European Parliament trilogue negotiation teams as collective agents: a principal-agent analysis of early agreement decision-making

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—— This is a draft paper, please do not quote ——

1. Introduction

Trilogue negotiations have de facto become now the major forum for legislative negotiation in the European Union. Trilogues are informal tripartite meetings between representatives of the co-legislators (the Council and the European Parliament (hereafter EP) and the. Their purpose is to reach an informal compromise that can be adopted as early as possible in the formal legislative procedure by the Council and the EP. Such ‘early agreements’ i.e. files concluded at first and based on an informal compromise negotiated between the co-legislators are now the standard form of legislative decision-making in the EU as they represent now the vast majority of the EU legislative procedure. In trilogues both the Council and the EP delegate the task to negotiate a compromise to a subset of the institution. The Council is represented by the rotating presidency. In the EP the situation is more complex: the committee responsible for a dossier shall delegate to a negotiation team composed of several MEPs. The aim of this paper is to focus on the EP delegation in trilogues by examining how are the EP negotiation teams organized, how the different political actors coordinate inside them and what are the consequences on the intra-institutional relationship.
While state of the art research emphasized the increase in the number of MEPs participating in trilogues, the functioning of the EP negotiation teams remains widely understudied. Especially, the role and the influence of the rapporteur regarding the other members remain unclear. In this perspective, by analyzing the relations between the actors in the EP negotiating team and between the negotiation team and the committee during trilogues negotiation this paper aims to fill this gap. It does so by applying a principal-agent model to the delegation occurring in the EP. Indeed, principal-agent theory is designed to study delegation of power from one actor (the principal) to another (the agent) with an emphasis on the discretion that the agent enjoy vis-à-vis his principal in executing the delegated task.

This paper contributes to the literature in two ways. First, it gives empirical insight into the functioning of the EP’s representatives during trilogues. Second, by theoretically modeling the relationship between the negotiating team and the responsible EP committee as a principal-agent relationship, it furthers our understanding of intra-EP politics in the framework of trilogues. By doing that, it provides a theoretical basis to further studies of the EP’s role and functioning in legislative policy-making. The empirical data for this study come from two types of sources. First, the EP rules of procedure are used to map the principal-agent relationship in trilogue. Second, I conducted interviews with seven personal members of the EP: MEP assistants and officials from the IMCO and LIBE committees, on the actual EP organization in trilogue negotiations. (see table 1).

<table>
<thead>
<tr>
<th>Interview</th>
<th>Function</th>
<th>Date</th>
<th>Venue</th>
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<tbody>
<tr>
<td>A</td>
<td>EP Conciliations and Codecision Unit</td>
<td>November 2015</td>
<td>Brussels</td>
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<tr>
<td>B</td>
<td>EP Conciliations and Codecision Unit</td>
<td>November 2015</td>
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<td>C</td>
<td>Assistant MEP (IMCO)</td>
<td>March 2016</td>
<td>Brussels</td>
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<td>D</td>
<td>Assistant MEP (LIBE)</td>
<td>April 2016</td>
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<td>E</td>
<td>Administrator (IMCO)</td>
<td>May 2016</td>
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<td>G</td>
<td>Administrator (LIBE)</td>
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Table 1: list of people interviewed

The paper is structured as follows. In the next section, I give an overview of the

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1 A and B were interviewed conjointly, F and G also
2 E, and F-G were interviewed in French, the translation of the quotes are from the author
evolution of the EP representation in trilogue negotiation and of the current situation. Section 3 introduces the principal-agent theory and applies it to the EP in trilogue negotiations. I then analyze the discretion enjoyed by the negotiation teams vis-à-vis the responsible committee. Section 7 focuses on the rapporteurs’ role within the team. Eventually, the last section presents the conclusion.

2. Evolution of the EP representation in trilogue negotiations

While developed in the framework of conciliation procedure, trilogue negotiations have spread into the whole legislative procedure after that the Amsterdam Treaty authorized the first reading adoption of legislative files. Since, the numbers of such ‘early agreements’ have continuously increased (see figure 1) as trilogue became the standard procedure to allow both co-legislator agreeing upon the same text, transforming codecision into ‘a de facto single-reading legislative procedure’ (Roederer-Rynning and Greenwood 2015).

![Figure 1. Percentage of EAs per half year (1999–2011), source : Bressanelli, Koop et al. (2016)](image)

Early trilogue negotiations were developed outside of the treaties and thus were characterized by a high degree of informality, following the definition given by Reh, Héritier et al. (2013): ‘a restricted, noncodified set of actors operates in a secluded setting; negotiation is structured by informal rather than codified, specific, and enforceable rules; and any pre-agreement must be formalized’. As the practice of
trilogue negotiations has progressively became routine, the degree of formalization has also increased to be now ‘an elaborate and ritualized process of aggregation and negotiation of preferences involving a broad range of actors meeting’ (Roederer-Rynning and Greenwood 2015). While in the Council, the internal procedure has knew little change over time, the EP adopted several procedural measures to regulate his organisation in trilogues. Especially, these reforms modified the composition of the EP representation in trilogue negotiations. Yet, the results of these reforms have often remained unclear. Moreover, empirical studies as well as interview done in the framework of this paper show that trilogue negotiations remain highly informal, ‘aren’t set in stone’ (interview A), their practical organisation varying between committees and files.

During the early years of first-reading trilogues, rapporteurs were identified as the main EP negotiator, giving them the double task to assist the EP in forming a position, and to represent him in the inter-institutional negotiations. The trilogue literature soon emphasized the issue of the rapporteur empowerment inside his institution. The ‘relais actors’ thesis developed by Farrell and Héritier (2004) argued that the informalization of the legislative process had increasing the intra-institutional bargaining power of the participating actors (the so-called relais actors). The restriction and the seclusion of trilogue allowing them “to control the flow of information from their own organization to the other and vice versa” (Farrell and Héritier 2004) and to “use this brokerage position to their advantage by emphasizing […] opposition to policy initiatives they would prefer to block, and by de-emphasizing […] opposition to policy initiatives they would prefer to promote” (Costello and Thomson 2010). Especially rapporteurs were identified as the biggest winners of trilogue negotiations (Benedetto 2005, Rasmussen and Shackleton 2005, Costello and Thomson 2010). They were seen as facing ‘very few or no restrictions’ (Rasmussen and Shackleton 2005) allowing him to hold ‘the most important leadership role’ and to ‘pursue partisan policies’ (Yoshinaka, McElroy et al. 2010).

More recently, the influence of the relais actors in the legislative process has been de-emphasized as several studies did not find empirical evidences that early agreements are beneficial for the rapporteur (Judge and Earnshaw 2011, Häge and Naurin 2013, Rasmussen and Reh 2013). However, the informalization of the legislative negotiations has raised several normative concerns inside and outside the EP
(Bunyan 2007, European Parliament 2007, De Clerck-Sachsse and Kaczyński 2009, Costa, Dehousse et al. 2011). Especially, a strong contestation emerged within the EP (European Parliament 2007, Héritier and Reh 2012). This contestation has led to the adoption, by the EP, of several procedural measures to broaden the participation to trilogues and increase the role of the responsible committee in the negotiations.

While the first call to adopt measure regarding trilogues appeared in 2001, under the form of a letter from the vice-presidents responsible for conciliation, the first EP attempt to formalize trilogue dates back to 2004 and the adoption of ‘guidelines for best practice within Parliament in first and second reading’ by the conference of the president of the EP. Their official purposes were to improve the control on the relais actors, to standardize the practice among the committees and to increase the transparency of the process (Costa, Dehousse et al. 2011, Héritier and Reh 2012, Obholzer and Reh 2012). Vague and without any binding nature, these guidelines had however little impact on trilogue negotiations (Costa, Dehousse et al. 2011, Héritier and Reh 2012).

The second measure was adopted through the general reform of the EP rules of procedure off 2009. During the preparation of the reform, the Working Party for Parliamentary Reform was ‘explicitly tasked with looking at the practice of early agreements’ (Héritier and Reh 2012). In his report (European Parliament 2007), the working party recommended to strengthen the content and to increase the status and the visibility of the guidelines. As result, two references to trilogues were included in the rules of procedures: the article 70 dedicated to the ‘Interinstitutional negotiations in legislative procedures’ and the annex XX containing an ‘Code of conduct for negotiating in the context of the ordinary legislative procedures’. While the article was limited to refer to the code of conduct, the latter introduced the concept of ‘EP negotiating team’. However, the composition of such negating team remained vague as the code only specified that ‘as a general principle, political balance shall be respected and all political groups shall be represented at least at staff level in these negotiations’. The code further contained article regarding the information of the committee member and the authorization to enter negotiation. Again the impact of this reform on trilogues remained unclear.

Eventually, this system was reformed for the last time in 2012 (European Parliament
The article 70 (now 73) was enhanced and completed by an article 70bis (now 74) regarding the ‘Approval of a decision on the opening of interinstitutional negotiations prior to the adoption of a report in committee’. Hence, these two articles and the code of conduct currently regulate the EP organization and representation in trilogue negotiations. Table 2 summarizes the evolution.

<table>
<thead>
<tr>
<th>Period</th>
<th>Main rules in vigor in the EP</th>
<th>EP representation in trilogues</th>
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<tbody>
<tr>
<td>1999-2004</td>
<td>/</td>
<td>No fixed practice</td>
</tr>
<tr>
<td>2004-2009</td>
<td>Guidelines for best practice within Parliament in first and second reading</td>
<td>EP participation should be decided by the coordinators-Rapporteurs identified as main negotiators</td>
</tr>
<tr>
<td>2009-2012</td>
<td>EP rules of procedure Annex XXI: Code of conduct for negotiating in the context of the ordinary legislative procedures</td>
<td>EP negotiating team: As a general principle, political balance shall be respected and all political groups shall be represented at least at staff level in these negotiations’</td>
</tr>
<tr>
<td>2012-</td>
<td>EP rules of procedure Article 73 (previously 70): Interinstitutional negotiations in legislative procedures</td>
<td>EP negotiating team: Shall be led by the rapporteur and presided over by the Chair of the committee responsible or by a Vice-Chair designated by the Chair. It shall comprise at least the shadow rapporteurs from each political group’</td>
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Table 2: Evolution of the EP representation in trilogue negotiations

The article 73 the EP rules of procedure reads that the EP is represented in trilogue by a negotiation team. While such team “shall be led by the rapporteur and presided over by the Chair of the committee responsible or by a Vice-Chair designated by the Chair. It shall comprise at least the shadow rapporteurs from each political group”; the exact composition ‘shall be decided by the committee’. Yet, the rules remains vague regarding the functioning of the teams during trilogue negotiations, especially regarding the role played by each member. Further, the literature studying trilogues remains contradictory regarding the impact of this regulation and the current practice of trilogue within the EP.

On one hand, the literatures have emphasized that the EP representation in trilogues has broadened. Roederer-Rynning and Greenwood (2015) show that the EP, especially in the ECON Committee, has ‘increasingly carved a more active role for the committee chair and for the shadow rapporteurs, which can mitigate the bias of the rapporteur’. In the same time they also recognized that as there is not a uniform culture between committee, the practice varied between committees. Similarly, Judge and Earnshaw (2011) showed that the ‘the importance of shadow rapporteurs in the negotiating process, and in the final legislative outcome, was starkly revealed in the processing of the advanced therapies dossier’ and thus argued that ‘the definition of
‘relais actors’ in the EP needs to be extended beyond committee rapporteurs themselves. Eventually Rasmussen and Reh (2013) explain the lack of evidence that early agreements are beneficial for the political group of the rapporteur by the larger involvement of other MEPs within the negotiation teams framework.

On the other hand, the rapporteur is still identified as the major EP actors in inter-institutional negotiations (Jensen and Winzen 2012, Finke and Han 2014, Smeets and Vennix 2014, Delreux and Laloux 2016) as they remain the “central actors to reconcile difference between and within institutions” (Dyrhauge 2014). Kurzer and Cooper (2013) reaffirmed the importance of the rapporteur and their ability to influence legislative outcomes. Similarly Burns (2013) found that in case of conflict between associated committees, the final outcome was closer to the rapporteur position than to that defended by its committee. Eventually Brandsma (2015) re-underlined ‘the relevance attached to relais positions’ and their ‘potential to speed up or slow down legislative processes’.

3. Principal-agent theory and complex delegation

3.1 Overview of the principal-agent theory

Principal-agent theory studies situation where “one (set of) actor(s) [the agent,] is acting on behalf of another (set of) actor(s) [the principal]” (Delreux 2011). It allows explaining key features of the interaction between these two actors. Especially principal-agent model is useful to understand both the decision and the setting of the delegation (the politics of delegation) and the actual game played by principals and agents once the act of delegation has been established (‘the politics of discretion’) (Delreux and Adriaansen forthcoming). Following Delreux and Adriaansen (forthcoming), I consider here principal-agent theory as an ‘heuristic tool […] helping to make sense of certain aspect of EU-decision making’ by ‘reducing the complexity in real life political process’. This definition allows for a flexible use of the theory. It releases most of the classical assumptions by considering them as variable rather than constant (Waterman and Meier 1998). Principal-agent theory is thus suited to be applied to complex pattern of delegation and to give ‘explain key features of such interactions’. Especially, it allows releasing the unitarian actor assumption (Worsham, Eisner et al. 1997) to consider collective agent and principal. Agent and principal are defined as ‘collective’ when they are linked by a single contract with
but “composed of more than one actor” (Nielson and Tierney 2003, Elsig 2010, Graham 2013).

Yet, two conditions must be fulfilled to apply principal-agent theory: 1) the rationality of the actors and 2) the existence of an act of delegation, might be formal or informal. This second condition means that all principal-agent analysis need to analyze ‘hierarchy in dyadic relation’ (Delreux and Adriaensen forthcoming). This means that all act of delegation needs to identify a relation of power (hierarchy) between two actors (dyadic): a principal and an agent. Hence, to use principal-agent theory, it is necessary to identify the ‘principal-agent proof of hierarchical relation’. In other words, it is necessary to carefully map the principal-agent relationship by identifying through the act of delegation: who is the principal; who is the agent and what is the object of delegation.

The discretion enjoyed by an agent in executing his task is central in the principal-agent theory. Discretion is defined here as “the range of potential independent action available to an agent after the principals have established mechanisms of control” (Hawkins, Lake et al. 2008). This discretion is the result of the delegation of authority to the agent from the principal. More precisely, the level of discretion enjoyed by an agent is a function of the level of control activated by the principal (Delreux 2011) and of the agent behavior during the execution of the delegated act (Hawkins and Jacoby 2006, Delreux and Kerremans 2010).

According to the principal-agent theory, principals decide to delegate a task to the agent because it generates functional benefits (Pollack 2003, Shapiro 2005). However, delegation does not only come with benefit for the principal but also with costs. Agency costs occur when agents pursue policy outputs that do not correspond to the principal’s preferences. Yet, in front of these cost principals are not helpless as they can establish control mechanisms to avoid a gap between what the principals want and what the agents do and thus maintain the benefit of delegation. Controlling the agent also has a cost as principals have to invest resources to activate and employ control mechanisms. Hence, the level of control activated by the principals is assumed to be subject to a cost–benefit analysis. This cost-benefit analysis depends of conditions that are external and internal to the delegation relation. Furthermore, agent can also increase his autonomy by affecting the cost and thus the principal
incentive to control (Delreux and Kerremans 2010).

3.2 Mapping the principal-agent relationship in trilogue

In this section, I map the principal-agent relationship that occurs for the EP in trilogue. I first quickly identify the act of delegation, the object of delegation and the principal. I then focus on the agent. In trilogue, both the EP and the Council agents are delegated the task to resolve legislative disagreement between both institutions to adopt a legislative file as soon as possible. In the EP, as seen above, this delegation is formally regulated by the article 73 of the rules of procedure. Following this article, the delegation act is the authorization from to open interinstitutional negotiation. This authorization is given by the responsible committee to a negotiation team, thus, from a principal-agent point of view, the former is the principal and the latter the agent. The principal-agent relationship is represented in the figure 2.

![principal-agent relationships between committees and negotiation teams](image)

The delegation act consist thus in the decision that shall be taken by the responsible committee to open inter-institutional negotiations in first reading. This authorization explicitly delegates the task to ‘reach an agreement in the course of a legislative procedure’. The rules of procedure insist that no interinstitutional negotiation ‘shall be entered prior to the adoption of the decision’. Committees adopt this decision by a majority of their members. In addition to the authorization, the committee shall adopt a mandate, under the form of a committee report, as basis for negotiation and define the composition of the negotiation team. The mandate represents the preference of the whole committee and must be followed by the agent in executing his task.
Regarding the principal side, the responsible committee is identified as the principal. For each legislative file, the responsible committee is the committee in charge of the preparatory work for the plenary. Hence, he is responsible for preparing the EP first reading. In this perspective, following the rules it takes the decision to delegate the task to negotiate with the Council in first reading. Responsible committees are collective principals. A delegation relationship with a collective principal occurs ‘when an agent has a single contract with a principal, but the principal happens to be composed of more than one actor’ (Nielsen and Tierney 2003). Indeed, committees are linked with a single contract with the agent (the authorization decision) and they are composed of several MEPs and political groups with different preferences and particular organizations (Yordanova 2013). In particular cases (associated committees (Rule 54 RoP)), several committee can be jointly responsible for a file and thus principal. Further, Committees are themselves agents of the plenary encompassing trilogue negotiations into a larger ‘chain of delegation’ (Bergman, Müller et al. 2000).

The delegation of negotiation authority is done in favor of the negotiation team, which is thus the agent. Indeed, the article 73 gives the authorization to the whole negotiation team, and not to specific actors composing it. Moreover it reads that the committee shall decide the composition of this agent. Yet it the RoP also gives instruction regarding the composition and the role played by the members by stating: “The negotiating team shall be led by the rapporteur and presided over by the Chair of the committee responsible or by a Vice-Chair designated by the Chair. It shall comprise at least the shadow rapporteurs from each political group”. Hence, negotiation team must also be modeled as collective agent. Like a collective principal, a collective agent is ‘an agent made up of more than one actor that is subject to a single contract with its principal’ (Graham 2013) Indeed, negotiation teams have a single contract with their principal and are fragmented. They are composed of various actors with potential different preferences and without clear relationships of authority between them and jointly linked by one delegation act with the committees: ‘they are supposed to be carrying the position of the entire committee; they do not speak on behalf of a political group’ (interview F).

While responsible committees have to appoint negotiation teams collectively and decide their composition, in reality they do not select the actors composing the
collective agent. Representing the EP in informal negotiation is not the only task of the rapporteur and the shadow rapporteurs. Hence they are appointed at the beginning of the legislative procedure, before the decision to open trilogue negotiations. The rapporteurship is allocated in a two steps process: first a negotiation between groups to get the report and then the group coordinator of the winning group gives it to one of his member according his rules. Afterward, shadow rapporteurs are appointed by the remaining groups following they own internal rules. Then these actors are de facto in the team without that committee can intervene in this process (interviews C, F, G): ‘so directly if there is a trilogue, you will be part of the trilogue, that’s it. So, there is no after discussion or vote on the composition of the trilogue’ (Interview C). Indeed, in the decision to enter negotiation, the committee either does not vote on the composition or does it informally (interview C, F). But even in the second case, the decision of the political group is always confirmed: ‘anyway I don’t see the committee refusing some member, because it is the responsibility of the groups’ (Interview G). In sum, the composition of the teams is rather an independent decision from the political groups that take place before the delegation act.

This selection from their political group induces that all the members composing the collective agents are also involved in a parallel principal-agent relationship regarding the negotiated files. In addition to being jointly the agent of the entire committee, they are individually agents of their political groups. Hence, for each legislative negotiation, members of the team are also responsible before other principals than the committee, namely their political groups. And these other principal may have different policy goals regarding the legislative proposal than the committee. More particularly, rapporteurs are involved in a ‘double delegation’ from the committee (Delreux and Laloux 2016). In the intra-institutional processes they are also responsible to facilitate the policy-making among his institution, including by constructing majority. Thus, while rapporteurs have the same principal for both task (i.e. the committee), they execute the first one individually and the other as part of a collective agent. These multiple delegations are summarized in the figure 3
Regarding the actual composition of the negotiation team, the rules seem usually followed but two main variations may occur (interview A, B, C, E, F, G). First, all the groups may not appoint a shadow rapporteur or may not send them to trilogues. Yet, even in the absence of shadow rapporteur, an assistant or the group coordinators always represent all the political groups. Second the chair may not be present for the trilogues. In the case of absence of the chair, she can be replaced by a vice-chair, by one of her assistant or let the chair of the negotiation team to the rapporteur. Both variations have the same source, namely the lack of resource regarding the number of trilogues negotiations: ‘the smaller groups they sometimes don’t have enough members to have shadow rapporteur on all the files’ (interview A) and ‘[the chair presence] is a question of the amount of work, really. Because sometimes it happens, in LIBE, to have simultaneously 5 or 6 files in trilogues. So it’s not possible’ (interview G). Hence, theses actors choose the trilogue negotiation they want to participle in function of their own priorities. In formal negotiations, the members of the negotiations team are also often accompanied by various support staff such as MEP assistant, EP or committee secretariat members and group advisors.

The rules of procedure establish several potential control mechanisms for the principal toward the agent in trilogue. Generally three kinds of control mechanisms are at the disposal of the principal: ex ante, ad locum, and ex post control. They
respectively take place before, during and after that the agent executes the delegated task. Ex-ante, the committee has two control mechanisms at his disposal. First he can refuse the delegation. In this case, it does not open interinstitutional negotiation and the procedure follows in second reading as foreseen in the treaty. Second, committees give to the agent a mandate as basis for negotiation. Mandates contain the collective principals’ preferences concerning the Commission proposal. They give instruction to the agent under the form of committee reports. Alternatively, by ‘way of exception where the committee responsible considers it duly justified to enter into negotiations prior to the adoption of a report in committee, the mandate may consist of a set of amendments or a set of clearly defined objectives, priorities or orientations’.

Regarding ad locum control, the rules also provide to the committee three ways to monitor and control the negotiation team. First, after each trilogue the negotiating team shall report back to the following meeting of the committee. Second the documents reflecting the outcome of the last trilogue shall be made available to the committee. These two mechanisms compel the agent to share his information with the principal, reducing the information asymmetry. Eventually, the committee responsible may update the mandate in the light of the progress of the negotiations. Hence the committee is theoretically able to gives more instruction to the agent during the negotiation.

Eventually, after that the agent has reached a compromise the responsible committee has yet to formally adopt it to close the procedure. Indeed, the responsible committee shall approve the committee by a vote before to table it on the plenary for consideration. Hence agent cannot take formal decision, principals keeping the final decision and thus a capacity of ex-post control by rejecting agents’ agreement. In principal-agent theory, this possibility of reject is crucial, even without being activated. Because when the cost of non-agreement is high for the agent, “the mere threat of this ex post sanctions creates ex ante incentives to cow [. . .] agents into submission” (Epstein and O’Halloran 1999). The different control mechanisms at the disposal of the principal in trilogue are summarized in figure 4.
5. Actual application of control mechanism and resulting discretion

Regarding ex-ante control, the refusal of entering negotiation is in practice a very rare event as opening trilogue negotiations is almost automatic (interview C, D, E, F, G) because “if you have a majority for a text, for a parliament position, you also have a majority for entering negotiations. Often the majority for entering negotiations is even bigger. Because the even the groups that may have different opinion sand may not agree with the text, they still, like in a democratic spirit, they say ‘this is the mandate now, that’s how it is, we lost at some points maybe but still we should enter negotiations now’ (interview D). Hence, in practice this first sanction does not seem very credible. The main exception to this automatic move was that ‘in the seventh term, at the end of the seventh term, we have a lot of EP first reading positions. So positions where we have not yet an agreement with the council. Simply because we were running out of time. People really want to make their stance. They wanted to show this is what we think (interview A).

Regarding the mandate, this control mechanism is usually used as mandate are always taken and negotiation really start on this basis: ‘The mandate is generally, more than eighty percent of the case, report voted in the parliamentary committee […] The mandate that’s crucial because if not we can’t start the work ’ (interview A). However, before entering trilogue negotiations, negotiation teams usually organize preparatory meeting to discuss the file (interview B, C, D, E, F, G). In such meetings, they assess they room for manoeuvre regarding the mandate ‘Usually we will take a position for the
trilogue and a “fallback” position. So we play with the main position and if we see that it does not really work, we have the fall-back position’ (interview E). Hence while a mandate is given, practically it may be practically modified by the negotiation teams already before entering the negotiation, inducing already independent action regarding the principal instruction.

Regarding, ad locum control, in practice, negotiation teams seem to enjoy high discretion during negotiations, yet this discretion may vary. The feedback obligation is usually followed. The rapporteur normally the update on trilogues, alternatively the chair or the shadow rapporteurs can take the floor. Such feedback can be followed by a debate where ‘the other members can talk on the issues’, but ‘generally is more like an announcement, It’s more progress reporting’ (interview B). Two remarks have to be done regarding feedback. First, variation occurs in the content of such feedback (interview A, B, C): ‘then generally you have a point of the agenda, fixed point of the committees what he do state of plays on trilogues negotiations. And then it can be more extensive can be bit less depending on the actors on, on if you perceive the need to speak about it in the room’ (interview A). Hence the update can be more or less detailed. Usually they are brief (interview D, E, G) as ‘[update] it is not in detail, the report which is given to the committee is usually a verbal report’ (interview E). Second, as they are responsible for the feedback given, the members of the team retain control on the information they give to the principal.

By contrast the committee seems to have little to say regarding the decision to accept a compromise, allowing the agent to take ‘independent decisions’ easily. Indeed, during negotiations responsible committee does not give instruction of the agent on his own as ‘[Nothing] was not really decided in the committee debriefing. It was more to inform colleagues about the state of play and then it was the job of the shadow rapporteurs’ (interview D). Hence there is few actualization of the mandate: ‘During the trilogues, you don’t, I have never see, well if there is a disagreement to go to the committee and ask for a vote on that, no’ (interview C). Decision regarding the compromise and thus the deviation from the mandate are taken within the negotiation team: ‘No, [the decision is made] in just the small team, otherwise it would not be manageable. No, it’s just the shadow rapporteurs whom are nominated by all political groups. It would be unmanageable to take all this in committee’ (interview E).
The decision regarding compromise relies thus on the team. It is the responsibility to all the members of the team to assure the support of their groups in order to have a majority in plenary to adopt compromise negotiated in trilogue (interview C, D, E, F, G): ‘it’s really their [the members of the team] responsibility to organize themselves and see if they have a majority of members who disagree with what the shadow wants to do, then it is for them to ensure, yes’ (interview E). Still agents may keep the possibility to ask his opinion to the committee, but that remain the agent’s decision, without any obligation: ‘if it’s different from what was in the original mandate, it is can be ask “do you also support us, team, when we, here on article three, trying reach some sort of agreement by saying relative distance from what we originally plant here but then that we insist here on, no”’ (interview C). The decision to adopt a compromise can be taken either in preparatory meeting before trilogue or during the negotiations. In the second case, breaks are taken during the process to have internal meeting with the team. In both cases the decision is taken at the majority, each member representing his group number of vote: ‘we always think of the majority, the proportion of the groups in the plenary of the Parliament. Which is represented in small scale in parliamentary committees. So every shadow more or less speak for the members of their groups’ (interview G).

In this perspective, political groups also control their member in trilogue negotiations. They give them individual mandate (interview C). Moreover they also organize a feedback process and give them instruction through working group meetings (interview C, D, E, F). Working group is constituted of MEP from the same political group from different committee and ‘in this working group, the rapporteur has to do the updates of the trilogue to the members of the working group […] Or the other, the shadow also they do the update of the trilogues. There is this discussion in the working group and there, if there is a disagreement we can have a vote. There is possible because the chair of the working group can say: ‘Ok let’s vote this and let’s decide what the position the group should take ’ (interview C). Yet, such reports are not automatic and depend on the political group and on the trust he has on his representative (interview D). Eventually, group advisors often are present to trilogue negotiations, allowing for ad-locum control.

Eventually, regarding ex-post control, the committee is effectively asked to confirm the agreement by a vote: ‘the committee members are really asked for mean of a vote if they can support or not the outcome of negotiations’ (interview A). While disagreements and
thus reject regarding the outcome are rare events, conclusion based on this fact is confronted to the risk of observational equivalence: ‘namely that the absence of sanctions is consistent with both the obedient servant and the runaway agent scenarios, each of which predicts, albeit for different reasons, the rarity of sanctions’ (Pollack 2002). This would mean that the absence of ex-post sanction is due to the agent’s anticipation on the control mechanisms, the final adoption requirement being be the most prominent control mechanism toward the agent. Hence what might at first appear to be a high level of discretion would be in fact a situation of perfect control by the principal. However, this mechanism reposes on the principal’s ability to credibly threaten the agent to be sanctioned ex-post. Which seems unlikely in trilogue negotiations.

Indeed, in trilogue the principal choice toward a compromise is not unconstrained. Principal has to chose on a take it or leave it basis. Either he accepts the agent proposal either he refuses it but he cannot modify it. If the collective principal does not vote the compromise as its formal position, the agreement falls off and the procedure continues in the second reading. Such rejection is not costless for the principal. It entails political and transaction costs and increases the uncertainty regarding the final output (Costa, Dehousse et al. 2011, Bressanelli, Koop et al. 2016). Hence whereas the principal retains the formal possibility to reject or modify the compromise it is not necessarily a feasible strategy. This decision regarding the agents agreement not only depends of to what extent it differs from its preferences but also of the cost to reject. Moreover, the EP plenary keeps the final word on the compromise, as she had to adopt it. It means that negotiation teams can bypass their committee to present directly their compromise to the plenary if they represent a sufficient majority. This allows them increasing their autonomy. While the interview do not mention such strategy from the negotiation team, an example of such bypassing is given by the negotiation leading to the adoption of the Regulation 421/2014 on the implementation of the EU’s emissions trading scheme (ETS) for aviation (Milevska 2014).

In sum, while control mechanisms are available, they are in practice little activated, giving the agent a rather high level of discretion during the negotiations. Indeed, the negotiation team is able to take most of their actions independently, taking into account that ex-post sanction remains possible. Yet, the involvement of the
committee and resulting discretion vary between files. The collective character of the EP agent in trilogue explains partly this level of discretion. The composition of the negotiation team allows a) the principal to trust the agent and b) the agent to engage credibly without the approval of the principal. First by selecting an agent with heterogeneous preferences, the principal decrease the risk of agency shirk and can thus the cost of no control. This allows him to reduce the level of control he activates: ‘In general there is not [questions from the committee] because the shadows are well informed’ (interview F). Second, as rapporteur and shadow rapporteurs represent their group and are responsible to engage them in support to the negotiated compromise, the collective agent can assure that his action will be supported by a sufficient majority within the principal. Hence agent can avoid ‘involuntary defection’ even without consulting the principal.

6. Role of rapporteurs within negotiation teams

The creation of negotiation team through the reforms seen above was directly aimed as controlling the rapporteur in the context of trilogues negotiations. Indeed, including him into a larger agent theoretically reduce reduces his room for manoeuver. However; this attempt has mixed consequences regarding rapporteurs’ power in the informal negotiations. On one hand, the rapporteur room for manoeuvre in the legislative process is limited by his inclusion in a negotiation team but on the other hand he remains a central actor in the negotiation teams and in trilogue negotiations more generally.

The main explanation of rapporteurs empowerment through the informalization of legislative negotiation was that seclusion and restriction of trilogue gave them control on the flows of information about negotiations vis-à-vis his committee (Farrell and Héritier 2004, Yordanova 2015). This information asymmetry allowed him to play a two-level game and to “use this brokerage position to their advantage by emphasizing Council opposition to policy initiatives they would prefer to block, and by de-emphasizing Council opposition to policy initiatives they would prefer to promote” (Costello and Thomson 2010). Moreover rapporteurs could defend his own preferences during the negotiation with the council and then present the compromise as a “fait accompli”, the cost for rejecting an informal agreement being very high for the EP (Costello and Thomson 2010, Costa, Dehousse et al. 2011, Yordanova 2015).
The delegation of negotiation to a broader, collective agent challenges these opportunities. Indeed rapporteur lost his informational advantage as other members have the same information than him on the negotiations. Moreover the decision to accept a point of compromise has to be taken by the whole team: ‘rapporteur cannot decide alone […] we decide all together’ (interview C). Hence he ‘has to make sure that he has the backing of the team’ (interview A), and he is less able to bias the compromise agreement toward his preferences: ‘the rapporteurs [...] may have an idea to advance but he must see with the shadows, if he has a majority to go one way or another. So they are still very controlled’ (interview F).

Furthermore, within the team, the leadership of the rapporteurs may be challenged by the involvement of the committee chair. The chair is also de facto member of the team, although she is not always present. When they are present, chairs usually preside meetings that take place in the EP where they ‘should be less political in that position’ (interview C) and act as ‘moderator (interview A)’. However ‘sometimes, the chair really takes over the trilogues from the rapporteur’ (interview D). Indeed ‘in principle, the [committee] chair is the chair of the meeting but the rapporteur and the shadows are the ones who decide […] the power relationship between chair and rapporteur, it depends on the personalities too’ (interview E). Especially ‘it can be difficult […] if they are from different political groups or opinions’ (interview D). Moreover, chairs can also have informal bilateral meeting with Council representative to discuss negotiated files (interview E).

Yet, all the people interviewed still identified the rapporteur as the central actor in trilogue negotiations, corroborating several studies. Indeed, even included in a negotiation team, rapporteurs keep certain advantages during trilogue negotiations. First, the rules of procedure identify the rapporteur as the leader of the negotiation team, giving him procedural powers. Second, the double act of delegations from the committee toward the rapporteur give him advantage regarding the majorities building and the proposal of compromises. Third, rapporteur remains the main interlocutor with the Council outside ‘official’ trilogues. There advantages are explained hereafter.

First, the rapporteur is identified as the leader of the negotiations and has some procedural powers on the procedure. Inter alia, he is the main speaker on behalf of
the EP during the negotiations: ‘In practical terms most of the trilogues are chaired by the committee chair, who, next to introduce to its statement, gives the floor to one of the other participant. And the negotiations are led by the rapporteur who’s more into the details of this file” (interview B). While other members as the chair and the shadow of the team can also take the floor during negotiation, the practical arrangements vary between committees and files. Furthermore, depending on the committee, rapporteurs may also have the final decision regarding the organization of technical meetings (meetings involving the technical staff): ‘the technical meeting highly depends on the rapporteur. There are rapporteurs who do not want it at all, first because they are very good technicians themselves. There are others for file control reasons, which consider that it should not delegate because all decisions may be political. And then there are others that prefer to delegate very technical questions’ (interview F). Such technical meetings may be important ‘because a lot happens before [“political” trilogues] already, so much is resolved at the technical level’ (interview D).

Second the rapporteur is involved in two delegations at the same time. This double delegation gives the rapporteur two advantages. First, he has the responsibility to build the majority within the team to accept a compromise. Hence he can select the combination of groups favoring his preferences and ‘rapporteur can it’s like he can go in force with two or three [shadow] rapporteurs and then say to the one of the shadow rapporteurs ‘excuse me we have decided’ (interview C). While the opposite is theoretically possible ‘it is quite difficult because it’s still the rapporteur that guide the negotiations. And a rapporteur will not be completely stupid, in the sense that they must build majorities for after having a positive vote’ (interview E). Moreover, in negotiation ‘it is always the rapporteur who made the first [compromise] proposal on which the other members have to take a position’ (interview E), giving him a first mover advantage (interview D, E, F, G).

Eventually, despite the EP rules of procedure, several contacts take place between rapporteurs and presidencies outside the formal trilogues (interview A, B, C, D, E, F, G), allowing the rapporteur to keep an informational advantage. While mostly limited to procedural issue, such informal bilateral meetings may already include discussion on the content (interview D, E, F, G). In this case, the rapporteur and the presidency ‘see what could be the possible deal’ and then ‘It is up to the rapporteur to sell this deal to his shadows and to the Presidency to sell it to the Council’ (interview E).
Bilateral contacts can also take place between the presidency and the shadow rapporteurs or the chair, allowing them ‘to defend their points of interest’ (interview E). However they are less frequent and contrary to the rapporteur: ‘they will not say it! They will not say “the Council said they will accept”, no. Or they will ask the Council: ”Why is it that you are not suggesting that? I’m going to support it and I will try. ” They will not say ”I have spoken with the Council ′, they do not’ (interview E), hindering them to present it as a ‘fait accompli’.

7. Conclusion

This paper aimed to study both the relationship between EP negotiation teams and their responsible committees and the relationship between members of negotiation teams during trilogue negotiations. It does so by using principal-agent theory. More precisely, in this paper I argue that, according to the delegation act, EP negotiation teams must be modeled as “collective agents” of their responsible committees. This delegation is however encompassed in a larger network of principal-agent relationships, both horizontally and vertically.

The empirical findings show that despite the attempts to formalize it, the EP organization in trilogues remains largely flexible and subject to variation between committees and between legislative files. Contacts between both institution representatives are not limited to ‘formal trilogues’ but take place under various format and including several different actors: ‘there are official rules and then there’s a way to work unofficially. Because the rules still leave plenty of room to do it yourself. So it depends on each case what is the most logical way to manage ’ (interview E). Such contacts within and outside institutions allow for a ‘contiguous signaling’ between agents, allowing them to conclude compromise (Delreux and Laloux 2016).

This paper also shows that while the EP rules of procedure establish several available control mechanisms for the committee, agent in trilogue usually enjoy high level of discretion. Indeed, they are able to take independent actions without interference from their principal. I argue that the collective feature of the agents can partly explain it as this decreases the cost of no-control for the principal and increases his ability to engage credibly. Yet, this credible engagement lies in the ability of the members inside the collective agent to engage their political groups for the vote
plenary, increasing the need for the political group to control their members in trilogues.

Eventually, the paper reasserts that rapporteurs are the central EP actors in trilogues. While their inclusion in negotiation teams decreases some of the theoretical basis of their empowerment, the interviews still consider them as the main relais actors in the EP, linking both the Council and the EP. This position can be explained by several features attached to the rapporteurship. Beside, rapporteurs have to secure the support of the team and face the concurrence of the chair, especially in case of disagreement between both actors. Hence while committees delegate with a rather broad discretion to negotiation teams, they give particular status, yet more constrained, to one actor within the collective, namely the rapporteur. However this balance of power inside the collective agent must be regarded as a variable rather than a constant, raising the question on the condition explaining whom, within the collective agent, is able to takes over the EP representation to be the ‘main’ EP negotiator and how to conceptualize this situation in a principal agent perspective.

Bibliography


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