aggregate amendment success of the EP. Given the research question, the unit of analysis is the proposal as a whole, not an individual amendment. Thus, the analysis is confined to two observations, which does not allow for the application of more advanced regression techniques that require larger sample sizes. Even the use of qualitative comparative or fuzzy set methods is problematic when the number of cases is very small (Häge, 2007). But more importantly, the study controls for many additional explanatory factors and potential interactive effects by design, greatly reducing the need to use such methods.

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Table 1 Number of Codecision dossiers broken down by number of reading

Time period	Total codecision	Dossiers concluded at 1st reading	Dossiers concluded at 2nd reading	Dossiers concluded at 3rd reading
1994-1999	30	--	18 (60%)	12 (40%)
1999-2000	68	13 (19%)	39 (57%)	16 (28%)
2000-2001	67	19 (28%)	28 (42%)	20 (30%)
2001-2002	76	18 (24%)	37 (49%)	21 (28%)
2002-2003	87	24 (28%)	48 (55%)	15 (17%)
2003-2004	105	41 (39%)	48 (46%)	16 (15%)
Total 1999-2004	403	115 (29%)	200 (50%)	88 (22%)

Source: European Parliament (2005: 13)

Table 2 Incorporation of amendments in text of dossier

	Driving time implementation			Drivers' licence
	1st reading	2nd reading	overall	overall
Adopted	1 2.6	8 22.2	6 12.0	22 23.7
Largely adopted	2 5.3	3 8.3	6 12.0	9 9.7
Partially adopted	3 7.9	10 27.8	11 22.0	10 10.8
Modified	0 0.0	0 0.00	0 0.0	2 2.2
Not adopted	32 84.2	15 41.	27 54.0	50 53.8
Total	38 100.0	36 100.0	50 100.0	93 100.0

Source: Own data based on documents of the EU institutions.

Table 3 Proportion of recitals among adopted EP amendments

	Driving time implementation			Drivers' licence		
	Article	Recital	Total	Article	Recital	Total
Adopted	4 66.7	2 33.3	6 100.0	21 95.5	1 4.6	22 100.0
Largely adopted	4 66.7	2 33.3	6 100.0	9 100.0	0 0.0	9 100.0
Partially adopted	10 90.9	1 9.1	11 100.0	9 90.0	1 10.0	10 100.0
Modified	0 0.0	0 0.0	0 0.0	0 0.0	2 100.0	2 100.
Not adopted	26 96.3	1 3.7	27 100.0	45 90.0	5 10.0	50 100.0
Total	44 88.0	6 12.0	50 100.0	84 90.3	9 9.7	93 100.0

Source: Own data based on documents of the EU institutions.

Table 4 Support of Commission for EP amendments

	Driving time implementation			Drivers' licence
	1st reading	2nd reading	overall	overall
Adopted	12 31.6	20 55.6	20 40.0	50 53.8
Largely adopted	4 10.5	5 13.9	8 16.0	5 5.4
Partially adopted	5 13.2	2 5.6	5 10.0	7 7.5
Modified	0 0.0	0 0.0	0 0.0	9 9.7
Not adopted	17 44.7	9 25.0	17 34.0	22 23.7
Total	38 100.0	36 100.0	50 100.0	93 100.0

Source: Own data based on documents of the EU institutions.

Table 5 Obstructive behaviour by Commission

	Driving time implementation			Drivers' licence
	1st reading	2nd reading	overall	Overall
None	36 94.7	35 97.2	48 96.0	77 82.8
Minor	0 0.0	1 2.8	1 2.0	11 11.8
Major	2 5.3	0 0.0	1 2.0	5 5.4
Total	38 100.0	36 100.0	50 100.0	93 100.0

Source: Own data based on documents of the EU institutions.

Table A1 Coding of degree of adoption by Commission or Council

Degree of adoption	Numerical code
Adopted (fully adopted)	1
Largely adopted (more than half of the words adopted)	2
Partially adopted (less than half of the words adopted)	3
Modified (change relevant but not in direction of either version)	4
Not adopted (entirely rejected)	5

Table A2: Coding of type of second reading amendment

Type of second reading amendment	Numerical code
Restores Commission wording	1
Reintroduces part of earlier amendment	2
Reintroduces earlier amendment entirely	3
Reintroduces earlier amendment and suggests new changes	4
New amendment (not amendments that restore Commission wording)	5

Table A3 Coding of overall degree of adoption of amendments

Type of 2nd reading amendment	&	Adoption 2nd reading	→	Adoption overall
1	&	1	→	3
1	&	2	→	3
1	&	3	→	5
1	&	4	→	4
1	&	5	→	5
2	&	1	→	2
2	&	2	→	3
2	&	3	→	3
2	&	4	→	4
2	&	5	→	5
3	&	1	→	1
3	&	2	→	2
3	&	3	→	3
3	&	4	→	4
3	&	5	→	5
4	&	1	→	1
4	&	2	→	2
4	&	3	→	2
4	&	4	→	4
4	&	5	→	5
5	&	1	→	1
5	&	2	→	2
5	&	3	→	3
5	&	4	→	4
5	&	5	→	5