



**Why Trilogues? Determinants of the use
of informal negotiations in EU codecision-
making processes 1999-2016**

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Thesis submitted in fulfilment of the requirements for the degree of

Doctor of Philosophy (PhD)

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December 2017

Declaration

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of Doctor of Philosophy (PhD) is entirely my own work, and that I have exercised reasonable care to ensure that the work is original, and does not to the best of my knowledge breach any law of copyright, and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

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Acknowledgements

First and foremost, I must acknowledge the spectacular support and direction afforded to me by my outstanding supervisor Dr. Karen Devine. Karen provided an expert balance between close supervision and support while at the same time, always challenging me to think for myself. She has been an incredible resource these past four years. I am forever grateful for the skills I have acquired and developed under her tutelage. She has shown tremendous faith and belief in my ability to get to this stage and this has been a very empowering experience for me.

On a personal level, I would like to thank my mam, Ann and father, Christy for their never-ending support of me throughout my time in education. They have always sought to encourage me to do my best and provided the love and direction upon which I could achieve my education and self-develop. I must also mention my two sisters Claire and Laura for always taking an interest. A special mention must go to my grandfather, Harry and my uncle and godfather Henry who both encouraged and supported my journey to this stage. I also appreciate the support of my wider circle of friends and my colleagues in the PhD research rooms over the years. There are too many to mention individually.

I would like to thank my external examiner Prof Adrienne Héritier and my internal examiner Dr Kenneth McDonagh for the time they took to read my thesis. I really enjoyed the viva voce examination under their questioning. It will live long in my memory. I would like to acknowledge Prof Iain McMenamin's role in reviewing my work each summer. He always provided robust feedback and constructive criticism. Huge thanks to him for chairing my viva panel on the day too!

I should also thank other members of the School of Law and Government who supported and encouraged me during my time as a PhD student. I would like to particularly mention our current Head, Prof Gary Murphy who provided me with some excellent teaching opportunities inside and outside of DCU. I am very grateful for his encouragement and his interest in me.

I am also grateful to all my former teachers in primary and secondary school, during my BA at DCU and my MA at UL. My experiences during this time shaped who I am today and in particular, my love of teaching and my curiosity in research. I would like to acknowledge a good friend of mine, Dr Kevin O'Higgins SJ who provided academic advice and conversation over the years.

Last but not least, I should acknowledge the support of the Irish Research Council who provided me with scholarship funding for the second, third and fourth year of the PhD, having initially been granted a scholarship from the School of Law and Government here at DCU.

Table of Contents

Figures and Table.....	viii
List of Figures.....	viii
List of Tables.....	x
Glossary.....	xi
Abstract.....	xvi
Chapter 1: Introduction and Importance of Research.....	1
1.1.1. The EU context	1
1.1.2. Institutionalisation of the Trilogue.....	3
1.1.3. Literature and Political Significance.....	6
1.1.4. Aim of this project.....	8
1.1.5. Structure of the project.....	10
1.1.6. Why and When Trilogues? A Summary of Findings.....	11
1.1.7. Transparency.....	12
Chapter 2: Understanding Codecision and Trilogues.....	14
2.1 Brief overview of Codecision.....	14
2.1.2 General overview of EU decision-making.....	15
2.2 Overview of Trilogues.....	19
2.2.2 Second reading and lead-up to Conciliation.....	21
2.2.3 The Conciliation Committee.....	25
2.2.4 Earlier Agreements.....	28
2.2.5 Summary positions.....	29
Chapter 3: Literature Review.....	30
3.1 Introduction to informal decision-making in the EU.....	31
3.1.1 Informal versus formal decision-making.....	31
3.1.2 Early Agreements and trilogues more generally.....	32
3.2 Trilogues: Conciliation through to Early Agreements.....	34
3.2.1 Conciliation.....	34
3.2.2 Emergence of Early Agreements.....	35

3.2.3 Trilogue use by Policy area.....	36
3.2.4 Treaties and influence on trilogues.....	37
3.2.5 Voting rules, reading stages and deadlines.....	38
3.3 Why do legislators “go informal”?.....	39
3.4 The effects of “going informal”.....	44
3.5 Similarities.....	49
3.5.1 Introduction to Conference Committees and “Ping Pong”.....	50
3.5.2 The Process: membership and mechanics.....	50
3.5.3 Statistics on the use of the procedures.....	51
3.5.4 Why “go informal”? International comparisons with the EU.....	52
3.5.5. The effects of “going informal”.....	55
3.5.6 But who wins?	57
3.6 Conclusion.....	58
 Chapter 4: Data and Methodology.....	60
4.1 Establishing Saliency of Files.....	60
4.2 Eurobarometer surveys as a way of gauging saliency.....	63
4.3 Reduced observations.....	65
4.4 Extending the database.....	66
4.5 How this database differs from the approaches of other scholars to date.....	68
4.6 Collection of and recording of the dependent variable.....	70
4.7 Contextualisation.....	71
4.8 Key word search and “informal”.....	73
4.9 Identifying information on trilogues.....	76
4.10 Recording the dependent variable.....	77
4.11 Database concerns and considerations.....	78
4.12 Brandsma database.....	79
4.13 Collection of second dependent variable “Transparency”.....	80
4.14 Review of the Transparency dependent variable.....	83
4.15 Collection of explanatory variables.....	84
4.16 Expenditure variable (budgetary implication).....	93
4.17 Using STATA to carry out empirical testing.....	103
4.18 Encoding the variables in STATA.....	104
4.19 Qualitative chapters: illustrative case studies.....	106
4.20 Interviews.....	112

Chapter 5: When and Why Trilogues?	115
5.1 Background	115
5.2 Applicable variables and the theoretical rationale for their inclusion	116
5.3 Trilogues overview	123
5.4 Explicit hypotheses	149
5.5 Discussion of model results and return to hypotheses	154
5.6 Summary of hypotheses	166
 Chapter 6: Illustrative case studies explaining “When and Why Trilogues”?	 168
6.1 Policy Character	168
6.1.1 Polity building	168
6.1.2 Market Building	180
6.2 Budgetary Impact	188
6.3 Time taken	196
6.4 Legislative instrument	204
6.4.1 Regulations	204
6.4.2 Directives	214
6.5 Conciliation files	218
 Chapter 7: Transparency, Democratic Legitimacy and the Ombudsman	 231
7.1 Background	231
7.2 Definitions of transparency and accountability	231
7.3 Brief overview of EU transparency rules	233
7.4 Ombudsman’s own initiative investigation into transparency of trilogues	235
7.5 Applicable variables and the theoretical rationale for their inclusion	239
7.6 Transparency Overview	242
7.7 Explicit hypotheses	252
7.8 Discussion of model results and return to hypotheses	255
7.9 Summary of hypotheses	264

Chapter 8: Illustrative case studies explaining Transparency.....	265
8.1 Transparency and Budget.....	265
8.2 Transparency and Timetaken.....	275
8.3 Transparency and Policy Area.....	285
8.3.1 Transparency and Environment.....	285
8.3.2 Transparency and Transport.....	292
8.3.3 Transparency and Employment.....	301
8.3.4 Transparency and Fisheries.....	311
 Chapter 9: Conclusion.....	 323
9.1 Summary and findings.....	323
9.2 Contribution to the literature.....	329
9.3 Implications for policy-makers.....	333
9.4 Further academic research.....	336
 Bibliography.....	 338
Appendices.....	349

Figures and Tables

List of Figures

Figure 1.1 the inception of the trilogue.....	2
Figure 4.1 collecting the units of analysis.....	67
Figure 4.2 screenshot of PDF thumbnails, case 2013/0449(COD).....	81
Figure 4.3 screenshot of PDF thumbnails, case 1999/0200(COD).....	82
Figure 4.4 screenshot of PDF thumbnails, case 2012/0364(COD).....	82
Figure 4.5 screenshot searching in the Legislative Observatory.....	86
Figure 4.6 screenshot establishing the legal nature of a file.....	87
Figure 4.7 screenshot of legal nature (new legislation).....	88
Figure 4.8 screenshot A of search for community budgetary implication.....	96
Figure 4.9 screenshot B of search for community budgetary implication	96
Figure 4.10 screenshot C of search for community budgetary implication.....	97
Figure 4.11 screenshot C of search for community budgetary implication.....	98
Figure 4.12 screenshot D of search for community budgetary implication.....	100
Figure 5.1 numbers of trilogued files and non trilogued files.....	125
Figure 5.2 trilogued files and non-trilogued files by EU treaty in force.....	126
Figure 5.3 trilogued files and non-trilogued files by legislative reading stage.....	127
Figure 5.4 trilogued files and non-trilogued files by EU treaty in force by legislative reading stage.....	128
Figure 5.5 trilogued files and non-trilogued files by EP committee.....	130
Figure 5.6 trilogued files and non-trilogued files by Commission DG.....	132
Figure 5.7 trilogued files and non-trilogued files by policy character type.....	134
Figure 5.8 trilogued files and non-trilogued files by legal nature of legislative file.....	136
Figure 5.9 trilogued files and non-trilogued files by EP term year.....	138
Figure 5.10 trilogued files and non-trilogued files by legislative instrument.....	139

Figure 5.11 trilogued files and non-trilogued files by leg' instrument by policy character type..	140
Figure 5.12 trilogued files and non-trilogued files by time taken to conclude file.....	141
Figure 5.13 trilogued files and non-trilogued files by Consilium document availability.....	143
Figure 5.14 trilogued files and non-trilogued files by Consilium document availability by EU treaty in force.....	145
Figure 5.15 trilogued files and non-trilogued files by EU community budget impact.....	147
Figure 7.1 document availability of each legislative file by treaty in force.....	242
Figure 7.2 document availability of each legislative file by responsible EP committee.....	243
Figure 7.3 document availability of each legislative file by the legal nature of files.....	245
Figure 7.4 document availability of each legislative file by EP term year.....	246
Figure 7.5 document availability of each legislative file by time taken to complete a file.....	247
Figure 7.6 document availability of each legislative file by time taken by trilogue.....	248
Figure 7.7 document availability of each legislative file by time taken by no trilogue.....	249
Figure 7.8 document availability of each legislative file budget category size.....	250

List of tables

Table 1 Number of Files by Trilogue/No Trilogue.....	124
Table 2 Logistic regression (trilogues).....	150
Table 3 Logistic regression (transparency).....	253
Table 4 Four Policy Types and their characteristics.....	349
Table 5 Policy type attributed to EP committees	350
Table 6 Typical EP legislative cycle.....	351

Glossary

A-point: a point that it not up for discussion at Council/Commission meetings and has already been decided.

B point: a point for discussion and potentially decision at Council/Commission meetings.

Beta coefficients: estimates arising from regression that have been standardized so that variances of dependent/independent variables are 1

Bill establishing TARP in 2008: Troubled Asset Relief Program related to the US government stabilising its financial sector by relieving financial institutions of toxic assets and equity.

Binary dependent variable: a two category outcome e.g. yes and no, often denoted (1 and 0).

Biometric identifiers: a system which uses fingerprints or facial recognition for identifying a person.

Botnet networks: special Trojan viruses used by cybercriminals to remotely take over computers.

Codecision: EU legislative procedure requiring agreement between the Council and Parliament for legislative files to be adopted.

Codification: the bringing together of a legislative act and all of amendments into one single new act.

Cohesion Policy: policy underpinning thousands of EU-wide projects that receive funding from the European Regional Development Fund, the European Social Fund and the Cohesion Fund.

Comenius: an EU funded education programme related to pre-school, primary and secondary education

Comitology: a set of procedures through which EU countries regulates the Commission's implementation of EU law

Commission Legislative Proposal: the initial proposal of law which the Commission sends to the Council, European Parliament, national parliaments and sometimes the Committee of the Regions and the Economic and Social Committee for their observations

Conference committees: a committee of the US Congress consisting of representatives from the Senate and House tasked with reconciling disagreements on a legislative bill

Consilium: Official website of the Council of the EU and the European Council

Coreper: Committee of Permanent Representative of Member States which prepares the work of the Council.

Coreper I: Deputy Permanent Representatives.

Coreper II: Permanent Representatives.

Council formations: the different configurations by which the single legal entity, the Council of the EU, can sit depending on the policy area under discussion.

Council Working Party: Council preparatory bodies which aid work on legislative files.

CPT (tariff): an absolute price capped tariff available to all customers.

Dichotomous outcome variable: a variable where there is just two possible outcomes.

Do file: a STATA text file which contains commands which enable the quick creation of tables and charts.

Doha round: a round of trade negotiations among the World Trade membership aimed at reducing trade barrier and revising trade rules.

Electronic tag: an electronic version of the wheel market. It contains proof of conformity with respect to marine equipment which is traded within the European Economic Area.

Encode: to generate a numeric variable from a string variable (containing letters, numbers or characteristics).

Energy Efficiency Action Plan: three year plans which set out estimated energy consumption, planned efficiency measures and improvements each EU country expects to achieve.

Engineered nanomaterials: any intentionally manufactured material, where 50% or more of the particles in the number size distribution is between 1 and 100 nanometres.

EP amendments: amendments made by member of the Parliament to draft reports, opinions or proposals when submitted to EP committees.

EP term cycle: this refers to the five year EP term legislative cycle. The most recent one begun in June 2014 and ends in May 2019.

Erasmus Mundus: an EU education programme aimed at enhancing the quality of higher education and encouraging mobility and academic cooperation.

EU competence: relates to the policy areas in which the EU can act. These are broken down into exclusive, shared (with MS) and competence to support, coordinate or supplement Member State actions.

Eurobarometer: surveys that monitor public opinion in all the EU's Member States so as to determine the citizens' awareness and support for EU activities.

European Regional Development Fund: a fund aimed at strengthening economic and social cohesions within the EU by correcting regional imbalances.

European Territorial Cooperation: one of the objectives of EU Regional/Cohesion Policy. It encourages cooperation among territorial units to help ensure equal economic, social and cultural development in the EU and in neighbouring countries.

Four column documents: a main tool of work in trilogues. The three columns present the positions of the Commission, the EP and the Council of Ministers. The fourth column permits for compromise text.

Grundtvig: an EU education sub-programme focused on adult learners and developing that sector of teaching and study.

Informal amendment exchange (ping pong): where a measure containing amendments is sent back and forth between the USA's House and Senate so as to try agree identical legislative language.

Legislative instruments: relates to regulations, directives and decisions.

Legislative Observatory: The European Parliament's database for monitoring the EU decision-making process.

Legislative Observatory's key events: a timeline of developments between a legislative file being proposed and its conclusion. This normally provides a link to documents detailing these stages and a summary paragraph.

Log odds ratios: a measure of association between an exposure and an outcome. The odds ratios represent the odds that an outcome occurs given a particular exposure compared with the odds of the outcome occurring if that exposure is absent.

Logistic regression models: a regression analysis which is predictive where the outcome is binary and there is one or more nominal, ordinal, interval or ratio-level independent variables.

Longitudinal seats: seats that are placed parallel to the sides of a vehicle which sees the passengers sit sideways to their direction of travel.

Market building: a character of a file which places emphasis on economic efficiency.

Market correcting: a character of a file denoting re-distributive implications.

Market cushioning: a character of a file where competence is often shared with member-states and where there is potential for implementation problems.

Multinomial regression model: a predictive analysis used to describe data and explain the relationship between one dependent variable which is nominal and one or more continuous-level independent variables.

Nitrates: inorganic compounds found in nature and in much of the food we eat.

Novel foods: a food which has not been consumed to a significant degree by EU citizens before 1997.

Ordinary legislative procedure: codecision renamed after the Treaty of Lisbon which means the Parliament is on equal terms with the Council. This is distinct to the Special Legislative Procedures where the Parliament has just a consultative role.

Outliers: relates to data that differs from the majority of the set of data and lies an abnormal distance from other values in a random sample from a population.

Parltrack: a European initiative to improve the transparency of legislative processes.

Policy character: refers to files categorised as polity building, market building, market correcting or market cushioning.

Polity Building: a character of a file denoting sovereignty sensitive concerns.

Prelex: database on inter-institutional procedures following EU decision-making.

Presidency compromise: the Council (rotating) Presidency achieves a compromise between Member States.

Protected designation of origin: a logo attesting to specific tradition and qualities of food, wine and agricultural products produced in a specific region in the EU.

Reciprocity mechanism: a principle of the EU's common visa policy which means when deciding on lifting visa requirements for third country citizens, the EU considers whether that third country in return applies its visa waiver to all nationals of participating Member States.

Repeal: revoking or annulling an EU law.

Rule 70.2b: rules requiring EP negotiation team in trilogues to report back to the responsible EP committee and make documents available which reflect the outcome of the last trilogue or else, for reasons of time, report to the Chair and shadow rapporteurs.

Schengen acquis: collection of rules and regulations for the Schengen area. It allows for Member States to take measures towards internal border protection and to take action if there are threats to national security.

Shadow Rapporteur: a rapporteur is responsible for a piece of legislation on behalf of an EP committee. A shadow rapporteur is appointed by the political groupings other than the one where the rapporteur originates.

Single European Act: the first substantial change to the Treaty of Rome. It saw the Union's powers increased and the decision-making capacity of the Council of Ministers improved.

SIS: the Schengen Information System is a large scale information system that supports external border control and law enforcement.

STATA: an integrated statistics package that allows data analysis.

Sunset clause: a specific date after which the law or measure shall cease unless action is taken to extend it.

TEN projects: hundreds of projects of work with the purpose of cohesion, interconnection and interoperability of the European transport network.

Terrestrial ecosystems: desert, forest, grassland, taiga and tundra.

TEU treaty: also known as the Maastricht Treaty. It was effective from 1993 and introduced the codecision procedure.

Trilogue: informal meetings between the European Parliament, the Council and the Commission.

Wheel mark: a mark which is affixed to products which comply with the Marine Equipment Directive

Why Trilogues? Determinants of the use of informal negotiations in EU codecision-making processes 1999-2016

Karl Murphy

Abstract

The institutions of the European Union (EU) pass legislation which affects 508 million inhabitants (Europa 2017a), 26 million enterprises, 143 million business economy workers, and the national policies of 28 Member States (Eurostat 2017). To date the EU has passed over 40,000 legal acts. Codecision refers to a legislative procedure in operation in the European Union decision-making process. Since 1999, informal tripartite meetings called “trilogues” between the EP, European Commission [Commission] and the Council have taken place prior to and separate from the main public “reading stages” of codecision legislation (where the EP and Council enjoy equal decision-making powers) so as to increase the efficiency of decision-making. A trilogue is an informal meeting or negotiation between representatives of the Commission, the EP and the Council. Commentators, including the EU Ombudsman, have questioned the democratic legitimacy of these “trilogue” meetings, numbering 1500 over the past five years (EU Ombudsman 2016), in the context of the EU’s democratic deficit and the need for decision-making transparency. Using logistic regression models, it is the aim of this present study to (a) investigate when and under which conditions trilogues occur and, (b) separately, but keeping in line with the charge against democratic legitimacy, to explore the conditions which potentially affect the transparency of legislative files. This will include the implications for transparency of efficiency and budgetary considerations. Parts (a) and (b) will be aided by a broad database consisting of 1448 Ordinary Legislative Procedure (OLP)-agreed directives, regulations and decisions. The findings in (a) and (b) will be illustrated further with the use of qualitative case studies of legislative files and interviews with MEPs and an EP legal advisor. Focusing on three full EP legislative terms and part of the subsequent one, this study is unique in its scope. It explores legislation at all reading stages in pursuit of understanding why files are trilogued. Equally novel is the examination of the same 1448 OLP codecision files to determine the transparency of both trilogued and non-trilogued legislative processes, in order to investigate concerns about the democratic credentials of trilogues. The study finds that files that are trilogued are usually building types where sovereignty, economic efficiency and budgetary implications matter. In the post-declaration period (2007-2016), the transparency of legislative file documentation is not adversely affected by efficiency in the time taken to conclude files. However, EU community budgetary implications matter. Increases in budgetary amounts see a corresponding reduction in the transparency of legislative file documentation.

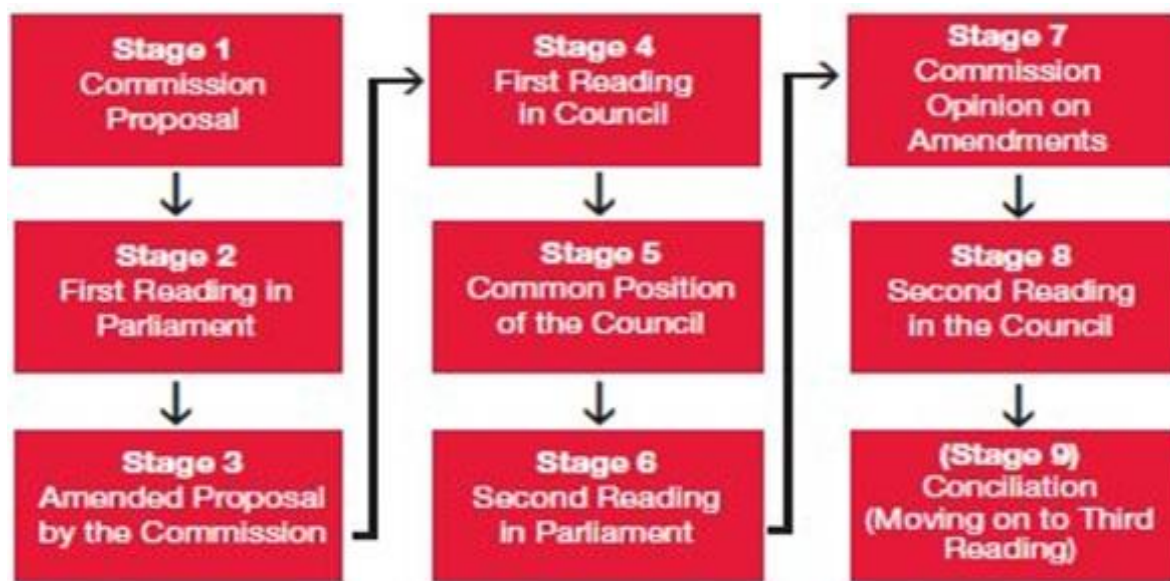
Chapter 1: Introduction and Importance of Research

1.1 The EU context

The European Union (EU) is a 28 Member State regional organisation encompassing 508.3 million (2014) inhabitants with competence to make policy through and on behalf of its members in specific areas. Thus far, the European Union has passed over 40,000 legal acts and this thesis focuses on the acts passed using the codecision procedure over the past sixteen and a half years, whereby Member State Governments through the Council of Ministers (Council) have equal power with the directly-elected representatives of EU citizens, the European Parliament (EP). Changes have occurred in debates over the EU's democratic deficit, as the EP has gained co-legislative powers over time, from its early years in a purely consultative role. The concept of a "democratic deficit" follows on from those that say the EU institutions and decision-making processes are not truly democratic and or accessible to the ordinary citizen due to their complexity. Others point to how EU voters feel unable to reject an EU "government", politics or policy that it wishes to change. Also, for the purpose of this study, "democratic deficit" refers to the "lack of accountability and transparency of European institutions" but can be more widely applied to the uncertain wording of Treaties governing the EU. Included is the "bureaucratic and technocratic nature" of the EU in which EU institutions cannot be properly corrected if they commit wrongdoing (Binder et al. 2016). I will return to this debate later. Despite the EP increasing its powers over time and it remaining the EU institution most trusted by the people (48%), the EU public's interest in it has fallen, perhaps measured by a decrease in voter turnout (De Clerck-Sachsse and Kaczyński 2009). The 2016 decision by the UK people to leave the EU has further increased the importance of adequately connecting the people of Europe to the importance of the

Union, namely a continuance of European peace, economic development and prosperity and social development across the realms of justice, human rights and climate change among many others.

Figure 1.1 the inception of the trilogue



Source: (Zaman 2013)

Informal negotiations were first formed as a response to the gap left by the Maastricht Treaty, dealing with the stage between the Council's second reading and the beginning of the Conciliation negotiation stage (stages 8 and 9 in figure 1.1). Looking at the second half of 1994 as an example, particularly the Packaging Directive (for discussion of the frustration, see Garman and Hilditch 1998: 274-6), those participating in the negotiations felt the Conciliation Committee was not the best forum for reaching agreement. This was because of increases in EU competences and an extension of the codecision procedure to more policy areas which led to an increase in legislative workload and a corresponding need to expedite the passage of legislation. This view was supported a year later when it

was agreed that having in excess of one hundred people at Conciliation meetings was unsuitable in attempting to reach agreement on major issues. It was said that in order to prepare for these Conciliation Committee meetings, there should be smaller preparatory ones to begin organizing and streamlining the process. During the then Spanish EU Council presidency, both the EP and Council agreed that such preparatory meetings should become a principle mode of practice for the future (Shackleton 2000: 334). Due to the ad-hoc nature of these negotiations, there exists no standard form of representation by the three institutions at these meetings (more on this in the next chapter). The level of attendance along with the content and purpose of trilogues can vary between types of proposals, for example, from very technical (involving staff from the three administrations) to highly political (involving Ministers and Commissioners) policy matters.

1.2 Institutionalisation of the Trilogue

Over time these informal meetings occurred more frequently and earlier in the legislative process, until the ‘norm’ of informal early meetings was formally acknowledged as a part of codecision in 1999 and trilogues were institutionalised in 2007¹. Thus, although informal trilogues were first introduced typically to help prepare for Conciliation meetings, Conciliation meetings began to be used less since 1999 (Konig et al. 2007: 286) and trilogues began to be used more (Farrell and Héritier 2004: 1197).

These informal negotiations behind closed doors are now so intertwined with the codecision process, their presence is reflected in this near-standard phrase found in codecision-subjected proposals: “In accordance with the provisions of Article 251(2) of

¹Europa; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:145:0005:0009:EN:PDF>

the EC Treaty and the joint declaration on practical arrangements for the codecision procedure, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier". The joint declaration lays down the working methods and the practical arrangements between the three institutions during codecision, including trilogues and Early Agreements. It was first adopted in 1999², with respect to codecision and was revised in 2007³ where the importance of the "trilogue system" throughout codecision was recognised (European Parliament 2014:1). Bunyan (2007:6) notes that the word "trilogue" was not used in the 1999 version. In terms of EU legislation passed between 1999 and 2007, 40% of all EU proposals went through a trilogue meeting. The use of trilogues was much more frequent than average across some policy areas – Information Society, Enterprise and Industry, Environment, Energy and Transport – where more than 70% of legislation was subjected to trilogues (Kardasheva 2012: 11). Agreements reached in trilogues are informal and ad referendum and must be approved by the formal procedures applicable within each of the three institutions (European Commission 2012B). In the period 2009-2014, around 85% of EU laws were agreed at first reading and an estimated 1500 trilogue meetings took place during this five year period (EU Ombudsman, 14 July 2016). Trilogues have steered the EP into new undiscovered territory around diplomatic culture at a cost to democracy (Roederer-Rynning and Greenwood 2015: 1151).

The Democratic Deficit now concerns this tension between the success and expediency of trilogues, and their lack of transparency, such that the EU Ombudsman in 2015 launched her own-initiative investigation (Ombudsman 2015) concerning the transparency of trilogues.

²Europa; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1999:148:0001:0002:EN:PDF>

³Europa; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:145:0005:0009:EN:PDF>

Transparency relates to the accessibility of legislative file documentation in a snapshot in time on the Council's public register of documents (Consilium)⁴. James Cross examines a different concept of transparency (or visibility) concerning the timing of the release of files after decision-making is complete (2014); Hagemann and Franchino (2016) looks at a trade-off between transparency and time taken in the Council's decision-making process and they conclude that access to legislative documentations can help get past the problem of incomplete information, reducing the risk of negotiation failure which increases decision-making efficiency. The move from the ordinary decision-making towards the use of trilogues has consequences for data accessibility (Bressanelli et al. (2014:5). The EP appears to recognise this but notes that "while the need for transparency remains a challenge given the generalization of trilogue negotiations; it has to be reconciled with the need for efficiency in order to reach agreements" (TI 2015: 38).

In discussing trilogue negotiations, it is important to distinguish principally between the two types that occur. There are the negotiations typically but not exclusively before Conciliation which are preparatory. As well as being preparatory, trilogues can at other times enhance efficiency. This means some legislative files being concluded more speedily so as to allow more time to be spent on the most salient files. Particularly after the Treaty of Lisbon, legislators are encouraged to be speedier in agreeing legislation and as a result, the Conciliation process has almost disappeared in recent years. In 1999-2004, 89 of the 403 pieces of EU law passed during this time were completed after Conciliation. In this current term's (2014-19) first half, this figure is reduced to only 4%. Around 80% of EU laws are now agreed at first reading with research by the EP estimating that the average law agreed at first reading takes 14.4 months from start to finish (Fox 2012). In

⁴Consilium webpage; www.consilium.europa.eu/register/en/content/int/?lang=en&typ=ADV

these cases, trilogues occur at an earlier stage in order to conclude legislative dossiers early. Such files are referred to as 'fast tracked' or 'Early Agreement' legislation.

1.3 Literature and Political Significance

Much is known about the formal decision-making arena where EU legislation passes between the EU institutions since information on this process is more readily available through “Consilium”, and the “Legislative Observatory”, the EP’s Public Register of Documents.⁵ When legislation is agreed early through the informal channels (sometimes as early as before the first reading stage, before being rubber stamped at the (formal) first reading stage), there is little opportunity to follow the paper trail of the institutions’ legislative preferences. Studies examining the formal legislative process and the relative influence of institutional actors are plentiful (Kreppel 2002; Kreppel 1999; Kasack 2004 among many others). The past decade and a half has seen analyses of the impact of informal negotiations (trilogues) on EU legislative decision-making (Shackleton and Raunio 2004; Rasmussen and Shackleton 2005; Héritier and Reh 2011), and the conditions which determine their usage (Rasmussen 2011; Kardasheva 2012; Reh et al. 2013; Brandsma 2015). This present study seeks to explain the conditions under which trilogues are used and also to examine the effect of these informal processes on the accessibility of documentation, for example, documentation on Member State (Council) positions in trilogues. As noted by Toshkov and Rasmussen (2012:6) and Shackleton and Raunio (2003:183), there is often thought to be a trade-off between democracy and efficiency where speedy decision-making is not necessarily democracy-enhancing. Early Agreements and trilogues more generally sees the exclusion of many Council and EP

⁵EP register of documents; www.europarl.europa.eu/RegistreWeb/search/simpleSearchHome.htm?language=EN

representatives due to the emphasis on speedy legislation which does not permit enough time to deliberate or consult with institutional representatives (CEPS 2009). Early Agreements are files which are often concluded at the first reading stage and aided by the use of informal negotiations. While legislation is concluded more and more quickly and does not allow the same degree of deliberation at the wider EP and Council level, having transparent documentation released to the public can contribute towards improving the democratic credentials of these files.

Informal negotiations are much less obvious, transparent and reported. Often, the democratic credentials of codecision more generally are questioned in relation to the link between efficiency and transparency (Huber and Shackleton 2013:1041). Particularly worrying was the "lack of transparency and democratic legitimacy" due to the procedures put in place for Conciliation instead governing Early Agreements. However, as noted by the same authors, there can be further questions posed about the quality of legislation (2013: 1048). There is a shift in internal decision-making from roughly 20 to 30 MEPs deliberating in EP committees to just two to three EP Committee rapporteurs forming the EP's position [between Stage One and Stage Two in Figure 1.1]. By entering into negotiations with the Council in trilogues, there is a movement from a public forum to a secret one away from public scrutiny and commentary, debate or intervention. There is a denial of transparency, openness in decision-making and access to documents detailing EP discussions. Crucial debates, differences and options are discussed secretly with the public and civil society excluded (Bunyan 2007:9). Where this is the case, there can be no true accountability (Bunyan 2007:9). Further to this, and as noted by Héritier and Reh (2012: 1140), informal fast track legislation affects the EP as "a collective actor and its public reputation as a democratic legislator in particular." In this era of increased

efficiency, legislation is agreed more and more quickly but perhaps the volume and speed of legislation is only one part of the result. How we get there is just as important.

The EP more traditionally provided a type of "democratic forum" whereas informal decision-making does not provide this same opportunity (Shackleton and Raunio 2003: 185). Information about the timing of negotiations, the preferences of the institutions, the names of those participants in the negotiations and the documentation detailing all of this is often not entirely available until after the legislative procedure has been concluded (Huber and Shackleton 2013:1049).

Therefore, by examining why trilogues occur and under what circumstances, European citizens can acquire a greater understanding of this type of legislative decision-making. This is important for democracy. If the EP as the only directly elected institution wishes to have a worthy impact on the creation of EU legislation (it is meant to be an equal co-legislator since the Treaty of Maastricht, and even more so since the Treaty of Lisbon 2009), it is vital that the EP should have a greater understanding of which factors influence the use and success of trilogues meaning it can best influence legislation according to EP preferences.

1.4 Aim of this project

The aim of this thesis is to investigate a number of hypotheses indicating the determinants of trilogue usage. Principally these include: (1) an "efficiency" hypothesis by examining the relationship between the absence or presence of a trilogue and (a) the time taken to complete a file ("timetaken"), and (b) the stages in the EP term cycle and (c) the Treaty phase, and (2) a "policy salience and constraints" hypothesis in terms of the relationship between the absence and presence of a trilogue with (a) the levels of EU competence and

national sensitivity of the policy portfolio areas, (b) the binding nature of legislative instruments (i.e. decisions, directives and regulations), and (c), establish whether the hypothesis linking budgetary impact with the decision to “go informal” is supported. (3) This thesis will also investigate a “transparency” hypothesis, on foot of the EU Ombudsman Emily O’Reilly’s report, in terms of the relationship between the absence and presence of a trilogue with the levels of transparency of documentation pertaining to decision-making negotiations of legislative files. Transparency is measured according to the extent to which there is redaction of text in the related file documentation. This redaction means the deletion or obscuring of text using black block printing. The relationships between efficiency and transparency, and budget and transparency will be particularly examined so as to evaluate the extent or otherwise of the democratic deficit. To address parts 1, 2 and 3 (outlined above), these hypotheses are tested using a number of logistic regression models based on a bespoke database of 1448 codecision legislative acts concluded between June 1999 and December 2016. Following on from (1), (2) and (3) above, a series of case studies (legislative files) illustrate some of the findings the statistical models identify.

There is evidence found in support of both the efficiency and policy characteristics hypotheses, indicating that trilogues are an expeditious method of decision-making and are employed where negotiations are required to overcome national sovereignty concerns and in areas where the EU has most exclusive and encompassing competence. Given that trilogues are most likely to occur in areas where national sensitivity is high, a lack of transparency related to the desire for secrecy is also probable given that secrecy permits controversial Member State positions to remain unknown to the general public. The transparency hypothesis test results demonstrated that despite the “generalization of trilogue negotiations” (TI 2015: 38), transparency is not so adversely affected by efficient

decision-making. The transparency hypothesis showed budget to have a significant effect on levels of redaction. The larger the budget associated with a given file (up to and above €1bn), the more likely is redaction in file documentation to have occurred.

1.5 Structure of the project

The thesis will be laid out as follows. Chapter 2 will consist of a section explaining codecision, and the process and procedures involved in ‘trilogues’. This will provide some key explanations around the procedure and some key terms. Chapter 3 will detail the existing literature surrounding these informal tripartite negotiations. Chapter 4 will provide a description of the research design and methods. Chapter 5 will be theoretical in nature, outlining hypotheses on trilogues in further detail in terms of when and why these occur. Here, the logistic regression model results will be presented for all codecision legislation concluded between 1999 and 2016, and separately then for two declaration-stratified models pre-declaration and post-declaration. Chapter 6 will provide a number of case studies to illustrate the models dynamics in chapter 5. Chapter 7 will examine the “Transparency” and “Ombudsman” hypothesis using logistic regression models. Chapter 8 will include a number of case studies to further illustrate the models’ dynamics. Chapter 9 concludes with a summary of my findings, my contribution to the literature, and the implications for policy-makers and suggested future academic research.

This study focusing on over three EP legislative terms is the first of its kind since it explores 1448 pieces of legislation at all reading stages across three and half EP terms (1999-2016) in order to understand why files are trilogued, whereas to date, the literature has focused on trilogues at first reading and early second reading stages only (Rasmussen, 2011; Reh et al., 2013; Brandsma, 2015) and one EP term (Brandsma, 2015; Rasmussen,

2011) or two EP terms (Reh et al. 2013) with less than half the number of files (Rasmussen, 2011; Reh et al., 2013 ; Brandsma, 2015). This (1) permits a longitudinal examination capable of picking up the changing nature of the purpose of trilogues; (2) provides the basis for a more nuanced and in-depth evaluation of the post-declaration dynamics of trilogued files; (3) supplies more data points to control for vital hypothesised trilogue predictors like EP term stage and to better pin-point efficiency characteristics; and (4) to distinguish between two distinct periods of trilogue usage pre- and post-declaration; and (5) although one of the drawbacks could be argued to be the lack of variance in the incidence of trilogued files in the post-declaration timeframe, on the other hand, the addition of these data points allows the identification of this finding.

1.6 Why and When Trilogues? A Summary of Findings

In terms of findings on when and why trilogues occur, the story amounts to a tale of two types of trilogue functions. Trilogued files in the pre-declaration period (1999-2007) are typically "building" types with member-states' sovereignty, and market efficiency/liberalisation implications. These types of trilogued files are more likely to be directives, agreed at first reading, taking between a year and two years to conclude and be new or recasting in terms of the legal nature of the file. Trilogued files in the post-declaration period tend to also have sovereignty implications and to be regulations, agreed at first reading. These files typically take less than a year to conclude and are new in terms of legal nature. In the combined pre- and post-declaration model, there is evidence of community budgetary implication increasing the likelihood of trilogues.

These findings from the first half of this thesis imply that trilogues enhance efficiency in terms of shortening time taken to complete the file and are used for more binding

legislation, with sovereignty sensitivity and budgetary concerns a constant predictor of a file being trilogued across time. The study into the transparency of files in the legislative process in the second half of this thesis has also yielded some interesting results.

1.7 Transparency

Files subjected to trilogues are more likely to be redacted. Overall, Lisbon is the least transparent of the Treaty periods while Nice is the most transparent period with a decrease in transparency the further back we look. Files which are "new" and fall under the remit of the EP committees (policy) of Employment, Fisheries, Environment and Transport are more likely to be redacted. Also, EP term cycle matters. Transparency increases the more a file is concluded closer to elections. The main story of the second part of this study centres on budget. The more money associated with a file in terms of community budgetary implication, the more likely it is that there will be redaction. These findings from the second half of this thesis imply that trilogued files are associated with decreased transparency, supporting the concerns of critics of the use of trilogues in the context of the European Union's democratic deficit. The fact that 'new' areas of policy [under 'legal nature' in the quantitative models] where the EU has new competences and by definition has never legislated before, are more likely to be subjected to trilogues compared with policy areas that have been legislated for in the past and are being merely amended for updating or are being codified, i.e. condensing a number of related files together into one instrument, means that the on-going and future progress of the European Union is worryingly less transparent over time. The types of policy areas standing out as being the most redacted (Fisheries, Environment, Transport, Employment) are among the most important policy areas for ordinary people in terms of quality of life, health and

everyday living, and impose significant business and infrastructure costs on state elites. This means that the most vital 'who gets what, when and how' aspects of politics in the EU are the least open to examination and significantly reduce the ability to hold politicians to account and are where the democratic deficit is the most pronounced.

The relationship between efficiency and transparency is one of the most important findings of this thesis. In the pre-declaration period, files taking longer to be concluded were the most transparent, partly explained by the finding from the depth interviews that leaks of information are more likely the longer a file takes to be concluded - whereas in the post-declaration period, files take less time to be concluded and by corollary are less subjected to leaks. Member States over time are more likely to reveal their positions due to media pressure etc. and as a result the relevant file documents are less likely to be redacted. On the other hand, in the post-declaration period, files that are expeditiously concluded are least likely to be redacted, which one could argue addresses the problem cited in the literature of an association between secrecy and efficiency in the EU decision-making process.

However, when one includes budget in the analysis, there is a clear trade-off with transparency: the more money at stake in the legislation, the more likely a file is to be redacted. Although it is held that in general in politics, 'money talks', this thesis finds that money clearly 'whispers' within the EU as the lack of accountability in relation to big budget files (e.g. files associated with budgets of €10 to €100 million, €100m to €1 billion, and more than €1 billion are proportionately increasingly subjected to redaction) is a particularly worrying aspect of the EU's democratic deficit.

Chapter 2: Technical note: Understanding Codecision and Understanding Trilogues

2.1 Brief overview of Codecision

Chapter 2 helps the reader to greater understand both the codecision process and the informal trilogue arm of this legislative procedure. The use of technical EU language and jargon might be thought to generate even greater distance between the institutions and the EU citizenry. It is thought that the EU institutions and their decision-making procedures are "inaccessible to the ordinary citizen due to their complexity" (EUR-Lex 2017). Presumably, being able to form informed opinions on the functioning of the Union and/or on the behaviour of EU representatives is an important part of citizens being able to properly hold their representatives to account. This is arguably one of the most important components of democratic accountability. There is a democratic deficit whenever EU decision-making is too technical or complexed for citizens to follow.

This chapter helps set the scene and explains some of the technicalities which arise related to both the codecision procedure and more particularly trilogues so as to better understand the thesis and its findings. This section will cover the introduction of codecision; the resultant informalisation of codecision arising from Conciliation; the use of trilogues early in the codecision procedure and the reduction in institutional representation at trilogues; the process of Early Agreement; and the consequences of this for effective deliberation and provision of information to the public. Some of these themes arise again the literature review in Chapter 3. Section 2 of Chapter 2 provides an overview of trilogues. This includes a summary of the main types of trilogue; their use in the lead up to Conciliation; the Conciliation Committee itself and the use of trilogues to

aid Early Agreements. At each stage, the nature of the institutional representation is discussed as well as the conduct of the negotiations including the back and forth nature of negotiations and reporting from the trilogue agents to their principles, the EP and Council.

2.1.2 General overview of EU decision-making

As provided for under the Maastricht Treaty in 1993, codecision can consist of up to three legislative readings. Following on from Maastricht, the Amsterdam Treaty amendments allowed the co-legislators to conclude legislation at first reading stage. This relies on the Council achieving the required majority to pass the Commission's proposals plus EP amendments. If this is not possible, there remains a possibility to achieve a second reading stage conclusion. This involves the Council reaching its "common position" and taking on board the EP's amendments to this document. However, if the Council cannot agree to the EP's amendments, the legislation moves to a third and final reading stage, and Conciliation Committee is established with the view to the institutions finding compromise and agreement on their differences (Toshkov and Rasmussen 2012:4). While compromise reached informally must be re-introduced back into the formal meeting of the Council and EP, normally such deals cannot be modified. This means the two institutions must accept what is on offer or face the prospect of no legislation being passed (Toshkov and Rasmussen 2012:4).

As noted by Rasmussen (2007:6), at second reading, negotiators normally find themselves defending their institution's official position. In the case of the EP, it is more difficult to make amendments. Under Article 251 of the EU Treaty (TEU), an absolute majority (above 50% of total MEPs regardless of the number of MEPs present) rather

than the simple majority (50% of MEPs present plus 1) needed at first reading, is required. At third reading, there is more back and forth between negotiators and their principals, refreshing mandates, and with negotiation scope reduced. Only those amendments made to the Council's common position (at late second reading) by the EP are open to negotiation due to rules preventing new amendments being made.

Rasmussen and Shackleton (2005) determine that negotiators to informal negotiations tend not be constrained or monitored by their principal bodies (EP, Commission and Council) early on in the legislative process when compared with the later stages. As noted by the Centre for European Policy Studies CEPS (2009: 1-2), decisions on the EP's position are taken more and more after just one legislative reading stage which reduces the time needed to deliberate and scrutinise. Despite the EP becoming this more "assertive political actor" with more powers, the ideal of efficiency has seen work move from plenary (all MEPs) level to committee level. Often, work is moving from the committee (sub group of the EP dealing with a specific policy areas e.g. ENVI (Environment)) to informal negotiations with even fewer representatives. There has been an increase in legislative agreements at the first reading stage, known as Early Agreements (CEPS 2009: 10-11).

This early agreement of files can be used for files which are less controversial but also for those that require swift action. This therefore covers a whole plethora of files with varying characteristics. The increased informality of the legislative procedure means that committees become more important than the plenary. EP committees don't always adequately represent the composition of the EP plenary as a whole. Also, when an informal compromise (in a trilogue) is achieved, its presentation to plenary is really with a view to it being rubberstamped "formally". There is no real prospect for wider deliberation by the plenary around this agreement, meaning public attention around

MEPs' political priorities is less captured (CEPS 2009:11). In trilogues, the participants are often acting on behalf of the institutions and the documentation detailing actors' positions is not revealed until after the process has concluded (Huber and Shackleton 2013:1041). Where this is the case, civil society and the public more generally are unable to gain access to the legislative process meaning there is a loss to democracy and the accountability of EP representatives. Particularly related to informal agreements at first reading, but not exclusively, the reduced visibility of such agreements to the public means the citizens' link to legislation is greatly diminished. The EP being a co-legislator was thought to mean national administrations did not dominate the legislative process (Huber and Shackleton 2013: 1049). The EP's internal reform working group proposed that the use of agreement at first reading should be limited to cases that are "clearly advantageous, such as in uncontroversial cases, highly technical matters or matters of urgency" (CEPS 2009:11).

As noted by Bunyan (2007: 8), first reading stage-agreed dossiers, with the aid of trilogues, are often completed prior to the relevant EP committee adopting its position, i.e. circulating a draft report from the rapporteur and discussing this among the various different EP political groups amending the draft report, with further discussion by MEPs and a vote on the amendments put down. This report, when amended, is ordinarily the EP's view at first reading, where it can be subject to further amendments by MEPs ahead of plenary adoption. The draft report, discussion, amendment and voting are done publically and are openly available on the EP's website, the Legislative Observatory. This way, EU citizens can follow the legislative process and seek to make representations to their MEPs ahead of committee and plenary votes. This cannot be done when the Council and EP reach agreements via trilogues at first reading. While the rapporteur writes a draft report and amendments are suggested, they are not subject to votes in the EP committee.

Instead, the agreement is presented to the committee and the EP plenary as a final position. Any amendments submitted are normally voted down by the rapporteur with the necessary majority in the EP plenary already onside. Once again, this has implications for the democratic credentials of trilogues. If a trilogue-agreed compromise is presented to the EP committee as a final position, particularly at first reading, it means the space for wider deliberation is non-existent. If the rapporteur's position is different to that of the median EP position, it can be argued that there is an even further disconnect between trilogues and EU citizens. Where details regarding the documentation and participants of these trilogues are withheld, democracy and accountability are almost certainly diminished.

As noted by Charlotte Burns to the House of Lords' Codecision and National Parliamentary Scrutiny Report (House of Lords 2009: 12), the Treaty of Amsterdam's introduction of the possibility of first and second reading agreements was about expediting decision making where the Council and Parliament did not disagree significantly on a dossier or where proposals were "merely technical". The nature of files agreed as EAs has changed, seeing very controversial and salient proposals addressed using this mechanism, such as the "Climate Change Package" [COM (2008) 30]. Where such controversial and sensitive proposals are agreed in private, a loss of democracy is even more palpable in terms of the distance between the EU citizenry and the extent to which their directly-elected representatives are seen to legislate on their behalf. The inability of civil society groups to influence salient legislation including in the area of environmental policy can be said to fly in the face of any notion of democratic action. As noted by MEP 1, a file would "need to be incredibly uncontroversial for it not to be trilogued while in the past they were used more for technical points". The MEP went on

to add that trilogues add value when working out "the nuts and bolts" of a file but are not good where "principles" are being worked out.

Simon Hix notes in the House of Lords "Codecision and National Parliamentary Scrutiny Report" (House of Lords 2009:17) that, in the past, the paper trail of the legislative process, right up to and including Conciliation Committees, would be formally available, including the "Commission's original proposal; the Council General Approach; EP first reading; Council Common Position; EP second reading; Council second reading; and the Conciliation joint text". This paper trail allowed the public and all interested parties to view amendments made by the institutions throughout the legislative process. However, since legislation is now mainly concluded through "a deal between a small group of MEPs and the Council Presidency... and then rubber stamped", MEPs, Member State parliaments and the EU populace cannot adequately scrutinise the legislative process. For files adopted at the first reading stage, the Commission's proposal and the Council's General Approach are only available ahead of the Council and EP first readings where the "agreed text is presented".

2.2 Overview of Trilogues

Trilogues are informal three-way meetings between representatives of the Commission, the Council and the EP. These meetings are ad-hoc in nature and representation varies, depending on the purpose and the content of the tri-partite negotiations. Attendance can be technical, with staff from the three institutions present, or highly political with Commissioners or Ministers involved in the meetings. The three institutions have their own separate rules and procedures regarding who represents them at each of the meetings and around the mandate handed down for the negotiations (European Parliament 2012A).

Each team of negotiators is supported with resources to permit it to carry out its job effectively. Resources include an administration team consisting of members from the Committee secretariat, Rapporteur's advisors, Codecision Secretariat and the Legal Service. This team can be increased in number as the negotiations progress (European Parliament 2012A). Meetings can deal with timetables or planning upcoming meetings or go as far as discussions around issues of real political substance. Often the aim of these meetings is to achieve agreement around a set of amendments which the EP and Council will both accept. Here, the Commission's agreement is important because if the Commission rejects an amendment which the EP favours, the Council must act unanimously to accept the amendment. All agreements which are reached in trilogues are informal and still must go through the formal procedures specific to each of the three institutions (European Commission 2012b).

Trilogue negotiations differ primarily along two grounds of purpose. Initially, they were used primarily to prepare for, and negotiate during, the Conciliation Committee stage (third reading). The joint declaration on practical arrangement for the new codecision procedure (Section 2 and 3) issued on May 22nd 2007, allows for informal contacts to occur so as to bring the positions of the co-legislators together. They can be two-way between the Council and EP or three-way, when the Commission is included. Again, there is no set format for representation but it usually consists of the Council Working Party Chairperson, the Council General Secretariat, the Rapporteur and representatives of the Commission (the experts in charge of a dossier and their superior, helped by the Commission Legal Service and Secretariat General) (European Commission 2012A). If these contacts reach a successful outcome on the dossier, the Chair of COREPER will write to the relevant EP committee. The Council approves the EP's amendments then once they are consistent with the joint compromise that has been negotiated between the

institutions. The amendments as part of this compromise text then go before the EP committee (if at an early stage) or instead go before plenary if at a later stage. The rapporteur and shadow rapporteurs sign this text which leads to the adequate majority of votes needed for the legislation to pass. Similarly, the EP's political groups vote to adopt the amendments agreed in the above compromise. Once they are adopted by the EP according to the compromise, the Council adopts the act and the procedure is concluded (European Commission 2012A).

2.2.2 Second reading and lead-up to Conciliation

When a decision cannot be reached earlier and a file goes to Conciliation, negotiations occur before Conciliation to prepare for the main upcoming meeting between the institutions. Often, these preparatory trilogues and three way technical meetings mean Conciliation is brought to a swift conclusion once begun. This meeting sometimes even result in a pre-agreed position or declaration. However, it is also possible that a number of Conciliation meetings are needed before agreement is reached on a Joint Text. These main meetings are often flanked by three way preparatory meetings to aid the process (Fox 2012).

Due to the difficulty of some legislative dossiers, and the restrictive nature of time periods for reaching agreement set down in the treaties, informal ground work is necessary leading up to Conciliation. The Conciliation procedure itself is formal, but as mentioned above, negotiators will meet informally in advance of this. The meetings are usually tri-partite at either the technical or political level with a reduced number of participants. The Chairperson of the delegation, the Chair of the EP committee in question, and the rapporteur will represent the EP. They are aided by the EP Conciliations

Secretariat and a member of the EP's Legal Service. The Council will be represented by the current presidency's Permanent Representative along with its Secretariat and Legal Service. The Commission is represented at trilogues by the relevant Department's DG, along with its Legal Service and Secretariat General. As mentioned above, representatives of the institutions participate in trilogues in accordance with the negotiation mandate given to them by delegations. The potential for compromise is informally examined before reporting back to delegations. Sometimes, informal technical trilogues are organised with experts and Secretariats of the three institutions in attendance (European Commission 2012A). These types of trilogue are more technical than political in nature.

In the lead up to the first meeting of the Conciliation Committee, the Council Presidency should be available for technical meetings and also for trilogues. These technical meetings normally involve the Working Party Chairperson, while trilogues involve the Chairperson of COREPER. COREPER will normally draw up the Council's negotiation position (Presidency's mandate). The Chairman will keep COREPER up to date on the progress of negotiations with the EP and of the outcome of these. The subsequent decision is then binding on the Presidency. The first Council negotiation offer takes the form of a Presidency compromise. The EP normally replies with the rapporteur's position. Once again, each offer must be approved by both the Council and Parliamentary delegations (Council Secretariat 2010).

When the trilogues immediately before Conciliation occur, the Commission is represented by the respective policy Commissioner. Otherwise, the relevant Director General may represent the Commission with the help of the Legal Service, the Codecision unit and the Secretariat General. The mandate given to the EP is usually formed from amendments which are adopted either in committee or in plenary. The committee might determine the time limit and properties for the negotiations. In the once-upon-a-time

seldom case of negotiations ahead of a first reading agreement, before the vote in committee, the committee provides guidance to the negotiators. A joint text is the basis upon which negotiations are conducted. This joint text indicates the three institutions' positions for all amendments and any compromise text. This joint document takes the form of a four column document (European Parliament 2012A).

All EP delegation members, even when not invited to the meeting itself, receive information in advance of each trilogue. This information includes the venue and the participants. Trilogue meetings are included on the EP's daily meetings list. When the first trilogue occurs, the Presidency representatives outline the Council's position on the EP's second reading amendments. They put forward compromises on other amendments, and may reject the rest. The EP's team then responds. When both sides have put forward their positions, debate begins with new compromise proposals (European Parliament 2012A). After every trilogue, the EP's team briefs the EP committee on the progress of the negotiations and provides it with all texts. If for some reason this is not possible, the team might meet the shadow rapporteurs to provide an update. It is at this stage that the EP committee considers the agreement or sanctions a further mandate ahead of a new round of negotiations. Sometimes when this is not possible due to a timing deadline (particularly so in the case of second reading), the rapporteur and shadow rapporteurs, along with the EP committee Chair and coordinators will decide together on the appropriateness of the agreement. There should be enough time between the end of negotiations and the EP plenary vote to permit all political groups to draft their final position (Stie 2012).

As mentioned earlier, trilogue negotiations are based on a working document with four columns. These columns represent the Council's position at first reading and the EP's second reading amendment in response to this. The third column shows the Council's

response i.e. acceptance, rejection or compromise suggestion. The fourth column shows the EP delegation's updated position. This approach is applied to all amendments and while the first two columns remain the same throughout Conciliation, the third and fourth column can change many times, depending on the progress of negotiations. Trilogues can sometimes conclude with a request that drafting work should be carried out at the political level (rapporteur, Council Working Group Chair and Commission representative) or at the technical level by civil servants of the three institutions (European Parliament 2012A).

Trilogues continue throughout Conciliation, attempting to resolve differences and preparing for an overall agreement in the Conciliation Committee. After the first informal contact or trilogue, an EP Vice President acting as Chair, brings together the EP delegation to discuss the outcome of the negotiations. The EP's rules of procedure (68.7) mean the EP's deliberations here are not open to the public. However, political groups and relevant EP services and the Commission are invited to attend. The Council is not included at these meetings. At these discussions, the team of EP negotiators informs the attendees of the progress of the trilogue(s). Here the delegation receives the Council's updated position (four column working document). The EP delegation considers compromise texts that are discussed and drafted after the trilogues. The Commission representative uses this meeting to explain the institution's position and to answer more technical questions on this. Since the Council is not present at this meeting, the Commission sometimes informs the EP of discussions at COREPER meetings where the Council reflected on the outcome of the trilogue (European Parliament 2012A).

These delegation meetings are primarily about updating the negotiators' mandate and discussing compromise texts. An agreement to any particular amendment or overall compromise is still subject to overall agreement by the EP. If some questions remain, the

delegation will instruct the representatives on how to pursue negotiations with the Council. The EP delegation considers procedural issues, such as whether another trilogue should occur or if a Conciliation Committee can be convened. These delegation meetings are normally organised after trilogues occur or when negotiations dictate one should be convened. Delegation meetings always occur before the Conciliation Committee meets, and can also be organised if the Committee is interrupted for negotiations in a trilogue. At the end of the procedure, the EP delegation approves or rejects the agreement that is reached in Conciliation. The delegation endeavours to reach consensus but if a vote is required, the agreement needs the support of an absolute majority of the Council's members (15/28). If an agreement is reached via trilogue, COREPER's Chair will contact the EP committee, providing details of the amendments made to the Commission's proposal. This contact will usually indicate whether the Council is willing to accept the outcome (provided plenary confirms it by vote) and the Commission will also receive a copy of this letter (European Parliament 2012A).

2.2.3 The Conciliation Committee

The Conciliation Committee is conformed between six to eight weeks from the time after the Council's second reading formal decision. The restrictive periods laid out in Article 294 (10) of the Treaty on the Functioning of the European Union (TFEU)⁶ mean there is often not enough time to conduct and conclude negotiations, meaning when it consequently becomes clear the Council will not accept all of the EP's amendments, contacts begin before the Council's second reading has even been concluded. The three to four months available to the Council to complete its second reading permits ample time for

⁶ Consolidated version of the Treaty on the Functioning of the European Union; <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>

negotiators to develop contacts via trilogues. Each of the institution's teams then reports back to its delegation. This period also allows the EP to appoint its delegation to the Conciliation Committee and prepare a mandate for its team, even before the Council's position at second reading has been formally determined. For the most part, during informal trilogues at Conciliation, the Commission is simply a mediator (European Commission 2012A).

The Conciliation Committee is composed of representatives of 28 Member States and 28 members of the EP. It is convened by the Council Presidency, in agreement with the EP's President. The official EP calendar sets aside dates for these types of meetings. While short trilogues right before meetings of the Committee are very common, further trilogues may pause the Committee meetings to allow clarification, to reach compromise or to iron out confusion among the delegations. The Conciliation Committee meetings are normally chaired by both a Vice President of the EP and the relevant Minister of the Member States holding the Council Presidency. The Commission is represented by the policy-relevant Commissioner (European Parliament 2012B).

At each Conciliation Committee, a number of legislative dossiers can be up for discussion. "A" points are not discussed. They are solely on the agenda so as to allow the Conciliation procedure to be opened or to formally note that agreement was achieved through trilogues and delegation meetings. "B" points are the main items discussed. The main working tool is the aforementioned joint working document (four columns). This has been prepared by the Conciliation Secretariats of the Council and EP, and translated into all official languages in advance of the Committee meeting. The document will be broken into two parts. Part A deals with amendments already agreed (but still subject to overall agreement) while part B constitutes the Committee's then main focus. The

Commission is sometimes invited to put forward compromise texts (European Parliament 2012B).

As laid down in Article 294(11) of the Treaty on the Functioning of the European Union (TFEU), the Commission must attend all formal and informal meetings related to Conciliation. Its role is essentially that of a facilitator, expected to bring together the EP and Council, while being mindful of treaty requirements and the general EU interest. Member State representatives normally include deputy Permanent Representatives of each Member State (Chairs of COREPER 1), but this depends on the file under discussion. The Council delegation could also be made up of Permanent Representatives of the Member States (COREPER 2). At Conciliation Committee meetings, Member States' senior or junior ministers belonging to the current Council Presidency attend and co-chair the committee along with the Vice President of the EP who chairs that particular delegation. The Presidency of the Council in office represents the institution in all its contacts with the EP. The main actors are the Presidency in office of the COREPER I or COREPER II and the Council Working Group Chairperson. The Codecision Unit in the Council Secretariat also supports the Council delegation. It coordinates the Council's relations with the EP and at Conciliation more generally (European Parliament 2012B).

Most documentation related to Conciliation is publicly available. Hence, there tends to be a paper trail of documentation leading to and recording negotiations during Conciliation. This documentation is normally less redacted. It includes reports on the procedure, the Joint Text, reports for third reading and information on Conciliation and trilogue meetings. The public cannot access the four-column working document during the Conciliation procedure. Unless the institutions agree to release the document in advance, the joint four column working document(s) are available via the EP's online register of documents after the procedure has concluded.

2.2.4 Earlier agreements

Since the Treaty of Lisbon, legislators are encouraged to move away from Conciliation and towards the earlier, usually speedier conclusion of legislation. In the 5th EP term (1999-2004), 89/403 (22%) pieces of EU legislation were concluded at Conciliation. By 2007 (6th EP term), as few as 4% of files underwent Conciliation with as many as 80% of laws agreed at the first reading stage. A study by the EP found that these files took just under 14.5 months from beginning to end. Trilogues are often used at this early first reading stage to bring legislation to a speedy conclusion (Fox 2012). Such outcomes are often referred to as "Early Agreements". When a file has matured enough for the Council Presidency to know the positions of its delegations on the main issues at stake, they will often contact the EP representatives at committee level (Chairperson or Rapporteur). Commission representatives supported by the Commission DG in charge of the particular dossier will join the Council Presidency (represented by the Chairperson of the Working Party or Chairperson of the Permanent Representatives and the Codecision Unit (which is the Directorate for General Political Questions)). These initial meetings allow each of the institution's primary views to be clarified, which helps determine the feasibility of a first reading conclusion. The three actors report back to their respective teams, with the Council briefing COREPER and the EP briefing its relevant policy committee. COREPER then determines, with the help of the relevant Working Party, whether a first reading agreement will be possible or might propose a compromise. If the file requires the negotiations to continue, the Presidency receives its mandate from COREPER. The Council and EP representatives work toward bringing the positions of both institutions together so that it will be possible to achieve an outcome acceptable to both at the EP's first reading stage. If this particular milestone cannot be achieved, contacts between both

actors continue in order to reduce the distance between them ahead of later attempts to achieve compromise.

2.2.5 Summary positions

In summary, both types of trilogue (Conciliation and Early Agreements) discussed above involve continuous contact between the Council and EP, after which they examine the outcome of the meetings and establish negotiating positions. If all amendments are not approved, Conciliation follows. When legislative dossiers are complex, the Council Presidency often advises against an immediate dismissal of a compromise where suggested amendments presented to them appear unlikely to be approved. The Presidency instead suggests using time to allow contact between itself and the EP to prepare for Conciliation meetings. The Council is allowed three to four months at the second reading stage for this purpose. At first, more technical meetings are held between the two institutions' staffs, with the Commission representatives also present. When the negotiating positions of both institutions are set out, a more extensive trilogue can occur with more senior representatives of the three institutions.

This chapter has provided an oversight of the complexity of EU informal decision-making. The glossary provided explains many of the more technical terms used in subsequent chapters. Chapter three will assess existing studies so as provide a more detailed explanation of the codecision procedure, trilogues and when and why they are used.

Chapter 3: Literature Review

This chapter will provide an overview of a number of academic studies exploring the EU codecision procedure. This chapter will review the literature in relation to my research question in order to contextualise my contribution to the study of informal decision-making in the EU.

The literature review consists of five main parts. These are: 1.) The introduction of informality into EU decision-making and how it differs from formal decision-making; 2.) The initial phase for the usage of trilogues at Conciliation and their extension to earlier legislative reading stages over time and their change in purpose; 3.) The reasons legislators decide to “go informal” (hereafter refers to the decision to initiate a trilogue); 4.) The effects of “going informal” and finally; 5.) The comparison of trilogues to other external informal legislative processes, namely the "ping-pong" procedure in the USA.

This thesis is interested in when and why legislative files “go informal,” how transparent the EU ordinary legislative procedure is and what determines redaction. Each of these sets of literature is linked to my research question as follows: 1) introducing the informality of EU-decision-making relates to the “why” trilogues question, 2) the evolution of trilogues at Conciliation through to the use of Early Agreements over time and the change in their purpose relates somewhat to the “when” trilogues question. Section 3 of the literature review, the reasons legislators decide to “go informal” relates to both the “when” and “why” trilogues parts of my research question. Section 4 of the literature review relates to the second research question I pose with respect to the transparency of file documentation in the legislative procedure. The final part, section 5 relates to the wider applicability of my research question, drawing comparisons with the legislative system of the United States of America.

3.1 Introduction to informal decision-making in the EU

More than 75% of the world's 190 legislatures are bicameral in nature. In 20 cases, joint committees have been established "as venues for inter-chamber compromise" (Inter Parliamentary Union 2012). All bicameral systems require the establishment of procedures for inter-cameral conflict resolution (Tsebelis & Money 1997: 5). Codecision, the legislative procedure that requires the Council and the EP to agree on an act becoming law was introduced in 1993, and following on from this, the possibility for the co-legislators to conclude at the first reading stage came about in May 1999 after the entry into force of the Amsterdam Treaty. The "informalisation of codecision is empirically ubiquitous, politically contested, normatively challenging" and potentially can be said to be of a "wider relevance for the study of informal governance and institutions" (Bressanelli et al. 2014: 1). Roederer-Rynning and Greenwood (2015: 1153) note how trilogues typically involve a "ritualized sequence of meetings". Exploratory meetings at the technical or political level usually precede the technical meetings leading to political trilogues. It is at these initial exploratory meetings that salient themes are determined and how the two institutions differ article by article. It is at the full trilogue meetings (or political trilogues) that political compromises around some of these positions are achieved and involve the three institutions.

3.1.1 Informal versus formal decision-making

As rightly noted by Conrad (2006: 265), "formality and informality can never be divided from their own deconstruction by themselves or each other." Christiansen et al. (2013: 1197) note that some authors think that informal and formal arrangements are exclusive of one another. Instead he says they "co-exist and interact". Others suggest that both types

of processes depend on one another. Helmke and Levitsky (2004, p 729) and their four-fold approach to informal arrangements distinguishes “between those that are complementary, accommodating, competing and substitutive depending on the way they relate to formal institutions”. These relate mainly to the extent to which "formal and informal institutional outcomes converge" and whether informal rules lead to outcomes that differ or are the same as those that come about when formal rules are followed and whether "formal institutions are effective and complied with in the political process."

In four particular ways, legislating informally with the help of trilogues differs from legislating solely through the formal route. Unlike in EP committees, plenary sessions and Council meetings, trilogue membership “is restricted and non-codified” (more participants and clearer rules in formal decision-making); trilogues are not transparent and are somewhat secluded since access to this decision-making and ensuing documentation is restricted. Thirdly, discussions at trilogues are subject to “informal rules which are created, communicated and enforced outside officially sanctioned channels” (Helmke and Levitsky 2004, p727); and lastly, any major decision reached informally in trilogues must still be formalised by the EP and Council sittings (Bressanelli et al. 2014: 3).

3.1.2 Early Agreements and trilogues more generally

Bressanelli et al.'s (2014: 7) study on Early Agreements (EAs) reports a "negligible" share of legislative files as undergoing informal decision-making in the early 2000s before becoming an established practice later that decade. I will discuss the introduction of trilogues at greater length later on. The above authors note the year 2006 as a turning point whereby the share of files agreed early (and informally) was higher than the

formally-agreed legislative dossiers. Files agreed early spiked from 21% in 2005 to 53% in 2006 (Bressanelli et al. 2014: 7). This thesis is influenced by the method and literature related to Early Agreements (EAs) but the unit of analysis is certainly different. Put simply, my unit of analysis is trilogued-files (all such files subject to informal negotiations between the institutions). This thesis suggests there is a real uptake in the use of trilogues to aid legislative decision-making from 2007. This year is chosen theoretically since this was the year of the joint declaration (2007) that recognised the importance of the use of trilogues in the legislative process. Indeed, they were used long in advance of this date, and as early as 1994 at Conciliation (European Parliament 1999). I hypothesised there would be a sizeable increase from this stage onwards. The negotiations around the Lisbon Treaty were also concluding around this time period. In terms of determining and understanding the dependent variables employed in this thesis and how they differ from other studies, it is important to explore how other academics measure these in their studies.

The definition of “Early Agreements” in Reh et al.’s (2013) study differs from earlier fast-track legislation studies. For example, Hage and Kaeding’s (2007) study is broader in the inclusion of all files concluded with the use of informal negotiations at both first reading stage and throughout the second reading stage. Rasmussen’s (2011) study on the likelihood of early conclusions includes all files which were concluded at first reading. She does not make any distinction between those informally-agreed (with compromise) and those which were agreed early (also informally) due to being uncontroversial. Yordanova (2013, chapter 5) in her study on how EAs impact the legislative power of the EP committees, codes EAs more narrowly, focusing solely on those files agreed at first reading following on from an “informal compromise” between the institutions (Bressanelli et al. 2014: 4). As noted before, this thesis includes all files agreed with the

help of informal negotiation regardless of the reading stage, and covers over three EP legislative terms. This also differs from previous work on informal negotiations during codecision which focus solely on one legislative term such as ((2004-09) Rasmussen 2011; (2004-2009) Yordanova 2013; (2009-2014) Brandsma 2015). It also adds to the work of Bressanelli et al. 2014 whose database includes two EP terms (1999-2009).

3.2 Trilogues: Conciliation through to Early Agreements.

3.2.1 Conciliation

As noted by Shackleton (2000: 334), for the first year and a half after the Maastricht Treaty came into force, there was no "structured dialogue" between the Council and EP before Conciliation. From the midpoint of 1995 this changed. New informal meetings, preparatory in nature, would help identify the main issues which the full Conciliation Committee should address. To note the preparatory nature of informal negotiation at Conciliation, it is worth mentioning Maurer's (2003: 32) study which found that by 2002, of the total 602 legislative proposals which had been transmitted to the EP under codecision, Conciliation was used in 112 cases. Of these, only 5 were unsuccessful. This points somewhat towards the rather uncontroversial decision-making at Conciliation or the effective functioning of trilogues in helping to secure agreements prior to the start of the formal Conciliation meeting. Trilogues instead prepare the ground for decisions to be reached. Trilogues have helped reduce uncertainty and allow for a channelling of conflict (Shackleton 2000: 334). Trilogues have thus helped determine both "procedural norms" and "common beliefs" regarding how negotiators should behave and engage. Shackleton (2000: 336) notes how these trilogues have served to strengthen the relationship between the Council and EP, which side-lines the Commission to some degree. While the

Commission is present and can help the institutions to reach compromises, their representatives often tread carefully to avoid expressing their views on the other two institutions' position too loudly, for fear of being reminded it does not enjoy the same rights within Conciliation as outside of Conciliation (right to withdraw proposal). The Amsterdam Treaty specifically provides for the Commission's reduced function compared with the other two institutions in how it is encouraged to take steps to reconcile the positions of both institutions.

While informal trilogues were first introduced typically to help prepare for Conciliation meetings, Conciliation meetings began to be used less and less since 1999 (Konig et al. 2007: 286). Maurer (2003: 240), however, notes that between 1994 and 2002, there was an increase in the use of Conciliation Committees and suggests that this might be due to the EP and Council caring more about delivering better than “second-best solutions.” Time efficiency savings (codecision lasts a shorter time than other procedure types) was more to do with the socialization of MEPS, COREPER and the Commission. Regardless of this, the trilogue was later extended to files where there was often a need to urgently conclude legislation (Farrell and Héritier 2004: 1197). This brings us fittingly into the next development in trilogues and their usage earlier in the legislative process.

3.2.2 Emergence of Early Agreements

The Council's determination in “going informal” earlier in the process is captured by Shackleton and Raunio's (2003: 177) article. Here the Council notes trilogues can be just as effective in reaching compromise earlier in the legislative process, besides at Conciliation. The report presented to the Nice European Council in 2000 (CVCE 2014) notes “tripartite technical meetings are encouraged, particularly at first reading” so as to

permit the institutions to understand one another's positions and to identify where the difficulties exist. Rasmussen (2011: 55) supports the view that trilogues are being used more and more, leading to an increase in first reading Early Agreements (Rasmussen 2011: 55) and fast tracked legislation "Early Agreements" (Reh et al. 2013). Farrell and Héritier (2004:1197) too focus on how trilogues had occurred so as to achieve informal compromises ahead of the Conciliation Committee stage (third reading) and how this process then began to be applied to the legislative process at an earlier stage of second reading, and even as early as first reading prior to the Council's adoption of its common position or prior to the EP giving its formal opinion on the Commission's proposal. The relative success of these informal tripartite meetings led to Member States formalising a "fast track legislation" process under the Treaty of Amsterdam. Farrell and Héritier (2004) note that the procedure applies to "technical and politically less controversial dossiers" which are less likely to record substantial disagreement between the two institutions. At a later stage, it was extended to files requiring urgent resolution, such as where there was an impending legislative deadline.

3.2.3 Trilogue use by Policy area

Looking more closely at EAs and the EP committees most likely to be party to them (Reh et al. 2013: 1122), between the fifth (1999-2004) EP term and the sixth (2004-2009) EP term, it can be seen that there has been a large increase in the amount of EP committees involved in informal negotiations. Bressanelli et al (2014:11) find that the "Budgetary Control" (CONT) committee used informal negotiations to conclude all of its legislation in both of these EP legislative terms. The "Fishery" (PECH) and "International Trade" (INTA) committees - in the case of the 6th EP legislative term - used informal

negotiations to conclude all of its legislation. It was only possible for the PECH and INTA committees to engage in informal codecision discussions after the Lisbon Treaty when codecision was extended to these policy areas.

Since the Commission, the EP and the Council are all involved in informal trilogue negotiations, it would in theory be appropriate to look at any of their organisational policy units to help determine why some files “go informal” and while others remain within the formal legislative decision-making procedure. Bressanelli et al. (2014) note different Council formations (and working groups) show variation in the use of EAs but that EP committees show this variance more strikingly (Bressanelli et al. 2014: 12). Over time, the Council began to accept there were real benefits to these new informal procedures.

3.2.4 Treaties and influence on trilogues

Not only was this procedure used after the Council's second reading term, it was soon even used before the second reading stage and as early as before the first reading stage. In the aftermath of the Amsterdam Treaty, there were two new changes to the legislative procedure. The Council was no longer able to reintroduce its common position and "Early Agreement" became possible (Farrell and Héritier 2003: 586). Due to the success of informal trilogues, Member States sought to make these innovations formal during the Treaty of Amsterdam with specific reference to 'fast track legislation'.

It can be argued that these two new developments were linked to bargaining and informal institutions which emerged after the Treaty of Maastricht (Farrell and Héritier 2003: 589). Farrell and Héritier argue that these new informal institutions will be representative of the then relative bargaining power of the legislative actors.

3.2.5 Voting rules, reading stages and deadlines

Brandsma (2015: 303) notes the key explanation for why first reading agreements appeal so much is to do with the voting rules applicable during the codecision legislative process. Both the main actors, the EP and Council are somewhat incentivised to conclude their negotiations at first reading. Since the Council finds it difficult to amend the file, Parliament should be persuaded to put forward only amendments that would be supported by "qualified majority (55% of Member States i.e. 16/28 which must comprise 65% or more of the total EU population) in the Council"(Brandsma 2015:303). Also, the EP needs more onerous voting majorities at second reading (absolute majority as opposed to a simple majority at first reading) and thus will seek to adopt amendments at first reading which it knows are broadly acceptable to the Council. On top of these difficulties outlined with allowing the process to drag out, both institutions are further disadvantaged at second reading by tighter deadlines around negotiations. Each institution has just three months with the option of a one month extension. Such deadlines don't exist at first reading (Brandsma 2015: 303). Based on this theory, both institutional actors are naturally interested in one another's positions or preferences on the legislative dossier in question before the EP formally acts in first reading. In order to prevent such uncertain outcomes, it is desirable to correctly anticipate one another's preferences and, to this end, to meet informally (in trilogues) to discuss a common set of amendments. When the amendments are then successfully negotiated, the EP rapporteur will formally table them during the EP plenary session which then rubberstamps the pre-agreed position after which "the Council only needs to adopt the EP position" (Brandsma 2015: 303). In terms of EP influence, at third reading, the EP rapporteur faces even more constraints. Negotiations are limited solely to second reading amendments which the EP makes to the Council's common position. During the Conciliation negotiations, EP rapporteurs must

report regularly to their Conciliation EP delegations in order to get mandates to continue or agree on discussions (Rasmussen 2005: 1024). So, in Conciliation Committees only amendments already submitted can be discussed, whereas during earlier trilogues, new amendments can also be introduced (Kardasheva 2012: 20-1).

3.3 Why do legislators “go informal”?

Factors which determine movement from the formal legislative arena to the informal legislative arena are relatively unclear. As noted by Hertz and Leuffen (2011: 196) and Rasmussen (2011: 52), the enlargement of the EU in 2004, and the increased number of negotiators involved in legislating, might have been expected to increase the cost of negotiating (gathering information and bargaining between institutions, and reporting back to their own institutions) under the codecision procedure. Rasmussen (2011: 52) claims that transaction costs increase (1) in parallel with the number of participants that are involved, (2) with an increase in workload and (3) with levels of complexity of the legislative files. Large workloads increase the cost of gathering information. If there are also levels of uncertainty around “cause and effect relations as seen with complex and regulatory-technical issues”, discussion requires time, as well as particular effort and expertise. The “distributive implications of complex and regulatory-technical dossiers” are less obvious and less likely to be of interest to the public or be of particular political salience. In summary, when there is a heavy workload, the legislation is multi-issue and there is no real controversy, actors tend to “go informal” so as to increase legislative efficiency. On the other hand, when legislation is of public interest and politically contested, the legislation is less likely to be completed in the informal arenas. The institutions and those that observe them are likely to insist on wider deliberation or

debate, for example with interest groups and civil society. When issues are redistributive, contestation and interest is generated if it is felt that "some social groups" are going to be most impacted while others are beneficiaries. For salient and/or redistributive issues, this is particularly expected to be the case. Rasmussen (2011:52) notes that if there are issues of salience, often contestation and interest is generated if the legislative file has some "strong symbolic relevance" or where there are sovereignty sensitive issues at play e.g. immigration. Farrell and Héritier (2004: 1197) note that this procedure has been extended to issue areas requiring urgent action or subject to a deadline. It can be observed that indeed these two types of acts are subjected to informal negotiations and adopted as Early Agreements. However, as time progresses, the distinction between those files which are technical and uncontroversial subject to Early Agreements and those which are controversial and subject to Early Agreements progressively lessens.

Kardasheva (2012: 17) finds that the pressure of time, majority party leaders' involvement and multi-issue legislation are key factors in determining the use of trilogues in EP-Council negotiations. Rasmussen's (2011) study seeks to explain why early conclusion deals have come about. Her article examines whether these deals are more likely to happen when the rapporteur has policy preferences that differ from those of the wider EP which he or she represents. In the past, it was the intention that first reading conclusions would be dedicated to proposals which were technical and mainly uncontroversial. Proposals would be allowed to move speedily through the policy making apparatus. The contention is therefore that actors prefer to reach an Early Agreement on these types of files and to channel their time and personnel into the more difficult files. The Commission (1999a:11) specifically states that "a special effort to conclude at first reading is desirable for the more technical and non-conflictual or politically urgent dossiers". However, the same actor (1999b: 8-9) said that "it is not advisable to pursue

this objective without due consideration in the case of dossiers that are more sensitive (particularly in budgetary or institutional terms)". In a nutshell, the proposition being that proposals which are technical are more likely to be concluded early (when compared with files that are non-technical) and files which are politically salient will take longer than non-salient files. I will return to this in Chapter 5 when discussing the policy character of files most likely to be trilogued.

In the next chapter of this thesis, I discuss the classification of files based on political controversy or salience. I name this "policy character". Bressanelli et al. (2014: 13) note that those proposals which result in Early Agreement include a higher number of recitals (two on average) and are subjected to the opinion of a higher number of committees. Recitals are usually the reasons underpinning the provisions of an act without normative language, essentially in a politically neutral way. Another way of looking at salience might be by classifying legislative files. Reh et al (2013), following on from Lowi (1972) attribute a file with a tag based on policy type. The argument being that some policy attributes more than others will give rise to political conflicts depending on the classification. For example, for cases on "redistributive" policy, there may well be conflict between the "haves" and "have-nots" echoing what was said earlier. In the classification of "distributive" policy, all parties are treated equally therefore leading to no conflict. Reh et al. (2013: 1127-8) classify files as "redistributive if specific funds are mentioned which are allocated to particular groups". Files are classified as "distributive" if they are available to all groups, "invested in the EU bureaucracy, or allocated to third countries". If files have no mention of funds but instead there are burdening legal requirements for all or if they burden all Member States equally, the file is classified as "regulatory-distributive." If the legal requirement burdens one specific group or MS, the procedure is classified as "regulatory-distributive." If "procedures are regulations which

coordinate or harmonise procedures, require actors to provide certain information, introduce guidelines and codes of conduct, or list recommendations aimed at specific sectors,” then they are classified as “regulatory technical.” “If a legislative file has procedural content (adaptation to Comitology, the creation of an agency or leads to appointment of a director),” it will be coded as “constituent”.

Power will be dependent on formal institutions, time horizons, the sensitivity of each actor to failure, and also, the different levels of resources enjoyed by the EP and Council (Farrell and Héritier 2003: 583; 2004: 1205). Rasmussen (2011), in an attempt to explore the actual conditions under which trilogues are favoured, finds that it is bargaining uncertainty (2011: 43-4) and the impatience of co-legislators (2011: 56) which matter most in determining the choice of trilogues over other more formal decision-making modes. Further to this, the Council, due to its limited staff resources, found that codecision was becoming a time-consuming strain. Where the Chairman of the Council’s COREPER has to deal with a wider range of codecision areas, their EP counterpart can concentrate on his or her own specific policy area (associated with the EP committee with which they are in charge). Another reason why the Council might be reluctant to allow negotiations to be dragged out is due to the differing time horizons. The Council chair rotates every six months. Unlike the EP or Commission, the representatives of the Council involved in such negotiations have less time in which to see the dossier through to conclusion. Having less organizational resources and capability meant the Council was inconvenienced by the dragging out of negotiations and thus it became willing to trade off legislative concessions against a more effective decision-making process which was informal in nature (Farrell and Héritier 2003: 585). Hage and Kaeding’s (2007) comparative study of the EP’s amendment success in two legislative files in the field of Transport (one informal, one formal) backs this up to some extent. They find that unless

the Council attaches salience to an issue(s) which outweighs the costs of engaging in Conciliation, it will prefer to conclude a piece of legislation earlier. The authors point to the trade-off between the increase in output legitimacy through efficient decision-making and the opaque nature of the informal legislative process where fewer representatives involved leads to disproportional influence vis-à-vis the representatives' principal bodies.

Further to claims on the efficiency-enhancing nature of trilogues, Reh et al. (2013: 1132) find evidence to support the theory that a larger number of legislative files under discussion increase, the incentives for negotiators to "go informal". More specifically they find that Early Agreements occur where Council Presidencies deal with an average of 51 legislation files while non-Early Agreements occur when Presidencies deal with an average of 47 files on their agenda at any one time. The difference between Early Agreements and non-Early Agreements are found to be highly statistically significant with a p-value as low as (0.00). Most recently, Brandsma's (2015) study examining the number of informal trilogues directly for all legislative files concluded after Lisbon, examines what factors are likely to lead to first reading trilogues and finds that intra-institutional dynamics like contesting the preferences of the rapporteur (2015:317), Council politicization within (2015: 317) and how many shadow rapporteurs (2015: 312) involved in trilogues matter.

Since the Council prefers to "go informal" for the purpose of managing its resources, the EP too has incentives to "go informal" outside Conciliation. Fabio Franchino and Camilla Mariotto (2012) conducted a study on the condition of joint texts at Conciliation to examine if the EP or Council was most advantaged (a joint text is the document upon which negotiations occur. It has four columns which contain the three institutions' positions and a final column, containing the compromise text). They found that the joint text presented at Conciliation is closer in content to the Council's common position for

nearly 70% of files that went to Conciliation up until February 2012 (Franchino and Mariotto 2012:2). Their findings show that the EP is more successful after the Treaty of Amsterdam (than before Amsterdam) when the Council decides by qualified majority voting. They also find that the EP does best if the rapporteur is from one of the larger parties (European People's Party or Party of European Socialists etc.), when the Commission is supportive and where the Member State national administrations take part in the implementation of the dossier more than the Commission. Separately, Garman and Hilditch's (1998: 272) study notes the increase in "informal joint meetings" and notes that trilogues impact on the outcome of policy. Others say and agree that the "EP has influenced policy outcomes from the use of trilogues vis-a-vis the Council" (Farrell and Héritier 2004: 1188; Steunenberg and Selck 2006; Hage and Kaeding 2007). Overall, the literature generally agrees that trilogues are used in response to increasing workload and pressures on time. The EP is a beneficiary of trilogues and has seen its legislative influence increased (Kardasheva 2012: 4).

The closer we move to the present time, the more we can observe that Early Agreements (and trilogues more generally, this thesis would argue) are not only applied to "technical, urgent or uncontested files" but instead occur across the entire scope of EU legislation. Their near universal application makes informal decision-making increasingly relevant for scholars and policy makers.

3.4 The effects of "going informal"

Another advantage of this informal interaction is noted by Farrell and Héritier (2003: 593-4). Due to the new trilogued-induced closeness between officials from the EP and Council, EP members now even engage in discussions on policy competences which do

not come under the remit of Codecision. Their discussions with Council officials increasingly blur the formal treaty base lines. It is not clear that the EP does gain additional legislative influence as a result of trilogues. However, it can make some institutional gains, particularly so when the EP enjoys internal cohesion (Kardasheva 2012: 1). Farrell and Héritier (2003) look at how formal institutional change can lead to informal institutions which can affect the negotiation of future formal institutions. The article is focused on codecision and specifically how the EP has used the relationship between formal and informal institutions to advance its interests over time and increase its influence in the legislative process. Empirical evidence supports the theory that Early Agreements helped speed up the informalisation of relations between the Council and Parliament (Farrell and Héritier 2004: 1198). Research by Toshkov and Rasmussen (2012) investigates claims made elsewhere in the literature which contends that informally-negotiated Early Agreements favour efficiency in place of substantive debate. Instead they find that the first reading stage of trilogue-negotiated files lasts longer than similar files reconciled later in the legislative process and not subject to trilogues (Toshkov and Rasmussen 2012: 15). As well as Early Agreements improving efficiency overall, more time is left for negotiation and deliberation where proposals are salient. The length of first reading negotiation is (46%) longer when there are Early Agreements than where files are concluded at second reading. Files that take longer are usually the salient ones on which there is political disagreement (Toshkov and Rasmussen 2012: 17). This suggests that while trilogues expedite the legislative process, appropriate time is left for the more politically controversial files. Essentially, it is not the case of efficiency winning out irrespective of the need for good quality deliberation on legislative files. I will return to this later when I discuss the theme of efficiency and trilogues.

There exist some studies which focus on the ill effects of such fast track agreements. The reasons put forward for this are as follows: those in the Council and EP do not experience much internal contestation when “going informal” “undercuts broad controversy” and open deliberation, or actors purposefully “go informal” so as to avoid opposition and the public eye. Either of these situations would be worrisome for the “democratic credentials” of fast-track legislation. Either public debate is avoided or informalisation occurs because there is a risk of contestation (Rasmussen 2011: 42). As noted by Huber and Shackleton (2013:1045) following on from (Julian Priestley 2008: 125-6), meeting behind closed doors, while efficient, is not consistent with the EP’s norms of “open public debate”, but that the EP was determined to see its codecision powers increased, which might be a reward if it were seen to get “through the business,” essentially an increase in efficiency versus the norm of open door negotiations.

De Ruiter and Neuhold (2012: 554) find that the effectiveness and quality of EU legislation can be affected by applying fast-track procedures to the codecision legislative process. Focusing on the Data Retention Directive (one of two directives they examined), it can be said that most of the Council and EP rushed to conclude the file which meant less discussions and a “half-baked directive” which had a negative impact on telecom companies and led to court cases around the “privacy of citizens” (De Ruiter and Neuhold 2012: 554). Essentially, if most of the EP and Council decide on the urgency of a proposal on the grounds of it being a “political priority” and only a minority want to slow down the legislative process in order to gain a fuller appreciation of the implications of the legislation, early conclusion can be costly. This opposition can be magnified at Member State level if most of the representatives at EP and Council level opposing the fastracking of the file come from that MS. Separately, Hage and Kaeding (2007:28) contend that by allowing only a restricted number of MEPS to participate means upsetting

the distribution of influence within the EP in terms of its overall composition. This offsets the gains in representativeness the EP achieved on the back of its increased influence (across treaty periods).

These new informal decision-making procedures have made EU law-making more efficient since institutional checks and balances which have caused gridlock has been overcome (Yordanova 2011: 99-100). Brandsma (2015: 304) contends that any such trade-off around the transparency of the trilogue process and the subsequent efficiency/speed at which legislation is concluded really only affects the EP. Typically, the Commission and Council would not have been the most open in their decision-making and their legitimacy is not necessarily gained from such openness. Roederer-Rynning and Greenwood (2015: 1151) find that trilogues have steered the EP into new undiscovered territory around diplomatic culture at a cost to democracy. However, trilogues have led the EP to a "sharper consciousness" of its role and identity while the Council has become less confident. The EP has used the norm of "public accountability" as a way of gaining leverage over the Council. As noted only recently by Bressanelli et al. (2014:5), the move from ordinary decision-making towards the use of trilogues has consequences for data accessibility. This arena "in which the actor and file characteristics are played out" is a closed space and for the most part, undocumented (Bressanelli et al. 2014:4). This thesis also examines the relationship between trilogues and transparency in relation to availability/accessibility and/or redaction of file documents or parts of file documents. Treating this variable as a dichotomous outcome variable, a logistic regression examines the factors which help explain this inaccessibility (transparency).

James Cross (2014:269) notes "The European project . . . derives its legitimacy from democratic, transparent and efficient institutions" (The Laeken Declaration made by the European Council, December 2001). This declaration, looking forward to the future of the

EU project, notes “transparency as one of the key elements” from how the project realises its institutional legitimacy. Cross conducts an investigation into the transparency and censorship of records (legislative documents) in the Council of Ministers between the time period 1999-2009. He assesses both codecision and consultation files. There is however a lag in releasing these documents except where they are entirely inaccessible. There is much redaction of Member State positions even when documentation becomes available. Cross (2014) does not examine if trilogues had an effect on document redaction. This thesis accounts for the effect of trilogues on document transparency.

Further to this, Hagemann and Franchino (2016: 411) note how Cross and Bolstad (2015) discover that during the years 1999-2009, the Transparency Regulation of 2001 (EC) 1049/2001 resulted in the Council subsequently overseeing a significant increase in the timely release of policy records. However, not all are publicly available and only some of the others are fully released. Instead, many documents have text redacted. The Council contends this is for the purpose of safeguarding the policy process or keeping national interests safe guarded. Hagemann and Franchino note that despite enlargement, the ability of governments to reach compromise has not altered the time taken for agreement to be achieved. Therefore, it is worth questioning some of what the literature has been saying i.e. that for transparency to be improved, the time taken for files to conclude needs to be dramatically increased (Hagemann and Franchino 2016: 422). In fact, we have seen a constant drop off in the time taken for files to be concluded from between 1999-2014, going from an average of 24 months in the 5th EP term, to 22 months in the 6th EP term. In the 7th EP term that has fallen back to 17 months (Hagemann and Franchino 2016: 422-3). To sum up, the Hagemann and Franchino study notes that it is possible to be transparent and fast when it comes to Council negotiations, linking the themes of

efficiency and transparency. This study does not account for trilogues and their effect on transparency.

Hagemann and Franchino (2016:424) note that it is worth talking to officials to check if this is the reason. Instead some of the reasons returned in interviews suggest that there is an emphasis on efficiency in meetings and that if the Council Chair determines that enough countries support a text and the rest of the countries (smaller countries or a few others) can't support the text, the latter are asked to minute their reservations instead. Such statements are more to do with PR and damage limitation, the officials contend. Since official documents are redacted, and thus their own (legislators') individual positions, release a statement to cover their own backs. Separately, in an interview conducted by Roederer-Rynning & Greenwood (2015: 1155), an interviewee described trilogues as being a game involving an "adult solution-orientated council and the teenage parliament." It was said the EP makes so much noise and approaches the negotiations with such an extreme position. It then uses this to make cheap "concessions." In summary, this present study fills gaps in the literature by examining the relationship between trilogues and efficiency, and transparency, respectively.

3.5 Similarities

Due to the relatively small amount of literature in relation to informal decision-making in the EU, I supplemented the literature review with a focus on informal aspects of the legislative decision-making process in the United States of America (USA) to help contextualise the trilogue literature and widen the applicability of this projects' findings.

3.5.1 Introduction to Conference Committees and “Ping Pong”

In the USA literature, "Conference committees" are considered the "third house of Congress" and often the point of reconciliation of major bills passed by both Houses. Where "the final touches" are applied to legislation and "where it all happens" (Oleszek 2010: 1). It is relatively common for both House committees and party leaders to engage in private preparatory discussions ahead of the formal beginning of Conference. For example, the Senate and House leaders negotiating a final bill to address the housing crisis before the Senate formally adopts its own position so as to expedite the legislative process (Oleszek 2010: 3). These might be considered similar to the EU's Conciliation Committees proceedings before which informal and preparatory meetings occur.

As well as Conference Committees (formal), there are more “informal amendment exchange” procedures (ping pong procedures) between the House of Congress and the Senate (Oleszek 2010: 1). In the case of the more formal Conference Committees, there must be at least one public meeting and documentation is to be made available publicly. The ‘ping-pong’ procedure is far less formal and transparent (Kardasheva 2012: 7). There appears to be a real parallel here between the formal and informal procedures of legislative decision-making seen in the EU.

3.5.2 The Process: membership and mechanics

Kardasheva (2012:2) notes that in the US, there are also two avenues for inter-institutional legislative decision-making. There is the formal "Conference Committee" ("the third house of Congress" where major bills are reconciled by both Houses of Congress). This Committee is appointed by both Congress and Senate to find agreement on bills. There is also the informal version, known as the "amendment exchange" or "ping

pong" procedure. Similar to the some of the controversies surrounding such processes at the EU level, Conference Committees (normally consisting of senior member of each House committee that is responsible for dealing with the legislation) must "provide detailed documentation" and publicly hold one or more meetings whereas such rules do not exist for the informal procedure. "Ping pong" consists of a back and forth sending of suggested changes to a bill, between the Congress and the Senate until a compromise is reached. This flexible procedure is used more and more to deal with salient proposals where Conference Committees could not be formed. Amendment exchange tends to be used to reach agreement on smaller differences in positions between the two Houses (Beth et al. 2009: 16).

3.5.3 Statistics on the use of the procedures

Between 1994 and 2007, the use of Conference Committees has dropped from 13% to just 4%. There are real similarities here with the formal and informal legislative processes which enable EU legislative decision-making. The use of the EU Conciliation Committees has decreased in favour of informal Early Agreements since 1999. Since 2000, legislators have been seen to use the 'ping pong' route more often and steer clear of the formal route in favour of the more flexible informal one.

While a lot of attention is given to the Conference process, other methods are used too, including one chamber adopting the other's language (legislative wording/interpretation). This happens for over 70% of public laws between 1980s and the mid-2000s. Amendments between the chambers "ping-pong" was used for 17% of all measures, 11% in 2003-2004 and 24% in 1993-94. On average, only 8.2% of public laws go through Conference. Major and contentious legislation is often sent to Conference. 67% of the

565 major measures in the dataset were sent to Conference and successfully concluded (Sinclair 2009: 7). The “ping pong” amendment exchange between the Houses is active as formal Conferences are becoming rare (Oleszek 2010: 1). In some cases, these informal behind the scenes negotiations between the chambers on legislative language (legislative intent) occur prior to passage by either chamber or even before a bill’s introduction. It is difficult to gauge the frequency and success of these conversations (Sinclair 2011: 16). This appears to be similar to the movement within the EU away from Conciliation Committees towards Early Agreements with the help of informal negotiations.

3.5.4 Why “go informal”? International comparisons with the EU

The question may arise as to why legislators go “informal”? It is said that the "ping pong approach" is important for the following reasons: the role of party leaders is enhanced; the roles of committees and their leaders are limited; minority parties play more of a marginal role; the deliberative process is constrained; procedural or political issues are avoided and there is a decrease in transparency (Oleszek 2008: 13). Sinclair (2009) focuses on the inter-chamber resolution process in the US Congress and the mix of procedures used to resolve differences between the two chambers on major legislation since the early 1990s. She found that majority party leaders’ involvement “post-passage” was important (Sinclair 2009: 19) and that other resolution procedures outside of traditional Conference Committees were important. These changes have become more significant since the early 1990s with majority leaders' adaptation to changed circumstances and their quest to satisfy their members' goals with increased involvement “post-passage”. It was from this involvement that they figured out resolution procedures worked better than the more traditional conference in terms of achieving their aims.

Congress adapts to changes in its environment to help members advance their goals which includes legislative success (Sinclair 2009: 2). Traditional inter-chamber resolution has become less effective due to heightened partisan polarisation. Other mechanisms have helped provide leaders with options and flexibility that Conferences could not. Even the Senate majority leader that lacks many of the enhanced powers and resources the speaker commands, does have considerable say over post-passage procedures (Sinclair 2009: 9).

Time and resources are often a feature in the EU legislative literature for the promotion of informal decision-making, with the idea that things can be sped up and efficiency achieved. The shift from Conferences towards other procedures is due to time pressure (Sinclair 2009: 9). Rybicki (2003:1) indicates that the long record of successful resolution of differences between the chambers is due to decisions made by legislators regarding how best to use their time and resources. The Council and EP make these considerations too when it comes to the decision to “go informal.” Congress will know to some extent if enough representatives in either chamber prefer some change in policy, or none at all and whether to persevere and spend time towards this goal.

The "ping pong" approach permits one House to accept the other chamber's amendment or to alter their amendment until such time that as there is the same language for all of the bill's provisions and it is often used in the days of a Congressional term so as to save time (Oleszek 2010: 2). Again, it can be said that both the Council and the EP wish to close out legislation as their term comes to an end. It is said that for reasons of efficiency and expeditious decision-making, trilogues are used to facilitate this. When compared with the 1950s and 1960s, Congress nowadays is "more open, partisan, workload packed and deadline driven". Amendment exchange procedures have therefore led to more speedy resolutions between the two Houses on significant legislation (Oleszek 2010: 12).

Another feature determining a decision for legislators to “go informal” has to do with the political sensitivity/salience associated with a bill/legislative file. Historically, Conference Committees were used to solve disagreement between the Houses on major bills when they involved complex and divisive policy issues. Amendment exchange on the other hand tended to be used to consolidate smaller differences in positions between both houses. Despite this, the chambers have extended the use of this procedure to find agreement on more significant legislation too (Beth et al. 2009: 16). This is similar to the development of the trilogue and Early Agreement, as mentioned above. Originally, trilogues were intended to be preparatory in nature, and to deal with less salient legislation, before being extended to all types of files, irrespective of their level of controversy. Oleszek (2010:3) supports the claim around the rare use of the Conference mechanism to deal with legislation. He notes that while a small percentage of public laws that are passed by the House of Congress progress to the Conference stage, they are usually the most complex and controversial laws. Often the ping-pong and Conference approaches are used together to reconcile difficulties (Oleszek 2010: 3). Perhaps, this is less likely to occur in the case of the EU, but it is not impossible that informal negotiations would be initiated earlier in the file’s legislative life cycle before being eventually subjected to Conciliation.

However, while in the past, it was the case that minor legislation did not go to conference; in later years even more important legislation did not go either. There was a decline in the number of bills sent to Conference (Magleby 2009: 2). The “informalisation” of contacts between the two houses has seen some high profile "peak-level" negotiations on highly salient measures, such as the bill establishing TARP (Troubled Assets Relief Programme) in the autumn of 2008 or the Debt Limit Increase in 2011 were highly visible but much of the time the discussions go on beneath the radar. Contact between the key players in the

two chambers early in the process may lead to agreement at the end of the process or even result in bills so similar that the second chamber accepts the first chamber's work (Sinclair 2011: 16). Once again, this has similarities to the rise of Early Agreements at the EU level.

Since Conference Committees might be expected to comprise outliers (opinions/preference which deviate from the median member in each house), the question is, why allow these types of informal negotiations to happen for such salient legislation? Vander Wielen (2010: 490) suggests it has to do with the fact that Conference Committees have "an information advantage" in resolving difference between the two chambers so that they can "overcome the uncertainty" that chambers face in knowing the preferences of the opposing chamber. Magleby (2009) finds that when the Houses have the least uncertainty around the opposite's preferences, conditions can permit the Committees to "produce higher than expected policy returns" to both Houses than normal inter-cameral negotiations.

3.5.5. The effects of "going informal"

Another feature which often goes hand in hand with informal decision-making, in both at the EU and USA is an issue related to the transparency of the legislative process. Confidential bargaining is the norm of both the Conference Committees and amendment exchange procedure. Policy compromises are crafted and the "amendment exchange method" is applied to achieve agreement between both chambers (Oleszek 2010: 2). However, while a joint explanatory statement accompanies a conference report, a public paper trail is not required nor is any written record of the "amendment exchange procedure", other than whatever information is given during the chambers' plenary

debates. Conference Committee meetings are "open to the public" and also, Conference Committees can be televised and that can influence decision making whereby public representatives hold particular positions in the hope of swaying public opinion (Oleszek 2010: 18). Formal Conference Committees must hold a minimum of one meeting in public and more documentation is required at the conclusion of conference reports when compared with amendment exchange. Also, for conference reports but not a House amendment, the Senate rules require that this is even "made available to members and the general public on the web 48 hours before a vote" on the report (Beth et al. 2009: 19). In the case of the EU, there is rarely, if ever, the same commitment towards a timely release of documentation.

The effects of "going informal" are vast but the above literature seems to agree on some points common to the EU and USA. Beth et al. (2009) examines whether the members appointed to Conference Committees used their authority to influence policy formation and whether it differs from the chambers' preferences to such an extent that it reflects the preferences of only the representatives in the process. They find that under certain conditions, this occurs (Beth et al. 2009: 15). The Conference report tends to be a take it or leave it one and thus the conferees get to dictate the types of policies that will be considered by the floor and may produce non-median or extreme legislative outcomes. These can't be amended and can be approved even when the median prefers an alternative since he or she has the choice of either retaining the status quo or the conferee proposal. Rejecting it and having it re-passed is costly in time and effort (Ryan 2013: 5). Vander Wielen (2010: 513) contends that if this was something which didn't happen so often it would be less of a finding, but since the arrangement "that predict the greatest policy movement" (the most occurring arrangements in a given Congress are usually joint or partial arrangements) are so prevalent and usually deal with salient legislation, this

highlights “the importance of the Conciliation mechanism in modern policy formation” (Vander Wielen 2010: 513). Rybicki (2003: 3) disputes this and contends that the institutions thought to be mechanisms enabling the median legislator to control Conference Committee delegations, are instead, means through which the chambers bargain. Oleszek (2010: 14) finds that the ping-pong mechanism has led to the House and Senate Party leaders increasing their power at the expense of the Committees. Again, there can be comparisons drawn with the EU where it is thought that the median MEP’s preferences are overlooked at trilogues in favour of the rapporteur’s preferences. The rapporteur normally comes from one of the main political parties. Where this occurs, power shifts from EP committees to a very elite representation of preferences.

3.5.6 But who wins?

Magleby (2009: 3-4) reports on the debate around who wins between the two US chambers in terms of Conference Committees. There is some inconsistency around who gains most in terms of the House of Representatives and the Senate. Steiner (1951) found that the House won in 32/56 major Conferences. He compared the Conference report to the initial bills passed by either chamber. Fenno (1966: 668) on the other hand, found that the Senate conferees draw more support from their parent chambers than do the House Committee and its representatives to the conference. Ferejohn (1975: 1043) found that the House wins when the conference considers budget cuts and the Senate wins when there is budget increases (Magleby 2009: 4). Once again, this is a relevant point of comparison between the US and EU legislative procedures. While this thesis does not explore who wins between the EP and Council in EU informal decision-making, it does contribute to the literature with respect to the impact of budget on the decision to “go informal”. In the

two qualitative case studies explored in Chapter 6 (section 2), there is contrasting evidence about the ability of the EP and Council to “win” in terms of EU community spending. However, a more thorough understanding of EU dynamics means it is clear that the Council is ultimately the kingmaker in terms of the real allocation of community funds. What remains is a discussion on the distribution of these resources. The next section (3.6) will conclude the review of the literature.

3.6 Conclusion

This thesis builds on and goes beyond the various studies discussed in the literature review section in a number of ways. The period analysed is mid-1999 to the end of 2016. This includes the Amsterdam Treaty, all of the Nice Treaty and the Lisbon Treaty up until the end of 2016. This compares with the single EP legislative term of (Rasmussen 2011; Brandsma 2015) and the two EP legislative terms covered by (Kardasheva 2012 and Reh et al 2013). The dependent variable is also wider in that it consists of first reading agreements subject to trilogue negotiations at any stage and all second reading agreements (early and late) subject to trilogue negotiations. Early conclusions are only collected as part of the trilogues database where they are informally-negotiated files. Also, third reading files concluded with the help of the Conciliation Committee are classified as trilogues. This is a new departure from previous work on trilogues but it is necessary since trilogue negotiations (albeit, more preparatory ones) are used to prepare for and during Conciliation. Indeed, it was here that the trilogue as we now know it was born. This thesis is interested in the wider question of when and why decision-makers choose the informal avenue of negotiations since it is hoped this can then contribute to other more general studies around informal negotiations within other legislatures and

within other international organisations. However, the statistical models omit third reading files for reasons of perfect trilogue prediction. This allows a closer comparison with previous studies, albeit the present thesis ranges across a longer time period and is also interested in trilogued files other than those that are defined more narrowly as “Early Agreements.”

Chapter 4: Data and Methodology

The following section explains the process by which the following research questions are addressed: When are informal negotiations/trilogues used in place of the formal legislative procedure, and which conditions lead to their usage?; How transparent is the informal decision making process and what factors affect the transparency of this process?

Due to the *sui generis* nature of the research question, the method adopted is an inductive and theory-building approach based on a working knowledge of the EU institutions' actors and corporate cultures. A number of hypotheses were formulated to predict the conditions and factors driving trilogue usage in the EU prior to and separate from the traditional treaty-based formal routes. Before proceeding with the theoretical and empirical investigations, one of the main concerns was whether it was possible to establish whether trilogues had taken place for each legislative file. If that variable of interest could not be identified, this project could not have been developed empirically. Below is a thorough explanation of the process of establishing whether a trilogue took place in the decision-making process of each file.

4.1 Establishing Salience of Files

In order to explore and investigate the presence of trilogues (often referred to as informal negotiations, tripartite negotiations etc.), typically thought to be centred on legislative files which are considered by the negotiating parties to be controversial, methods of gauging 'salient' policy areas in general, and in particular salient policy proposals on an individual basis, were investigated. One way of approaching this was to look at the number of recitals attached to a legislative proposal to assess the general political

importance of the proposal. From discussions with other academics in the field, including Robert Thomson and Andre Warntjen, it was decided that this method might not be the best. Recitals really measure the extent to which the Commission might deem a piece of legislation to be important (to them) but also, recitals can refer to previous legislative activity. Instead, it was decided to set about collecting a ten per cent random sample of legislative proposals across different treaty periods from the time of the Single European Act onwards using a number of sampling criteria for a broad sweep of cases (please note: the word 'case' is used throughout this paper to refer to the *legislative file unit of analysis in a database*, not to be confused with a legal case that comes before the European Court of Justice (ECJ)) that could be examined for the presence or absence of a trilogue. At this stage, gauging the dependent variable was prioritized. Only minimum reading had been done on other similar projects.

It was important to identify the legislative files with the corresponding treaty periods to ensure a 10% sample for each treaty timeframe (SEA (1987-1993), TEU or Maastricht (1993-1999) Amsterdam (1999-2003), Nice (2003-2009), Lisbon (2009-present). If, for example, there were 800 proposals raised and completed during the Treaty of the European Union phase and (4th EP term) from June 1994 until May 1999, 80 cases were selected. Secondly, using the 'year' filter, a distribution of proposals across years within the treaty time period was gathered. For example, if more directives and regulations were typically proposed in 1998 and less in 1996, the dossier references selected were collected to take this 'weighting' into consideration. It was felt that if the preliminary data being examined for patterns was as robust and as representative as possible, the inductive inquiry would yield more reliable hunches. Having calculated the relevant number of files necessary for each treaty time period and each specific year, the Legislative Observatory search tool was set up to show lists of legislative cases in sets of ten i.e. 1-10, 11-20, and

21-30. These batches of ten proposals were the foundational sample units from which proposals were drawn. At random, a case dossier number e.g. 1999/0148(COD) was selected from each ten cases shown, and copied and pasted into Excel file columns to represent the relevant treaty time periods. The dossier reference code acted as a hyperlink back to the relevant 'Legislative Observatory' database to use in the later stages of the project.

The above described search yielded a number of proposals across a variety of different policy portfolios. As well as this, the proposals were dealt with by a variety of legislative procedures e.g. cooperation, assent and codecision. This yielded some 251 proposals.

Using Consilium, and alongside the file number (e.g. 2007/1097(COD)), a key word search was conducted to determine if informal negotiations had occurred. Initially the key word search was restricted to "trilogue" and the alternate spelling "trialogue". (Later on, the key word search was broadened to include 'informal' since I was concerned that I was not capturing trilogues due to some of these being referred to instead as "informal negotiations," for example). Initially, only for the treaty periods Nice and Lisbon were there any real substantive results achieved to this end. "Transport", "Environment", "Industry Research and Energy", and "Agriculture" were all well represented where trilogues occurred (approximately 38/114 times in the sample collected between the time beginning at the implementation of the Treaty of Nice right up until the beginning of 2014. The database was extended at a later date to include those files concluded up until the end of 2016. For the period preceding Nice, it was less obvious whether informal negotiations did or did not exist. This was a very time consuming process but it did allow me to gain new skills in terms of navigating the main database sites more efficiently.

4.2 Eurobarometer surveys as a way of gauging salience

The above mentioned 10% sample did not provide the envisaged indicator of salient legislation (and thus, trilogues) but it did help to navigate the database more speedily for future use throughout the project and, more importantly, to determine with confidence that there existed a way in which to properly collect information on the existence (or not) of informal negotiations. Due to the relatively modest return in terms of trilogued file data at this stage of preliminary collection, it was decided instead to look at the Eurobarometer surveys to determine what the most important concerns for the demos were. Based on the hunch that trilogues helped deal with salient legislation, it was hoped that this could help determine which areas (high controversy/salience) to zoom in on thereafter to discover the presence of informal negotiations. Eurobarometer surveys for the spring of 2013, 2011, 2009, 2007 and 2005 were looked at to examine this question. The main concerns of the demos during that eight year period were principally (a) rising prices/inflation, (b) unemployment and (c) the economic situation. Since these are policy realms for the competence of domestic governments, it was decided to focus on the Eurobarometer question ‘In your opinion, which aspects should be emphasized by the European institutions in the coming years, to strengthen the European Union in the future?’ The responses indicated Enlargement (focusing on Turkish accession); the Internal Market; Common Foreign Security Policy/ Common Security Defence Policy; Fisheries and the Environment; Regional Development Policy and Immigration were of concern. (European Commission 2005, 2007, 2009, 2011, 2013) In fact, capturing salience as a way of identifying where trilogues occurred was not the best way forward. Leaving aside pre-Conciliation trilogues which are easy to identify (all Conciliation files are trilogued), it can be said that establishing a file is salient is likely to help identify a file which is subject to trilogues. However, files that are high technical or urgent might also be subject to

trilogues despite the absence of salience or political sensitivity/controversy. Also, in the post-declaration period, most files are trilogued and concluded efficiently irrespective of salience. This process had been exploratory, but it was then decided to move away from a pure measure of salience as a way of determining the presence of trilogues and, instead, to generate an explanatory variable on a general EU-focused schema of four sets of policy type characteristics: Market Building, Market Correcting, Market Cushioning and Polity Building. I discuss this policy characteristics variable later on but the dependent variable (trilogue or no trilogue) was properly established using a key word search for each piece of legislation included in the database. I discuss the collection of this data now.

To properly determine the feasibility of measuring the dependent variable (trilogue/no trilogue) and to collect the many associated explanatory variables, it was important, to first construct a robust database of legislative files. Using the Legislative Observatory, a search was conducted for all regulations, directions and decisions concluded between July-1999 and December 2014. This time frame was chosen since the Treaty of Amsterdam came into effect in May 1999. Also, the 5th EP term begun in July 1999. The most recent legislative files in the database were to be those concluded in December of 2014. This date was a substantial time after the Treaty of Lisbon came into effect (December 2009) and was to be the cut off point for the collection of data within the confines of this research and its timescale for purely practical reasons. The batch of observations included files other than codecision, including files concluded under the co-operation, consultation and assent legislative procedures. At this stage, some 1567 pieces of legislation were deemed relevant. Initially all of these files were manually copied in to an Excel spreadsheet along with their file identification number hyperlink e.g. 2014/0034(COD). For each of the cases, the hyperlink was used later to gain other such relevant explanatory variables pertaining to the files' characteristics. These included

treaty period; legislative procedure; the type of legislative file (decision, regulation, and directive) responsible European Commission department; EP committee; reading stage; date beginning; and date ending. Other variables were then generated from those initial ones collected. The next section provides an explanation and justification of the explanatory variables collected and constructed.

4.3 Reduced observations

As mentioned earlier, initially all files concluded between July 1999 and December 2014 were collected. However, at a later point it was decided to remove from the database all files concluded under any procedure other than codecision (Ordinary Legislative Procedure). Only these files would be analysed since the trilogue is a codecision practice/norm where the EP must have substantial leverage. This leverage exists under the codecision procedure and this has been extended over time. The EP does not have this same leverage under the other legislative procedures. This left the observation count at over 1200 files. It was decided to align the data with the three main treaty periods across which the data spreads, namely the treaties of Amsterdam, Nice and Lisbon. As mentioned above, EP powers increase across these three treaties as well as overall EU competences. This is thought to have an impact on the likelihood of trilogues being used or not. Removing the codecision TEU files meant removing just 12 observations. It was felt at the time that this category was too small so as to conduct meaningful statistical tests. Finally, to take us to the number of observations (1198), it had been decided to align the data across the three applicable EP terms available in the data. This meant EP terms 5, 6 and 7 spanning July 1999- June 2004; July 2004- June 2009; and July 2009- June 2014.

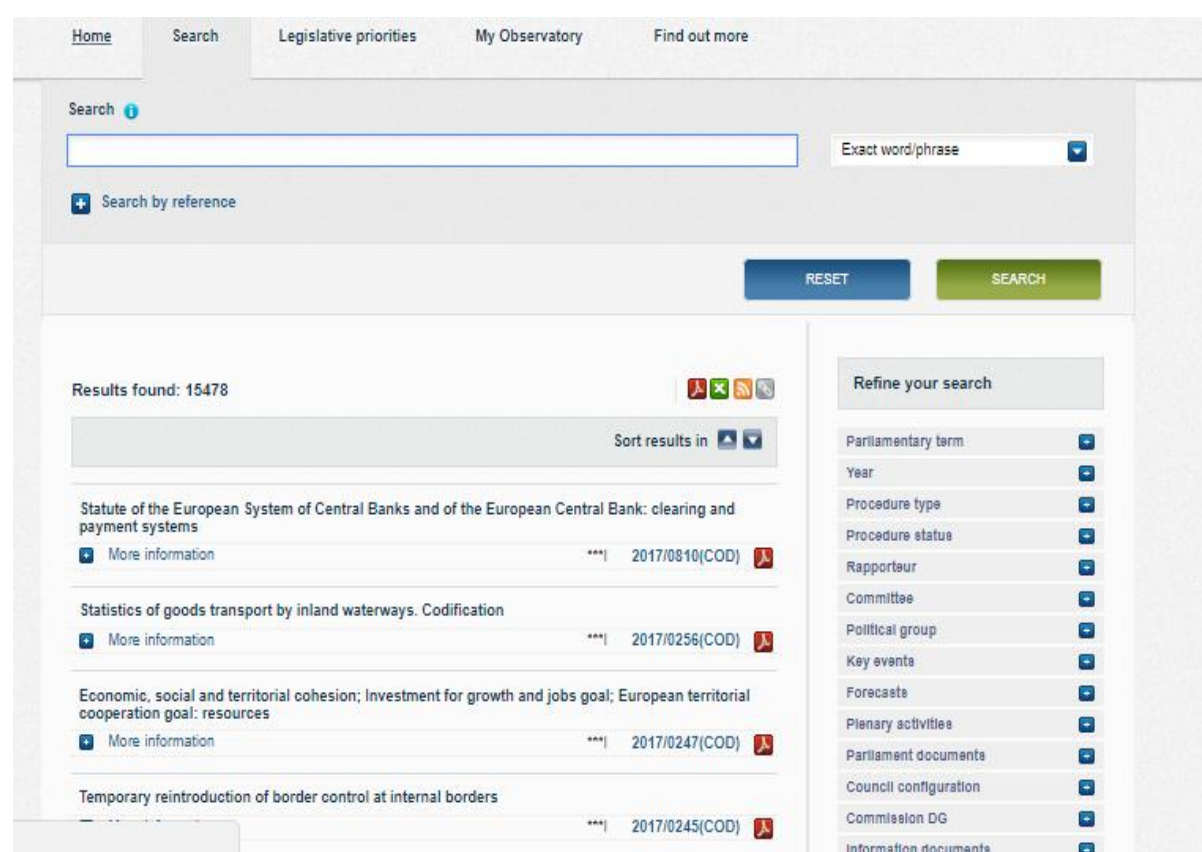
4.4 Extending the database

At a later date (2016), following a review of the database, it was decided to include all codecision (now known as Ordinary Legislative Procedure) files that were concluded during the 5th, 6th, 7th and 8th EP terms up until December 2016. Since I was returning to the data to re-check the dependent variable and collect some new independent variables including budget and legal nature, I felt that extending the database to include files concluded up to the end of December 2016 would allow an even more thorough examination of the extent to which EU legislative decision-making had become informal. This had to be the ultimate deadline so as to finish the thesis and conclude the writing up stage.

The EP's codecision scope has evolved over time. The Maastricht Treaty in November 1993 introduced the procedure with internal market being the main legislative area subject to co-legislating. Amsterdam in 1999 saw the procedure simplified with first reading conclusions becoming possible. More than forty legal bases were now covered by codecision including Transport, Environment, Employment and Justice and Home Affairs. Nice in 2003 saw the scope of competences further increased. Lisbon in 2009 resulted in codecision becoming the "Ordinary Legislative Procedure" with Agriculture, Fisheries and Common Commercial policy among 85 areas of Union action subject to the procedure (EP 2014:6). All files captured in the database are either "codecision" or "ordinary legislative procedure" files. Both of these categories are captured under "ordinary legislative procedure," notwithstanding the name change at Lisbon. Files captured under this procedure are suitable for the study of trilogues. If the EP has codecision powers, they are supposedly equal co-legislators to the Council and therefore nearly every piece of legislation has the potential for EP-Council contestation, thereby laying the pre-conditions for invoking trilogues. This is a relatively fluid capture with

respect to timeframes. Files sometimes begin in one EP term and conclude in the next EP term, notwithstanding the institutions' preference to close these out before the EP term ends, due to potential changes in EP composition following on from an election. The database thus also contains files that were begun prior to July 1999 and includes files that were concluded by the half way point in the 8th EP term i.e. December 2016. The only files included from the 8th EP term are those concluded before the end of December 2016.

Figure 4.1 collecting the units of analysis



On the right hand side of the Legislative Observatory screenshot above, there is an option to “refine your search”. All files which were concluded during the 5th EP term (July 1999-June 2004), 6th EP term (July 2004- June 2009), 7th EP term (July 2009- June 2014) and 8th EP term (July 2014- June 2019) up until December 2016 were searched and

selected for inclusion in the database. Other criteria were applied to the search including procedure status: complete; procedure type: Interinstitutional ordinary legislative procedures; and type of legislative act: directives, regulations, and decisions. It was decided to focus on these legislative acts due to their more binding nature on Member States. For each individual EP term, an individual PDF file of legislative cases was downloaded. There was some overlap across these four PDF files. For example if a dossier begun under the 6th EP term and was not concluded until the 7th EP term, it would appear in both PDFs. I deleted duplications. I added in the new (2015, 2016) dossier file numbers to my Excel database and their associated variables from the Legislative Observatory and Consilium.

At the end of this process, I collected 1448 regulations, directives and decisions that were concluded under the Ordinary Legislative Procedure. All of these files were concluded during the 5th, 6th, 7th and 8th EP term up until December 2016.

4.5 How this database differs from the approaches of other scholars to date

The empirical analyses carried out as part of this thesis is based on a dataset designed specifically for investigating the unit of analysis, informal tripartite institutional meetings, latterly called 'trilogues', outside of the formal decision-making procedures. Notably, the data captured and database construction for this present study differs from others in the literature to date. As mentioned previously, some researchers like Bressanelli et al./Reh et al. (2014; 2013) have a more narrow approach, and classify 'Early Agreements' (informal negotiations) as being negotiations that were (1) trilogued first reading agreements and (2) trilogued pre-second reading agreements (leaving out trilogues that occurred after the second reading stage/after the formation of a common position), whereas this thesis

investigates all files where there is evidence of informal negotiations regardless of whether or not such negotiations aided the eventual agreement, and regardless of the reading stage (more on some comparisons later). The time period Bressanelli et al./Reh et al. (2014; 2013) focused on was 1999-2009 (5th and 6th EP terms). Brandsma's (2015) database too shared the same challenge as mine in determining with confidence if a file was trilogued. However, his research question focuses on the number of trilogues it takes to conclude a legislative agreement. The EP term his research is focused on is 2009-2014 (7th EP term). These two databases (Bressanelli et al. 2014 and Brandsma 2015) collectively span the time which my research focused. While some decisions around recording the dependent variable differ, these allowed me to later make some comparisons with their databases.

The database underpinning this thesis differs from those of the above authors in that it spans four EP terms (5, 6, 7 and 8) unlike the above authors' concentrated work on one and two EP terms. Also, for this thesis, it was decided to consider files subject to trilogues at first reading, at any stage second reading and right up to and including third reading Conciliation as being trilogued because all files which go to Conciliation are subject to informal negotiations between the three institutions. This thesis is interested in when and why files "go informal" and is not limited solely to Early Agreement trilogues. Also, for the second part of the thesis, non-trilogued files and trilogued files (again, irrespective of their reading stage conclusion) are examined. Given this comprehensive, grounded approach to data capture, there is a reasonable certainty around the validity and reliability of the database.

4.6 Collection of and recording of the dependent variable

Information on informal trilogues (e.g. issues being discussed, progress in discussions, and Member State positions) is not always publically available and hence as Christiansen and Neuhold (2013: 1202-3) contend with other forms of informal governance, the challenge lies not just with collecting data but also to find out what data can be collected in the first place. This makes measuring the dependent variable quite challenging.

Key word search: Consilium was used for the collection of the dependent variable instead of the Legislative Observatory. This was due to reliability and the fact that Consilium allows a search option in the title and text of documents, as well as a search across the entirety of the time span in question (i.e.1999-2016). A search was conducted in the Council's documents and publications for each of the above case specific (inter-institutional file) references. An inter-institutional file reference e.g. *2000/0183(COD)* is the dossier reference number through which it is possible to access all documents of the Council related to the file. At first, in each case both in text and in title the initial key words 'trilogue' and 'trialogue' were searched for. Where documents were found to contain those key words, it was determined that trilogue negotiations occurred. Often trilogue negotiations are not reported on in terms of official records of meetings. Rather, text specifying an intention to enter into trilogue negotiations, preparation of these negotiations and even the outcome of such negotiations are often located in documents pertaining to files. These documents normally take the form of internal Council documents often sent to and from the Council Presidency to delegations, from COREPER to delegations, or from Working Party to delegations.

4.7 Contextualisation

In each case, the documents, where accessible, were opened briefly (usually PDF files) to gauge the context in which the mention of such trilogue negotiations occurred. This contextualization ensured that the key words did not relate to events which occurred in other past files mentioned in the current legislative discussion surrounding the file searched. An example of this contextualisation is as follows:

1) When inserting the dossier number 2013/0063(COD)⁷ into the "interinstitutional file" tab; and searching for the words "trilogue" in both the file documents' "Words in Subject" and "Words in Text" tabs, the following documents are returned: 14666/13⁸, a note from the Council Presidency to COREPER on the "Endorsement of the mandate for the informal trilogue". Point 8 states: "The Presidency intends to reach a first reading agreement with the European Parliament by January 2014. The first trilogue is scheduled to take place on 21 November 2013 in Strasbourg."

Also returned was document 16756/13⁹, a note from the Council Presidency to COREPER with the subject "Approval of the final compromise". Point 9 states: "The first informal trilogue was held on the 21 November 2013. An overall compromise package could be identified. The Presidency indicated that it would recommend this outcome to the Permanent Representatives Committee."

While the first document notes that there is an upcoming trilogue on the cards, the second document confirms that this trilogue occurred. There is no doubt that the trilogue occurred. There are files with even more assured notes of trilogues having occurred, for example, where documents are returned noting "preparation for the fourth trilogue" or the "outcome of the third trilogue".

⁷File 2013/0063(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0063\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0063(COD)&l=en)

⁸Council document 14666/13; www.data.consilium.europa.eu/doc/document/ST-14666-2013-INIT/en/pdf

⁹Council document 16756/13; www.data.consilium.europa.eu/doc/document/ST-16756-2013-INIT/en/pdf

2)When inserting the dossier number 2011/0130(COD)¹⁰ into the "interinstitutional file" tab; and searching for the words "trilogue" in both the file documents' "Words in Subject" and "Words in Text" tabs, the following four documents are returned:

The first document, a note from the Presidency to Coreper (document number 5429/13)¹¹ in point 7, recorded that "two trilogue meetings have been tentatively scheduled, the first for 30 January and the second for 18 or 19 February 2013."

The second document (document number 17552/11)¹² was from the Working Party on Civil Law Matters detailing a summary of discussions regarding the "outcome of proceedings". The text under point 2 noted that "provisional agreement had been reached in the trilogue with the European Parliament and the Commission on the text of the Member States."

Document three (document number 6080/13)¹³ is a note from the Presidency to JHA Counsellors and the subject notes that the document relates to "preparation of the Trilogue with the European Parliament". The introduction notes that the "Presidency held informal technical contacts with the European Parliament on the above mentioned file with a view to preparing the Trilogue with the European Parliament."

The fourth and fifth documents (document no 6668/13¹⁴ and 6838/13¹⁵) are notes from the Presidency to Coreper/Presidency to Council and point 8 in each case states that "at the trilogue on 19 February 2013, the rapporteurs of the JURI and the FEMM committee indicated that the European Parliament could agree to the compromise proposals presented by the Presidency as set out in the Annex to this note."

¹⁰File 2011/0130(COD); [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0130\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0130(COD)&l=en)

¹¹Council document 5429/13; www.data.consilium.europa.eu/doc/document/ST-5429-2013-INIT/en/pdf

¹²Council document 17552/13; www.data.consilium.europa.eu/doc/document/ST-17552-2011-INIT/en/pdf

¹³Council document 6080/13; www.data.consilium.europa.eu/doc/document/ST-6080-2013-INIT/en/pdf

¹⁴Council document 6668/13; www.data.consilium.europa.eu/doc/document/ST-6668-2013-INIT/en/pdf

¹⁵Council document 6838/13; www.data.consilium.europa.eu/doc/document/ST-6838-2013-INIT/en/pdf

It can be seen in the above descriptions that there is no doubt that trilogues occurred in this file. The first document refers to trilogue meetings being scheduled and document three refers to the Council and EP having held informal contacts. The second and fourth/fifth document is proof of the trilogue having occurred and even names the date.

This qualitative approach is superior to a quicker but less accurate 'content analysis' approach to constructing and/or analysing a database. As mentioned above, the presence of the words 'trialogue' or 'trilogue' in the text or title of documents was enough to indicate that tripartite negotiations between the three institutions took place. It was felt that by using the key words 'compromise' and 'agreement' (Toshkov and Rasmussen 2012: 10), the search would become unnecessarily broad given the particular Consilium database key word search that this thesis deploys, and would yield more files than those actually engaging informal negotiations.

4.8 Key word search and “informal”

It was later decided to further broaden the key word search to include references to 'informal', in relation to “informal negotiations” or “informal meetings/contacts”. The reason for this was that in more recent times (under “Lisbon”), the key word(s) 'trilogue' or 'trialogue' typically revealed the presence of informal negotiations more steadily as this word appeared to be used more often in documentation following on from the 2007 joint declaration formally recognising trilogues as a part of codecision. On the other hand, closer to the Treaty of Amsterdam time period (from 1999), trilogues were less revealed via this search. With the timing of the 2007 joint declaration in mind, it was decided to carry out a similar word search to the one outlined above, but restrict it to files between 1999 and 2007 and instead use the word 'informal' to try and supplement the previous

search using “trilogue” and “trialogue” on these earlier files. In the interests of being robust, it was later decided to apply this word search ‘informal’ to post-2007 files also. This meant all such informal meetings between the three institutions could be captured. As described earlier in the case of trilogues, files with documentation recording the word ‘informal’ were checked to ensure this related to informal negotiations (trilogues) between the three institutions and was not merely referring to intra-institutional informal meetings, for example reference to an informal meeting of the Council of Ministers in some formation. This checking of the context in which the word “informal” was used meant opening the documentation and reading the relevant passage of text.

An example of the contextualisation would be as follows: when inserting the dossier number 2009/0005(COD)¹⁶ into the "interinstitutional file" tab; and searching for either of the words "trilogue or triilogue" in either the file documents' "Words in Subject" or "Words in Text" tabs, no result is returned. When the same approach is applied, this time using the word "informal" in the "words in Text" tab, three documents are returned.

These documents are 13590/09¹⁷; 11718/10¹⁸; and 14221/10¹⁹.

The first document was document 13590/09, a "Progress Report" sent from the Council Presidency to COREPER. Point 15 noted: “as soon as the European Parliament has started its examination, it is the intention of the Presidency to commence informal contacts with the rapporteur. The aim would be to reach a first reading agreement with the Parliament, depending on the time-table of the Parliament.”

Also relevant was document 11718/10, a note from the General Secretariat to COREPER on the "Outcome of the European Parliament's first reading". It contained the text "In

¹⁶File 2009/0005(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2009/0005\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2009/0005(COD)&l=en)

¹⁷Council document 13590/09; www.data.consilium.europa.eu/doc/document/ST-13590-2009-INIT/en/pdf

¹⁸Council document 11718/10; www.data.consilium.europa.eu/doc/document/ST-11718-2010-INIT/en/pdf

¹⁹Council document 14221/10; www.data.consilium.europa.eu/doc/document/ST-14221-2010-INIT/en/pdf

accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for a second reading and Conciliation. In this context the ALDE, EPP, S&D, Greens/EFA and ECR political groups presented a compromise amendment to the proposal. This amendment had been agreed during the abovementioned informal contacts".

But the most relevant document in terms of robustly ascertaining an informal negotiation had occurred was a note from the General Secretariat of the Council regarding the "Adoption of the legislative act" with points 3/4 reading as follows:

"In accordance with the provisions of the joint declaration on practical arrangements for the codecision procedure, informal contacts were initiated between the Council, the European Parliament and the Commission with the aim of reaching agreement at first reading. The European Parliament delivered its first-reading opinion on 6 July 2010, adopting one amendment to the Commission proposal. The outcome of the vote in the European Parliament reflects the compromise agreed between the institutions and should therefore be acceptable to the Council."

The above three documents contain convincing information on the presence of a trilogue. I have ranked the three documents in position according to an intention to enter into informal three way negotiations and a confirmation that these negotiations did in fact take place. This approach towards collecting the dependent variable is robust and thorough.

Consilium was used to gauge simply whether trilogue procedures were in place. This information might be provided by Council depositories due to the Council Presidency

needing to report back to the Council in writing around the scheduling, participants and agenda of trilogues.

4.9 Identifying information on trilogues

As well as this, information on trilogue meetings can also be accessed from the EP's summaries of sittings (Legislative Observatory). This is due to rapporteurs typically justifying the compromise texts coming about from the initiation of trilogues between the institutions. Under my definition, a proposal would be counted as a trilogued proposal if even one informal trilogue meeting occurred. The Council's Register documented 96% of the proposals that were negotiated at trilogue, while the EP Register accounted for around 45%. The outcome of trilogue negotiations was discussed in the EP plenary in 124/442 debates (Kardasheva 2012: 10-11).

Toshkov and Rasmussen's work on Early Agreements (2012: 10) notes another way of locating trilogue files would be to download from the Legislative Observatory all such first reading agreed files and their summaries and to search for references to 'informal', 'compromise', 'trilogue' or 'agreements'. This is not necessarily applicable to this thesis since my research goes further beyond just first reading Early Agreements. The new rule 70.2b, relating to the code of conduct in EP negotiations, requires that "after each trilogue, the negotiating team shall report back to the following meeting of the committee. Documents reflecting the outcome of the last trilogue shall be made available to the committee". This rule also stipulates that when it is not possible, for time reasons, to report back to the full committee, the negotiators should report back to the Chair, the shadow rapporteurs, and the coordinators of the EP committee (Reh 2014: 837). This

provides confidence that it is possible to determine the presence, or not, of trilogues in each legislative file. Determining this with real certainty was a painstaking process.

4.10 Recording the dependent variable

Initially in Microsoft Excel, columns were produced recording information on the presence or absence of key words (leading to) indicating the incidence of informal negotiations. One column indicated the presence of the word ‘trilogue/trialogue’. Another column recorded the presence or absence of the word ‘informal’. It is worth mentioning that originally ‘informal’ was only searched for and thus collected where there was no presence of the word ‘trialogue/trilogue’. Often the symbol ‘.’ would be inserted where this applied. At a later date, for the purpose of examining the usage of the key words in documentation, information was examined on references to “trilogue”, “trialogue” and “informal” regardless of whether it was obvious that trilogues were present”. However, for both columns, where applicable, ‘Y’ and ‘N’ indicated the presence or absence of “trilogue” or “informal” negotiations. Originally a column ‘total’ existed which was the original definitive column indicating a positive or negative with regard to the binary dependent variable. Having this column along with the other two mentioned previously meant that it was easier to navigate back and re-check original collections where there was a suspected discrepancy. ‘TRILFINAL’ is the final column produced to record the final decision on whether a file is subject to an informal negotiation or not. The dependent variable is a dichotomous measure of whether the trilogue procedure is selected as the preferred choice of inter-institutional conciliation or not. It is recorded as ‘0’ or ‘1’ to indicate "No" or "Yes" in the relevant logistic regression models’ dependent variable or independent variable (in the case of the transparency models).

4.11 Database concerns and considerations

For a long period, the robustness of this approach towards collecting the dependent variable was continually re-examined. Following on from the joint declaration on the use of informal negotiations to aid codecision (1999, and again in 2007 specifically around trilogues), the near-default text of many Commission legislative proposals is “In accordance with the provisions of Article 251(2) of the EC Treaty and the joint declaration on practical arrangements for the codecision procedure, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier”. This usually is referring to agreement at the earliest possible stage i.e. first reading, or if this has passed, at second reading, ‘avoiding the need for Conciliation’. Because of this relatively standard text, using the key word ‘informal’, there was a fear I would over-estimate trilogue negotiations to the point where most files would contain this similar text with a view to informal negotiations aiding the file to be concluded early. However, this was not the case. This text was not present across all of the Commission’s legislative proposals and instead helped point to where informal negotiations did occur following on from this statement of intent. This variance on the dependent variable satisfied me that the method used above was robust as far as identifying trilogued files was concerned.

The concern had always existed that the dependent variable would be collected properly and accurately. Very mindful of this and the need to be as robust as possible, I accessed Bressanelli et al.’s (2014) database on Early Agreements (EAs) and using Excel, I made a number of comparisons to determine where there might be similarities or differences between measurements of my dependent variable and that of Bressanelli et al. (2014). Bressanelli et al.’s (2014) database captured EAs, and required such measurement to have been a trilogue-negotiated agreement that concluded at the first reading stage or at the

early second reading stage (before the Council published its “common position” document in response to the EP’s amendments). Bressanelli et al.’s (2014) database covered the period 1999-2009 allowing some comparisons to be made between their observations and my observations for this period. Still, it was possible to broadly confirm for this time frame, and for first readings and early second readings (where I would also count their definition of an EA as a trilogue), that we had captured the same binary “yes” and “no” in that order. In particular, having compared 2009 and 2008 of Bressanelli et al.’s (2014) database and my own database, where the procedure references match, so did all of my Ys and Ns (except one) despite a different method by which we collected this information.

4.12 Brandsma Database

As well as Bressanelli et al.’s (2014) database, I accessed another database belonging to Gijs Brandsma (2015). Brandsma is particularly interested in the number of trilogues needed to come to an agreement. His database deals specifically with the timeframe 2009-2014. This is convenient since the previous database with which I had compared mine, was for the previous ten years to this. Similar to my own requirements, Brandsma needed first to determine if a file was trilogued or not. I discussed my approach for collecting the dependent variable with him in a series of e-mails. He expressed confidence in how I had conducted my searches but pointed to Toshkov and Rasmussen’s (2012: 10) study on the effect of Early Agreements on EU legislative duration and how they conducted searches for their dependent variable using sentence long searches such as “The text adopted in plenary was the result of an agreement negotiated with the Council” as well as a variety of key terms. These texts were collected from the Legislative Observatory and



complemented by Prelex (Commission database on inter-institutional decision-making). This exact procedure was not possible given the manual approach I had taken to the key word search and my use of the Consilium database. Despite this, for a number of “no trilogue” observations I had collected in my database, I did run, for approximately 10 sample cases, parts of the sentence in question. In each case, the result was negative for trilogues. Brandsma did record more non-trilogued cases than I did during this period. While the sample of legislative files was not entirely comparable for both databases during this period, I did consider I could be over-estimating the amount of trilogues that occurred. I accept that my recording of all informal negotiation is broader than Brandsma’s but absolutely accurate in pursuit of the objectives of the thesis in determining which factors led to informal decision-making.

4.13 Collection of second dependent variable “transparency”

So far the methods described above applied to the dependent variable related to the question around “when and why trilogues.” There is a second strand to the quantitative part of the thesis surrounding the issue of transparency of documentation pertaining to the legislative files collected in the database, namely the extent to which documents are accessible. Since trilogue negotiations can be often seen to deal with controversial legislation, there is an element of sensitivity or secrecy associated with the documents reporting the detail of the discussions. The Consilium database was used to collect this variable. Originally, when I collected this variable, I was not planning on using it in the statistical models. Instead, it was more a case of recording the general state of affairs with respect to trilogue document accessibility/availability. It was at first captured with general references to the extent of accessibility such as "available", "some available", "some

avail/some not", "unavailable" and "three categories" etc. The latter one referred to where some of the file's documents were available, some were unavailable and some were partially available. The documents concerned were accessed in PDF form. Where these PDF files are perfectly accessible, the thumbnail is red (see figure 4.2 below).

Figure 4.2 screenshot of PDF thumbnails, case 2013/0449 (COD)

PE 9 2014 REV 1	26-02-2014
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) No°260/2012 AS REGARDS THE MIGRATION TO UNION-WIDE CREDIT TRANSFERS AND DIRECT DEBITS	
Also available in: BG CS DA DE EL ES ET FI FR GA HR HU IT LT LV MT NL PL PT RO SK SL SV	
ST 5689 2014 INIT	18-02-2014
ECB opinion of 22 January 2014 on a Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) N°260/2012 as regards the migration to Union-wide credit transfers and direct debits (CON/2014/3)	

Again, the extent of the detail varies across such different trilogue-related documents and files. There are, however, also documents where the PDF thumbnail is grey. These files are completely inaccessible for reasons of sensitivity, confidentiality or national security (see figure 4.3).

Figure 4.3 screenshot of PDF thumbnails, case 1999/0200(COD)

Please note that any references contained in the register are not legally binding. Only legal acts published in the [Official Journal](#) are binding.

16 results

ST 3652 2000 INIT

07-11-2000

REGULATION (EC) No /2000 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL MODIFYING THE COMMON PRINCIPLES OF THE EUROPEAN SYSTEM OF NATIONAL AND REGIONAL ACCOUNTS IN THE COMMUNITY (ESA) 95 AS CONCERNS TAXES AND SOCIAL CONTRIBUTIONS AND AMENDING COUNCIL REGULATION (EC) No 2223/96



The content of this document is not accessible. Nevertheless, a request for access can be sent to the [Access to Documents](#) department.

ST 11884 2000 INIT

03-10-2000

ADOPTION OF LEGISLATIVE ACTS AT SECOND READING BY THE EUROPEAN PARLIAMENT Proposal for a Regulation of the European Parliament and of the Council modifying the common principles of the European System of national and regional accounts in the Community (SEC 95) as concerns taxes and social contributions and amending Council Regulation (EC) No 2223/96 - Outcome of the European Parliament's second reading (Strasbourg, 2 to 6 October 2000)



The content of this document is not accessible. Nevertheless, a request for access can be sent to the [Access to Documents](#) department.

There is a third classification where the PDF thumbnail is coloured red with a black band on the red background indicating that the file is P/A (partially accessible) and indicates the partial accessibility of some of the document (parts of the text are blackened out or redacted). Some files have documents pertaining to them which are red (accessible), all grey (inaccessible) or all red with a black band (partially accessible).

Figure 4.4 screenshot of PDF thumbnails, case 2012/0364(COD)

ST 16653 2013 REV 1

28-11-2013

[Proposal for a Regulation of the European Parliament and of the Council on establishing a union programme to support specific activities in the field of financial reporting and auditing for the period of 2014-2020 - Preparation for the third informal trilogue](#)



ST 16653 2013 INIT

27-11-2013

Proposal for a Regulation of the European Parliament and of the Council on establishing a union programme to support specific activities in the field of financial reporting and auditing for the period of 2014-2020 - Preparation for the third informal trilogue



Some files have documents where some are accessible, some are inaccessible and to different degrees, a mix of the three classifications. The variable was first collected in word form to indicate degrees of ‘accessibility’ before being allocated a code of 0, 1 or 2. (2: documents are accessible. 1: Some documents are accessible. The documents are either fully or partially accessible. 0: Documents are totally inaccessible.) At a later stage prior to the statistical modelling, it was decided to create a new binary variable from these entitled “Transparency”. It was decided to collapse both categories “0” and “1” into one category “Not transparent” coded “0” and “Transparent” would be coded as “1”. This collapsing of the dependent variable meant being able to run this variable as a binary dependent variable in a logistic regression model.

I had initially considered treating the variable as a three-category outcome, and applying a multinomial regression model. However, I decided on a binary dependent variable of “transparent” or “not transparent” since any redaction of file documentation means transparency does not exist. Even one paragraph being redacted (for example, from a highly contentious sovereignty-sensitive file) might have contained information far more important to the EU populace than other files which are entirely transparent, yet deal with technical or semantic content.

4.14 Review of the transparency dependent variable

This variable was reviewed again as recently as the spring of 2017. It was then that all the variables had been collected and finalised in my dataset. In terms of file documentation, some files had changed status from “not transparent” to “transparent”. There were just minor changes. Some files that were wholly inaccessible were now partially accessible. Similarly, some files which were just partially accessible became fully accessible. Over

time the current recorded accessibility (transparency) variable may change. However, it is difficult to apply a lag to this since the time taken for an entire release of documentation is not known and is likely to vary. It is instead necessary to work with this snapshot in time.

Whereas previously ‘trilogue’ was a binary outcome variable being investigated by means of a logistic regression model, ‘trilogue’ is now included in the second set of models as one of the potential explanatory factors in predicting “transparency” or a lack thereof.

4.15 Collection of explanatory variables

Still using Excel to collect and record variables related to legislative files, the previously collected hyperlinks in column A of the spreadsheet allowed a direct link back to the Legislative Observatory for the purpose of collecting potentially explanatory variables for both trilogues and file transparency.

Treaty period was collected and linked the Treaty under which the file was opened from the Legislative Observatory and consisted of the Single European Act (and before), the Treaty of the European Union, The Amsterdam Treaty, the Nice Treaty and the Lisbon Treaty.

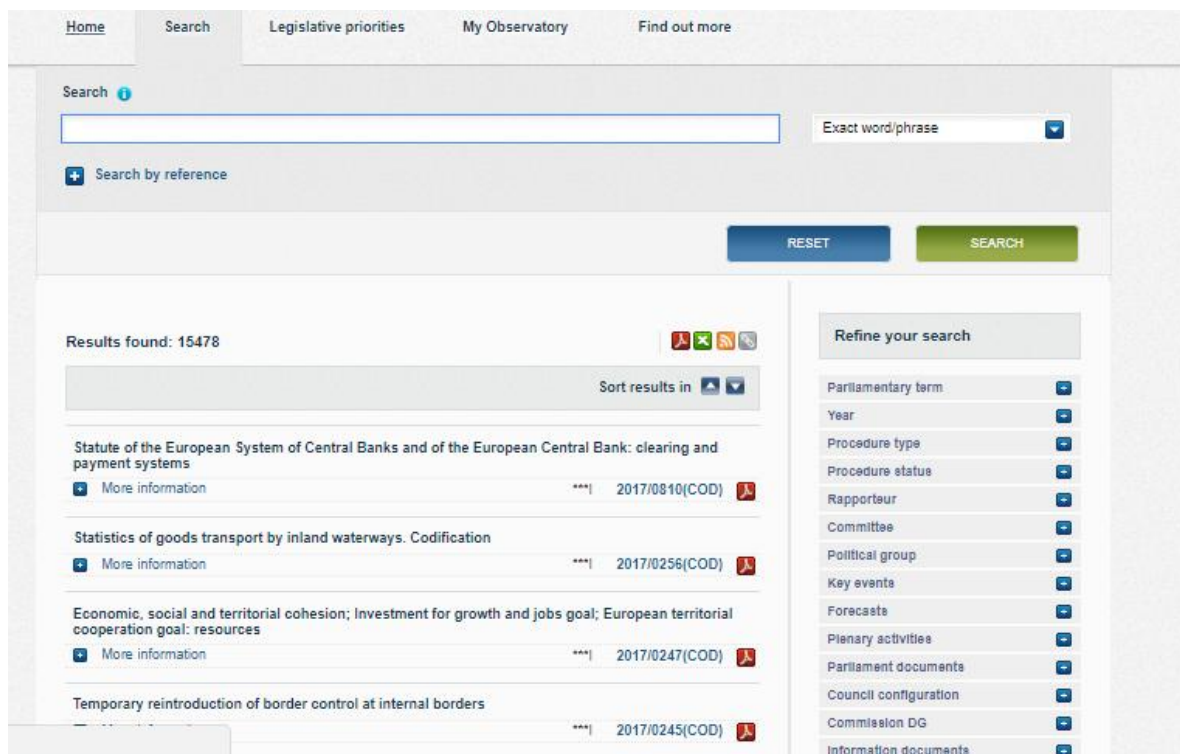
Legislative procedure was also collected from the Legislative Observatory and recorded information on whether the file was concluded under one of the four possible decision-making procedures, Codecision (later called the “Ordinary Legislative Procedure”), Consultation, Assent or Cooperation. In this study only codecision files would be analysed since the trilogue is a codecision practice/norm where the EP must have substantial leverage (like that achieved under codecision and across time).

Legislative instrument was collected from the legislative observatory and recorded information on whether the legislative instrument underpinning the proposal was one of three possible categories of regulation, directive or decision. Regulations are binding and applied uniformly throughout the EU. Directives, on the other hand, set out the wider goal that must be reached by Member States but leaves it to individual Member States on how to reach this target by permitting them to form their own laws in this respect. Decisions are binding on a Member State or a specific company (Europa 2017b).

Legal Nature and its categories were captured as follows: (1) “Repealing and Codification or Codification”; (2) “Repealing”; (3) “Recast and Repealing or Recast and Amending or Recast and Repealing and Amending”; (4) “New/Other”; and (5) “Amending”.

This variable was collected by visiting the Legislative Observatory. This variable was captured towards the end of 2016. As follows: I accessed the “search tab”:

Figure 4.5 screenshot searching in the Legislative Observatory



On the right hand side of the screen above, there is an option to “refine your search”. Files which were concluded during the 5th EP term (1999-2004), 6th EP term (2004-2009), 7th EP term (2009-2014) and 8th EP term (2014-19) up until December 2016 were searched and selected for (1) procedure status: complete; (2) procedure type: Interinstitutional ordinary legislative procedures; and (3) type of legislative act: (a) Directives, (b) Regulations, and (c) Decisions. For each EP term, a PDF file was downloaded. Each PDF file included the title sentence of the legislative proposal with the inclusion of other details at the end of these e.g. “recast” and “codification”. See the image below for an example of the layout at the beginning of the 7th EP term.

Figure 4.6 screenshot establishing the legal nature of a file

2014/0168(COD)	Common rules for imports from certain third countries. Recast
Committee	• International Trade
Rapporteur	• WALEŚA Jarosław (PPE)
2014/0167(COD)	Common rules for exports. Codification
Committee	• Legal Affairs
Rapporteur	• DUDA Andrzej (ECR)
2014/0166(COD)	Common rules for imports. Codification
Committee	• Legal Affairs
Rapporteur	• DUDA Andrzej (ECR)
2014/0165(COD)	Avoiding trade diversion into the EU of certain key medicines. Codification
Committee	• Legal Affairs
Rapporteur	• FERRARA Laura (EFDD)

The description consisted of the following labels: “amendment”; “codification”; “new/other”; “recasted” and “repealed”. It is also possible to have files that have more than one legal nature/purpose. For example “repealing and recasting,” “repealing and codification” or “repealing and amending”.

On the second page of this same PDF file (image below), it can be seen that there are no mentions of “amendment/amending”; “recasted/recast”; “repeal(ing)”; “repeal(ing)/amendment/amending”; “repeal(ing)/codif(y)ication” or “repeal(ing)/recast(ing)” in the titles. This is due to these files being “new”. Instead, I describe these as “new/other” in the dataset.

Figure 4.7 screenshot of legal nature (new legislation)

2014/0096(COD)	Caseins and caseinates intended for human consumption
Committee	• Environment, Public Health and Food Safety
Rapporteur	• LA VIA Giovanni (PPE)
2014/0090(COD)	Goods originating in Ukraine: reduction or elimination of customs duties
Committee	• International Trade
Rapporteur	• ZALEWSKI Pawel (PPE)
2014/0034(COD)	Capital increase of the European Investment Fund (EIF)
Committee	• Budgets
Rapporteur	• GARDIAZABAL RUBIAL Eider (S&D)
2014/0032(COD)	Zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and germinal products thereof
Committee	• Agriculture and Rural Development
Rapporteur	• DANTIN Michel (PPE)

I visually scanned each of the PDF documents a number of times to ensure the legal nature of each dossier was captured and recorded. Two of the final three (mixed) categories of this variable I mentioned: “repealed/amendment” (n=4); and “repealed/recasted” (n=2) have so few observations It was arguably sensible to code them into “repealed” for example but I decided to maintain their categories because a mixed legal purpose may predict trilogues or have an effect on transparency due to this specific characteristic.

I had suspicions about the large number of files that were “new/other” and expected that these PDF files as described above were not providing the complete information for this variable. It appeared that there were too many files that were “new”. This was confirmed when I opened some files using the Legislative Observatory. I decided to re-examine the 1448 regulations, directives and decisions to record the legal nature/purpose, this time using the Legislative Observatory. I recorded this variable in an Excel column alongside the previous variable on legal nature. Here, the labels used were “amending”; “new”; “repealing” and “repealing and amending”.

It was decided to merge these two columns to produce accurate descriptions of the legal nature of the legislative files. For the purpose of accuracy, preference was given towards the latter method of collection, the Legislative Observatory's record of the legal nature. The original collection of "new/other" files had a lot of inaccuracy and instead many of these files according to the Legislative Observatory were: "amending", "repealing" or "amending/repealing". There were other contradictions between the two columns. It was decided to form a final column of legal nature with the following categories: "amending"; "new/other", "recast and repealing/amending/repealing and amending"; "repealing"; "repealing and amending" and "repealing and codification/codification".

Commission DG is created to link the case to a policy area via the Directorate (DG) responsible for drafting the legislative proposal. There are 36 in total: Budget; Climate Action; Communications Networks, Content and Technology; Competition; Development; Economic and Financial Affairs; Education and Culture; Employment, Social Affairs and Inclusion; Energy; Energy and Transport; Enlargement; Enterprise and Industry; Environment; Europe Aid Development and Cooperation; European Anti-Fraud Office; Eurostat; External Relations; Health and Consumers; Home Affairs; Human Resources and Security; Humanitarian Aid and Civil Protection; Informatics; Internal market and Services; International cooperation and development; Justice; Legal Service (reference category); Maritime Affairs and Fisheries; Migration and Home Affairs; Mobility and Transport; Regional Policy; Research and innovation; Secretariat General; Taxation and Customs Union; Trade; and a non-DG affiliated category (for files that had no 'home').

EP committee was created to capture the EP committee responsible for providing the rapporteur and negotiating team for the trilogues. Also, they are formally involved in the decision-making process vis-à-vis the Council of Ministers configuration. EP committee

helps control for the policy area under which the legislative proposal is situated. There are 22 in total: AGRI; PECH; ECON; JURI; BUDG; EMPL; RETT; ENVI; LIBE; AFET; DEVE; CONT; ITRE; INTA; TRAN; REGI; IMCO; CODE; DELE; FEMM; CULT; AFCO. “DELE” and “CODE” are technical in nature and are responsible for representing the EP along with other committees in preparation for Conciliation and codecision respectively. Conciliation is the end point (third reading stage) in the formal process under codecision.

EP term was created using the “Legislative Observatory.” The variable records years one, two, three, four and five of each EP legislative term. For example, taking the 7th EP term (2009-2014), year one would correspond to July 2009-June 2010. Year five would correspond to July 2013-June 2014 (ahead of the new EP elections).

Reading stage was captured using the Legislative Observatory. It records the reading stage at which the legislative file is concluded: first reading, second reading, and third reading.

The variable “**days**” was constructed by subtracting the variable “date began” from “date ended” to yield the number of days taken to conclude a legislative file. This information was provided in the Legislative Observatory. Using Excel, this variable was converted into an additional column of “months” and then “quarters” (periods of three months). This was done with the theory and hypotheses in mind, namely the exploration of efficiency as a factor in predicting trilogues. It was not practical to have so many subcategories for an independent variable since this could hamper the explanatory power of the variable. The next variable “time taken” describes the process used to reduce the number of categories included in the variable measuring time.

Time taken: after the Excel file was converted to a STATA “dta” file, two versions of a new variable “time taken” were formed with four and five different categories. These include “less than one year”, “between one year and less than one and half years”, “more than one and a half years and less than two years”; “two years to three years” and “more than three years”. For the triogue models in an attempt to be more focused on efficiency, it was decided to collapse the second and third categories (“between one year and less than one and a half years” and “more than one and a half years and less than two years”) into one category of “more than one year but less than two years”. The five categories of “timetaken” are included in the transparency models.

Policy character (policy type classification): Reh at al (2013: 17) classify files as “redistributive” if specific funds are mentioned which are allocated to a particular group. Files are classified as “distributive” if they are available to all groups, invested in the EU bureaucracy, or allocated to third countries. If files have no mention of funds, but instead there are burdening legal requirements for all persons or if they burden all Member States equally, the file is classified as “regulatory-distributive”. If, instead, the legal requirement burdens a particular group or Member State the file is classified as “regulatory-redistributive”. If files are (a) regulations which coordinate or harmonise procedures or require actors to provide certain information, (b) introduce guidelines and codes of conduct, or (c) list recommendations aimed at specific sectors, then they are classified as “regulatory-technical.” If a legislative file has procedural content (adaptation to Comitology, the creation of an agency or leads to appointment of a director) it may be coded as “constituent”. The above classification comes from Lowi (1972) and can be used as “policy types” to distinguish between legislative dossiers and their policy characteristics. The argument being that some policy attributes over others will give rise to political conflicts depending on the classification. For example, in the case of

“redistributive” policy, there may well be conflict between the “haves” and “have-nots”. It can be argued that with the classification of “distributive” policy, all parties are treated the same, therefore leading to no conflict.

Another, slightly different, way in which to control for the responsible EP committee is to use Broscheid and Coen’s (2006: 9-10) distinction between regulatory policy and distributive policy areas. This means that files which come from the EP committees of “agriculture”, “budgets”, “culture”, “development”, “employment”, “fisheries” and “regional” policy are coded as distributive; files coming from the EP committees of “economic and monetary affairs”, the “environment”, “industry”, “legal affairs” and “women’s rights” are coded as regulatory; and those on “citizens’ freedoms and rights”, “constitutional affairs”, “budgetary control”, “foreign affairs” and “petitions” are coded as “other”.

Instead of using Broscheid’s and Coen’s (2006) approach, this thesis uses a variable influenced by Bomberg’s and Stubb’s (2012: 131) policy type characteristics classification. This summarized the characteristics of EU policy-making (Table 1). The 20 (from the 22 EP committees minus the two technical/non policy committees) EP committees were assigned one of the following four descriptions: Market building; Market correcting; Market cushioning; and Non-Market "Polity building." The technical committees “DELE” and “CODE” were classified as “non-policy/technical”. These include files where instead of being policy-focused, the EP representatives are more technical/legal in their focus. These representatives cover Conciliation in the case of the “DELE” committee and the codecision procedure more generally in the case of the “CODE” committee. The decision to use Bomberg’s and Stubb’s classification instead of Broscheid’s and Coen’s was to do with the potential for greater explanatory power with four distinct categories of policy character (named above, Market Building etc.) in the

case of the latter instead of just two categories in the former (regulatory and distributive), along with a more general “other category”.

Declaration: the binary variable “declaration” (pre and post the joint declaration 2007 (0,1 respectively) was generated to ensure that the 731 files which were begun under the time period of the Treaty of Nice accounts for the joint declaration on May 22nd 2007 which recognized the importance of the use of trilogues throughout the codecision legislative procedure. This was with the view to “improving the efficiency and quality of EU legislation.”

4.16 Expenditure variable (community budgetary implication)

This study is concerned with the named allocation of community budget funds at the file level. As well as capturing the monetary impact normally up for discussion/redistribution, it is envisaged that when a file has a significant sum of money associated with it, it causes an increased focus by the co-legislators on the issues at stake. In other words, not necessarily redistribution, but rather the best quality delivery of a service/scheme e.g. value for money. The latter is explored in detail using a case-study in Chapter 6, section 2, e.g. a management committee to oversee a programme worth over €1 billion.

Collecting information related to the budgetary implication of legislative files proved quite difficult. While legislative dossiers often discuss pre-existing budgets or frameworks, and indeed have various cost implications for actors such as for businesses in Member States. Rasmussen (2011) coded files as budgetary if the text of the file document involved the allocation of EU funding or a direct reference to the EU financial framework. The aim in this thesis is to collect a new Community budget implication i.e. the cost to the EU budget of each new file, where applicable. This is to be captured so as

to gauge the potential for a clash between the Council and Parliament on the allocation of EU budgetary spending and/or the added sensitivity/controversy of files that have big budgets attached to them. In an attempt to accurately collect this data, revenue and expenditure information was downloaded from the European Commission along with separate OECD information on GDP in the EU and total economic activity across different sectors. Both of these were in the form of Excel files.

Initially, it was decided that the twenty-two (minus the two procedural types “CODE” and “DELE”) policy areas were aligned with a 'responsible' EP committee. Sometimes, a number of these areas (2 or 3 or even 4) of expenditure could be assigned to the same EP committee. This provided in itself an interesting insight into how powerful a particular EP committee was relative to others in terms of how much expenditure could be potentially associated with it. Since this expenditure variable was associated with EP committees, the financial weight of some committees provided a problem in terms of the “missing values” that were then evident in the dataset.

A similar variable was carefully collected with the above approach. The average monies spent on each of these policy areas (attributed to EP committees as explained above) was recorded for the years between 2000 and 2010. A similar Excel file was consulted to collect expenditure data from between 2009 and 2014. The tables where these figures were derived and their programme spends added and collated came from the same location but the format and the names of the programmes experienced some small changes over time i.e. between 2000 and 2010 and 2009 and 2014. It was hard to record continuance in terms of the spending on each policy area. This was an average yearly spend in millions of euros.

Still, issues existed around the reliability of these variables due to the lack of continuity across time and the missing values associated with those legislative files which did not have area(s) of expenditure attributed to them due to their associated EP committee not being aligned to spending programmes. It was envisaged that despite not using the above expenditure variables (containing many missing variables) in the overall logistic regression model, the relevant data would be used for stratified smaller models (stratified by treaty for example where there are not so many missing values). This would permit me to test whether the expenditure variable (aggregated spending on programmes) could reliably determine policy area spending more generally. At the very least, this variable would demonstrate the EP committee which is most involved in high-spend policy areas subject to codecision. This might have been useful for examining the relationship more generally between EP committees involved in big spending for both the trilogue and transparency quantitative models (and thus, potential predictors of same). However, it was decided that establishing the community budget implication for each individual file would be the most accurate way of gauging its effect on the likelihood of trilogues and redaction, and the budgetary implication of a single file could not be reliably determined using this approach towards aggregate expenditure on policy areas. Therefore it was necessary to devise another way of capturing EU budgetary implication at the individual file level.

It was later decided to capture “budget implication” by looking up the budget implication section of the final published Commission proposal and recording the figures per annum.

I will demonstrate this approach using the file 2011/0340(COD)²⁰

Figure 4.8 screenshot A of search for community budgetary implication

²⁰File 2011/0340(COD); [www.parltrack.euwiki.org/dossier/2011/0340\(COD\)](http://www.parltrack.euwiki.org/dossier/2011/0340(COD))

2011/0340(COD)

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Consumer programme 2014-2020

Procedure completed

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2011/0340(COD) Consumer programme 2014-2020

Role	Committee	Rapporteur	Shadows
Opinion	BUDG	FERNANDES José Manuel (EPP)	
Lead	IMCO	ROCHEFORT Robert (ALDE)	IRIGOYEN PÉREZ María (S&D), HARBOUR Malcolm (ECR), TRIANTAPHYLIDES Kyriacos (GUE/NGL), SALVINI Matteo (EFD)
Opinion	JURI	WIKSTRÖM Cecilia (ALDE)	

Lead committee dossier: [IMCO/7/07737](#)

Legal Basis TFEU TFEU 169-p3

Subjects

- [4.60 Consumers' protection in general](#)
- [4.60.02 Consumer information, advertising, labelling](#)
- [4.60.04 Consumer health](#)
- [4.60.04.02 Consumer security](#)
- [4.60.06 Consumers' economic and legal interests](#)

Links

[CFR](#)

And for each of the files, selecting the tab “documents” led to the following window:

Figure 4.9 screenshot B of search for community budgetary implication

2011/0340(COD)

Consumer programme 2014-2020

Procedure completed

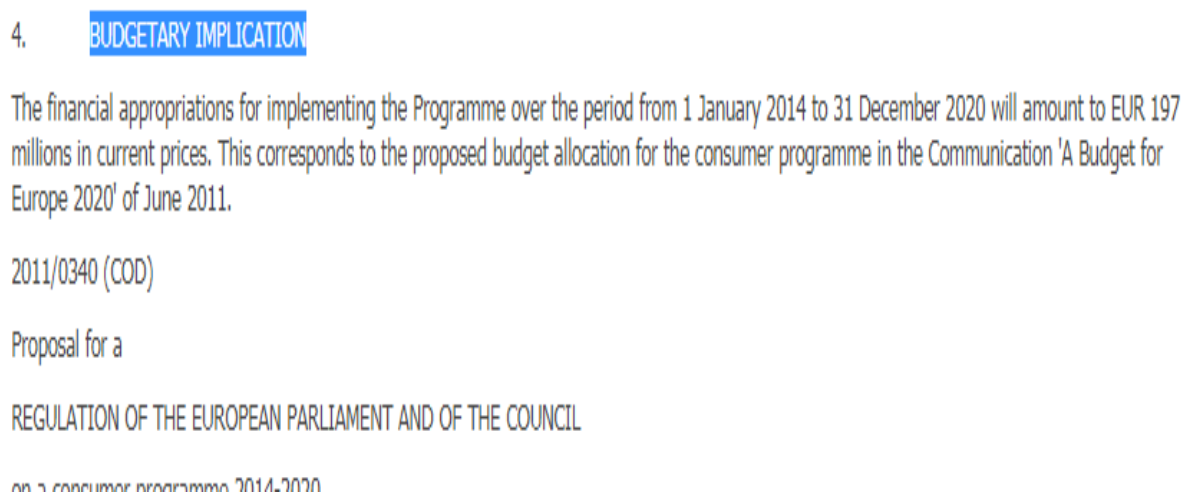
[General](#) [Activities](#) [Documents](#) [Amendments \(174\)](#) [History](#)

Documents

- Legislative proposal published: [COM\(2011\)0707](#)
- Debate in Council: [3133](#)
- Debate in Council: [3176](#)
- Committee report tabled for plenary, 1st reading/single reading: [A7-0214/2012](#)
- Debate in Council: [3208](#)
- Results of vote in Parliament: [Results of vote in Parliament](#)
- Debate in Parliament: [Debate in Parliament](#)
- Decision by Parliament, 1st reading/single reading: [T7-0005/2014](#)
- : [Regulation 2014/254](#)
- : [OJ L 084 20.03.2014, p. 0042](#)

By selecting “Legislative proposal published”, and the hyperlink titled COM (2011)0707, a search for budgetary implication was performed. The screen (below) is shown

Figure 4.10 screenshot C of search for community budgetary implication



I have highlighted the part of the text which relates to the information of interest.

Essentially:

“4. BUDGETARY IMPLICATION

The financial appropriations for implementing the Programme over the period from 1 January 2014 to 31 December 2020 will amount to EUR 197 million in current prices. This corresponds to the proposed budget allocation for the consumer programme in the Communication 'A Budget for Europe 2020' of June 2011.”

I always looked at the context of the proposal to ensure it was referring to that particular file and at times; there was some deviation to the text above. For example, in

2004/0153(COD)²¹, it said in the Commission’s proposal that “the proposed indicative financial amount is set at EUR 13.620 billion for the 7 years of the programme”. Provided it was clear to me that the text meant there was a community budgetary implication, I was satisfied to record that it was a budget implication.

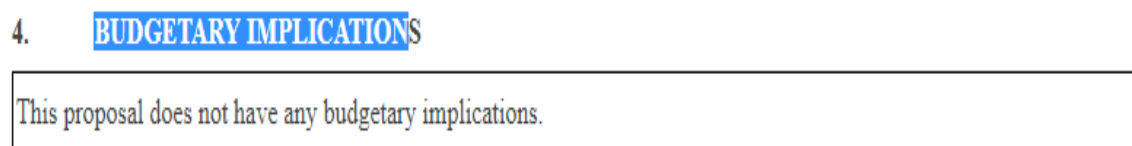
Here, it is clear that there is an implication to the EU community budget. In this case, the annual amount can be derived (€13.620 billion divided by 7). I will now provide an example, showing the text where there was “no budgetary implication.”

Take, for example, 2015/0295(COD)²², it can be seen that when the Commission’s proposal is searched for references to “budget”, the following text confirms there is no budgetary implication:

“4.BUDGETARY IMPLICATIONS

This proposal does not have any budgetary implications”.

Figure 4.11 screenshot C of search for community budgetary implication



In terms of the other outstanding “no mention” category, such files had neither an explicit budgetary implication like in the case of 2011/0340(COD) (see above), nor an explicit declaration of not having any budgetary implications like in the case of 2015/0295(COD) (see above). Using the approach of searching the Commission’s legislative proposal for budget, those files that are categorised as “no mention” is non-determined as far as explicit EU community budget is concerned.

²¹File 2004/0153(COD); [www.parltrack.euwiki.org/dossier/2004/0153\(COD\)](http://www.parltrack.euwiki.org/dossier/2004/0153(COD))

²²File 2015/0295(COD); [www.parltrack.euwiki.org/dossier/2015/0295\(COD\)](http://www.parltrack.euwiki.org/dossier/2015/0295(COD))

The above steps were completed for all of the 1448 legislative files; each case involved accessing the Commission's published legislative proposal and conducting word searches for "budgetary". In 406 files this allowed me to determine the "budgetary implications" of the legislative file. Essentially, what was the cost to the EU community of seeing through this proposal?

In 1044 files, there was neither any mentions of cost (n=522), nor any spend (n=520) attributed (no budgetary implications) to a file (like in 2015/0295(COD)). This budgetary implication variable was collected late on in the PhD process and was initially exploratory, in order to see what information was available. Applying the above mentioned method to all files was time-consuming and extremely challenging. Primarily this was due to the inconsistency in presenting the information on the budgetary implication across files. I discuss this shortly. When I examined the impact of "budgetary implication" in both the trilogue and transparency models, I was encouraged to return and conduct a more thorough collection of this variable. I had discovered that using the Legislative Observatory's database summary of events tab, it was possible to further search for the "budgetary implication" in the Commission's Legislative proposal summary. There were some cases where there was "no mention" of budgetary implication in the full version of the legislative proposal while information on a budgetary implication was clear and concise in the summary version. There were other examples where the information was not available in the summary but provided in the fuller version of the legislative proposal as described above.

I made another column during this cleaning stage. I searched in the Legislative Observatory's summary of the Commission proposal for the 1448 files. In most cases, it was clear if there was either a budgetary implication, no mention of one, or zero budgetary implication. Where this proposal summary was not entirely clear about the

budgetary implication, I referred once again to the fuller version of the proposal and specifically, the Legislative Financial Statement “summary of resources”. For the purpose of illustration, see an example of the Legislative Financial Statement in the case of 2009/0096(COD).²³

Figure 4.12 screenshot D of search for community budgetary implication

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 2 decimal places)

Expenditure type	Section no.		2010	2011	2012	2013	> 2013	Total
Operational expenditure¹⁶								
Commitment Appropriations (CA)	8.1	a	24.75	24.75	24.75	24.75		99.00
Payment Appropriations (PA)		b	9.00	16.00	20.00	20.00	34.00	99.00
Administrative expenditure within reference amount¹⁷								
Technical & administrative assistance (NDA)	8.2.4	c	0.25	0.25	0.25	0.25		1.00
TOTAL REFERENCE AMOUNT								
Commitment Appropriations		a+c	25.00	25.00	25.00	25.00		100.00
Payment Appropriations		b+c	9.25	16.25	20.25	20.25	34.00	100.00
Administrative expenditure <u>not</u> included in reference amount¹⁸								
Human resources and associated expenditure (NDA)	8.2.5	d	0.25	0.25	0.25	0.25		1.00
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e						
Total indicative financial cost of intervention								
TOTAL CA including cost of Human Resources		a+c+d+e	25.25	25.25	25.25	25.25		101.00

The Legislative Financial Statement is located in the Commission proposal and contains information on budgetary “total appropriations”. In summary, if the information on budgetary implication was clear from the original collection in the fuller version of the

²³File 2009/0096(COD); [www.parltrack.euwiki.org/dossier/2009/0096\(COD\)](http://www.parltrack.euwiki.org/dossier/2009/0096(COD))

Commission's proposal (with a search for budgetary implication); it was inserted in the first Excel column. Attempts had been made to determine the budgetary implication otherwise in the rest of the document during the initial exploratory phase. During the cleaning stage, information was recorded in a new column, as it appeared in the summary of the Commission proposal. At the end of this cleaning up stage, the two columns were merged to form a definitive column on the budgetary implication of the file.

While a majority of files had no explicitly named budget implication, it is possible that the content and activities of files already fall beneath other pre-existing budgetary frameworks for which money has already been allocated. This information was not provided in these cases. Instead this study was concerned with a community budgetary implication mentioned in the Commission proposal ahead of inter-institutional negotiations.

It is possible that when files are part of a multiple package of files they appear to have similar budgetary implications attached. By this, I mean a number of legislative files (directive, decisions or regulations) that are negotiated jointly due to their interdependence in achieving an aim, e.g. in Cohesion Policy. Often it is possible to separate these legislative files and to obtain their individual budgetary implications. Where this is not possible, the overall monetary weighting of the package is applied to all files as part of the package. This occurs on just a few occasions. Also, in the relatively few cases where a file imposes a one off cost on the EU budget, this is recorded as a one off annual figure (as opposed to dividing the cost across the relevant years). This was decided according to its presentation in the Legislative Financial Statement. It would normally be in the year specific column i.e. cost for 2013, 2014 etc.

The process of measuring the community expenditure on a given legislative file is quite difficult, whether it be by more simply aligning program spend to policy areas via EP committees (the very first approach towards collecting this variable) or by a more specific measure per file, as outlined afterwards. The format for recording budgetary figures - particularly in the case of the Legislative Financial Statement was at best, extremely inconsistent. This is perhaps explained by the various different authors of Commission legislative proposals across time but this basic provision of information was particularly challenging in respect to the formatting of monetary figures themselves. For example, in the title heading of the table containing the budgetary information, it was common that it would say “in millions of euros and to three decimal places” but instead, deviate from this format and leave the reader wondering if the money involved was in thousands, millions or billions of euros.

Another challenge presented was the calculation of the yearly-weighted “budgetary implication”. In many cases like the example given above (2011/0340(COD)), this was as simple as dividing the total monetary amount by the number of applicable years of community budgetary contributions. This process was more challenging when calculating the “budgetary implication” using the Legislative Financial Statement. I would use this method of collection when a search in the same document for “budgetary implication” did not yield a clear budgetary figure and where the summary of the Commission proposal in the Legislative Observatory did not provide this. When looking at the Legislative Financial Statement, I noticed that sometimes the “human resource” or “administrative” costs of a proposal would be included in these figures (the two other approaches to collecting budgetary details) and at other times, they would not be.

This is another example of the inconsistent presentation of this information in the Commission’s legislative proposal. However, because the way this information is coded

in both sets of statistical models; this particular kind of deviation has no impact. For example, in the trilogue models, a general budgetary impact is recorded with three categories of “budgetary impact”; “no mention of impact”; or “zero impact”. In the case of the transparency models, the categories are quite broad (“€0-1m”, “€1-10m”, “€10-100m”, “€100m-1bn” and “€1bn plus”) and no file is at risk of falling into another category on the basis of including or excluding these administrative costs.

4.17 Using STATA to carry out empirical testing

Since the relationship between the binary dependent variable and independent variables is not linear, odds ratios are used to report on the logistic regression instead of beta coefficients. As noted by (Reh et al. 2013: 1130), odds ratios provide us with a more intuitive interpretation i.e. a one unit change in x_i leads to the odds of $y=1$ change by a factor of $e^{(\beta)}$, while holding all other variables constant. As a rule of thumb, odds ratios with values between 0 and 1 point to a decreasing likelihood of trilogues, while odds ratios greater than 1 indicate an increasing likelihood.

Initially, it had been decided to collect the columns of variables in Excel as it was not decided at this stage that STATA would be the statistical software to analyse the data. Conveniently, it was simple to transport the Excel data from their columns to the STATA equivalent (dta file) known as a ‘data editor’ file. Many of the same properties attributed to Excel files apply to ‘data editor’ files. A number of variables were collected in Excel but not transported over to STATA. Only those variables which were complete and deemed relevant (theoretically) to the final logistic regression models were transferred.

This transfer of data from Excel to STATA was done a number of times across a two year period before finally deciding I had all of the relevant and correct variables in the dta file.

It does not take much time to complete but typically if there were any mistakes uncovered in STATA, it was best to return to the Excel version and fix these before creating a new dta file. It can be complicated to edit and filter columns and observations in STATA. By highlighting the relevant columns from cell 1 to 1448, the observations were copied and pasted into STATA. When pasting into STATA, the option to have the first row used as variable names was selected.

The details of the files copied across from Excel to STATA included the legislative reference number (necessary to identify file); “Trilogue or no trilogue”; “Availability of documents (0,1,2)”; “treaty”; “declaration (0,1)”; “Principal Commission DG”; “EP committee”; “Policy type”; “Reading stage”; “EP term year”; “Date began”; “Date ended”; “Days”, “Months”; “Legislative instrument”; “enlargement”, “budget”, “budget categories” and “budget impact”. Some of these variables were yet to be tidied up.

4.18 Encoding the variables in STATA

When the correct variables were copied across from Excel to STATA, it was important to determine which of the variables needed to be “encoded” and which ones were suitable to be run in a logistic regression as they already existed. By entering “describe [variable name]” into the STATA command box it was possible to see if the variables were “string”. This is common when the data has been copied from Excel. “String” is non-numerical. Where this was the case, it was important to convert these to numerical forms in order to be able to perform a regression. There were a number of variables which needed to be encoded and these are as follows: Treaty under which file begun (now Treaty); Commission DG (now CommDG); EPcommittee (now “EP Committee”); Policy Character (now “Policy Char”); reading stage (now “Reading Stage”); EP term year of

file at conclusion (now “EP Term”); legislative instrument (now “Leg Instrum”); Legal Nature (now “Legislative Purpose”) budget implication (now “Budg’ Impact”); and budget category size (now “Budget Cat”). In each case the command was “encode var1, gen(var1a)” where var1a was the new variable name. In each case it was necessary to change the name of the variable. In hindsight it would have made sense for me to abbreviate the variables in the Excel sheet so as to then change the names and give them the most appropriate labels in the dta file. However, it was possible to change the names of the variables when the empirical output was transferred to the Word document using the STATA “outreg2” command.

Despite mentioning above that it is easier to edit variables, rows or columns in Excel, the exception to this was generating new variables or creating interactions. These are done with a simple command in STATA. From the existing variable "years" present in the dta file, a new variable "timetaken" was generated. This was done with the following command "generate timetaken=. ; replace timetaken = 1 if (months <=12); replace timetaken = 2 if (months >12 & months<=18); replace timetaken = 3 if (months>18 & months<=24); replace timetaken = 4 if (months>24 & months<=36); replace timetaken = 5 if (months>36). As mentioned above, another version of this variable “Time Taken” was prepared for the trilogue models. It had just four categories and saw the command adjusted to merge the second (between 12 months and 18 months) and third categories (between 18 months and 24 months). This was done so as to be more efficient in the interests of the statistical model since both of these categories had similar effects on the likelihood of a trilogue occurring.

Next, from the pre-existing variable "availabilitycode", transparency was generated using the command “generate transparency”=.; replace transparency = 0 if (availabilitycode >= 0) & (availabilitycode < 2); replace transparency = 1 if (availabilitycode ==2)."

It was later decided to create some “interactions” to test the combined effects of two variables on the dependent variable. When an interaction effect exists, the effect of one independent variable may depend on the level of the other independent variable. The general command for generating interactions in STATA is "gen var(c)=var(a)*var(b)". It was decided to form the interaction term "monthreading" from the variables “months” and "reading stage". Also to form “ttreading” from the variables "Timetaken" and "ReadingStage". In both cases, these interactions were created to control for controversy. If a file takes many months to complete and continues into the second or third reading stages, it is likely the file contains controversial issues for one or more of the actors.

4.19 Qualitative chapters: illustrative case studies

To provide an illustration of some of the dynamics in both set of quantitative models, namely the model examining the factors leading to trilogues and the model examining the factors affecting the transparency of the decision-making process, it was decided to take a number of case studies illustrating the empirical findings of the models’ output. These case studies are solely for the purpose of illustration. I am not testing the hypotheses using these case studies. This qualitative phase acts as a good supplement to the empirical chapters and enables a bringing to life of the political dynamics as seen in the empirical findings.

There is a variety of ways to approach this qualitative phase of the thesis. Taking the method adopted by Kardasheva (2012: 13-4), selected legislative proposals may be broken down into the contested issues, allowing the analysis to trace if the EP’s (and Council’s) demands were included in the final legislative text.

In order to determine the most substantive issues being discussed during these negotiations, and where available, EP debates and EP committee reports, formed by the EP committee rapporteur, are very useful in helping to determine the EP's position across the various items in each proposal. To understand the Council's preferences, Consilium is a valuable source of information since its internal documents such as Presidency reports/notes and COREPER minutes can be useful to evaluate the position of both the Council and EP on contested issues within the legislative proposal being examined.

By uncovering these points of contestation in the aforementioned documents, it is hoped, firstly, to further understand why some proposals are subjected to trilogues and secondly, why some files are more likely to be redacted than others. For instance, are the EP's and Council's institutional positions in direct competition along classical political grounds? It is hypothesised that the EP on average will be espousing aims and outcomes represented by a normative approach towards legislative decision-making whereas the Council of Ministers will be more interest-based in its approach to negotiations.

It was decided to write two qualitative chapters consisting of case studies illustrating the models' findings for both 1) the likelihood of files being subject to trilogues and 2) the likelihood of file documentation being subject to redaction (opposite of transparency). The purpose of this chapter is to help tell the story of the empirical findings.

So as to illustrate files most likely to be subject to trilogues, I deemed the following variables relevant: Policy Character's "polity building" and "market building" and their corresponding EP committees, as representative of policy area, (for the pre-declaration model); "timetaken" "12-24 month" category (for the pre-declaration model); Legislative instrument's "regulation" in the case of the post-declaration model, and "directive" in the case of the pre-declaration model; and finally, Budgetary impact in the overall model.

Budgetary impact had a positive effect across each of the three trilogue models. However, it was statistically significant only in the full model (capturing all files).

So as to illustrate files most likely to be subject to redaction, I decided the following variables were relevant: the EP's "ENVI"; "EMPL"; "TRAN" and "PECH" committees; Budget Categories' "€1bn+" category (in the case of the post-declaration model) and finally, timetaken "36+ month" category (in the case of the post-declaration model). Each of these variable categories represented the most interesting dynamics to come out of the empirical tests.

An Excel file was created with nine different internal sheets (refer to a Microsoft Excel file for an example. On the bottom left of the screen immediately to the right of the direction arrows, there is an option to add an additional sheet to the one already being displayed) for the following combinations of variables: 1) files which are trilogued and "polity building"; 2) files which are trilogued and "market building"; 3) files which are trilogued and "concluded between 12 and 24 months"; 4) files which are trilogued and are "regulations (post-declaration)"; 5) files which are trilogued and are "directives (pre-declaration)"; 6) files which are trilogued and have a "budgetary impact"; 7) Files which are subject to Conciliation (and omitted from the statistical models because they perfectly predict trilogues); 8) files which are redacted under the EP committees ("ENVI"; "EMPL"; "TRAN" and "PECH"); 9) files which are redacted and have the budget category size of "€1bn+" ; and 10) files which are redacted and take "36+ months" to be concluded.

Each internal sheet contained the name of the variable combination (e.g. trilogue*regulation; trilogue*directive), along with the respective file dossiers numbers (copied from the main database), a URL link to the EP's Legislative Observatory and

some other variables to aid selection. For example, in the case of selecting directives, I narrowed down the overall volume of directives by looking at those that were “market cushioning” in the pre-declaration period. While this was the most voluminous category, it meant needing to find just two cases within this section that might best illustrate the trilogue-directive dynamic arising from the quantitative model. Similarly, in selecting regulations, I filtered for those that were “market correcting” in the post-declaration period. This helped narrow down the overall amount of regulations from which I selected two cases. For trilogues, most of the files in each of the internal sheets were opened via the link to the Legislative Observatory. The documentation in the Observatory and associated summaries allowed me to visually scan the general content of the file and the main dynamics between the EP and Council. Any specific trilogue information was assessed (where available) by entering the legislative dossier number into the Consilium database and searching for "trilogue/trialogue" or "informal" in both title and text (as described earlier).

More widely, the following three dynamics were expected for both, files subject to trilogues, and separately but still connected, subject to redaction:

- 1). A clash between the EP’s preferences and the interests of the Council in files which at that time provided both institutions with equal co-legislative powers;
- 2). Connected to; issues around EU competence and sovereignty sensitivity;
- 3). Big money at stake

To illustrate the dynamics of trilogues and document redaction, each case will include a brief summary (1-2) paragraphs, including a contextualisation of the file, but particular attention will be given to the inter-institutional decision-making squabbles leading to trilogues/redaction. Where relevant, the case study will focus on inter-institutional

compromise and/or the Council's intra-institutional stage of position formation. Sometimes, the Council's intra-institutional position can be where contestation occurs and not just at the inter-institutional trilogue itself. Contestation can occur at both stages i.e. between the Member States at Council formation level and then between the EP and the Council ahead of trilogues and during trilogues.

The Legislative Observatory's facility of providing summaries of institutional positions at various stages of the file's legislative duration is a useful tool for the initial "eye-balling" of files in an attempt to choose the ones which best illustrate the dynamics of the statistical models.

In order to scan the categories of eligible files, all files in each of the categories were opened, (often 15-20 at a time). Since this chapter was really about best illustrating the dynamics as seen in the models, I sought these cases according to the above mentioned dynamics but with consideration for files that might be considered topical. Deciding if something was topical was based on the knowledge from studying the politics of the European Union over the past seven years and normally meant the title and summary of the file indicated the potential for a clash between the EP and Council or between the Council itself. I typically selected files which indicated a wider application to the Union rather than files which legislated for a specific group of persons/countries. Sometimes the volume of files needing this initial exploration was reduced due to the variable having a statistical effect on the post-declaration model as opposed to the pre-declaration model. For example, "market building" and "polity building" files have a statistical effect on the pre-declaration model and not the post-declaration model. The majority of trilogue case studies chosen were from the pre-declaration time period, whereas all transparency case studies are post-declaration files.

In selecting the trilogue case studies, there were a lot of “market building” and “polity building” files to sift through before settling on three to four files from each category. For the variable “timetaken”, files were assessed for the category of “12-24” months, during the post-declaration period. This reduced the number of potential files from which to select my two case studies. With respect to “budgetary impact”, the main effect of this variable was seen in the full model. It was decided to “eyeball” dozens of files but with particular emphasis on the highest spending category i.e. above €1 billion, from which two files would be chosen. In terms of “legislative instruments” directives were statistically significant (in the pre-declaration model) and it was decided to filter the Excel file for those directives that are “market cushioning”. As a proportion of total directives during this period, those that were “market cushioning” were most voluminous. In the case of regulations (statistically significant in the post-declaration period), the proportion of these that were most voluminous were for those files that are “market correcting.” For both directives and regulations, two files were chosen as case studies. Finally, a whole range of Conciliation files were explored and considered. Two principal policy areas were most represented here: “Energy and Transport” and “Environment”. It was decided to focus on one file from the single policy area of “Environment”. Two other files were chosen according to the time span of the dataset: one from 1997 (Enterprise and Industry) and one from 2008 (Mobility and Transport). This was done to examine the potentially different characteristics of files that are subject to Conciliation across time.

In terms of transparency, the four EP committees “ENVI”; “EMPL”; “TRAN” and “PECH” in the post-declaration stage provided the categories of files from which the case studies were to be selected. This helped filter the number of files that needed to be considered. The number of eligible files that fell into the budgetary category “€1bn+” for the post-declaration period was manageable and permitted me to pick the best examples

of files illustrating the models' dynamics between high budget spend and corresponding reductions in transparency. Finally, the post-declaration transparency model showed that files which took more than 36 months were some 12.5 times more likely to be redacted. Filtering the Excel file for this specific category of material allowed me to navigate and explore the eligible files in pursuit of the cases that best illustrate this dynamic.

For each of the illustrative case studies, a quick link URL to the Legislative Observatory/Parltrack webpages from which the summary/institutional positions are outlined is provided in footnotes. Where applicable, the Council documentation link is provided in the footnotes too. This is done to permit the reader to access any of the cases with ease.

4.20 Interviews

After all the relevant data was collected in its final form, the quantitative models ran, and the qualitative case studies examined, I decided to add another layer of substance to my research by travelling to Brussels and meeting some MEPs and EP legal advisors to ask them whether the dynamics that were arising from my quantitative models cohered with their perceptions and experiences of the determinants leading to trilogues and the consequence of these for the transparency of legislative file documentation.

Recruitment: I identified the first week of September (4th-8th) as being a good time to travel to Brussels. It was suggested to me from a friend that previously worked in the EP that MEPs are generally more likely to “be in good humour” and “open to engagement” at this time, following on from the summer break.

For practical reasons, and due to speaking only English fluently, I decided it would be most efficient for me to contact almost all Irish and British MEPs to request a meeting. I

found all MEP contact details either through their own webpages online or through their party websites. The European Parliament also has a directory through which you can find contact details for each MEP. I contacted roughly 60 MEPs and two-thirds responded in some way. Most declined to meet me due to time pressures or their physical absence. While a number of MEP offices informed me that they were too busy to meet me, some agreed to meet me in the future and/or to answer questions through an online survey or telephone interview.

I managed to meet 6 MEPs (3 Irish and 3 British) and 1 EP legal (Bulgarian) advisor during my time in Brussels. There were 3 female and 3 male MEPs among the 6. 2 of the MEPs were members of the “Confederal Group of the European United Left/Nordic Green Left”; 2 were members of “Greens/European Free Alliance” while 1 MEP was a member of the “Alliance of Liberals and Democrats for Europe”. The final MEP was a member of the “Europe of Freedom and Direct Democracy Group.” The EP legal advisor worked for the “Greens/European Free Alliance.”

Substance: I asked 18 questions related to my hypotheses and model findings and found this to be really useful because for the most part, their responses supported my research findings. See appendix 2 for the questions asked. Each interview lasted between 30 and 40 minutes with the exception of one where the MEP was under particular time constraints. The interviews typically occurred in the office of the MEP. There were two exceptions to this where I met one MEP and an EP legal advisor in nearby cafés. I recorded handwritten notes for all seven of the interviews and recorded five of the interviews with a voice recorder. All participants consented to this. I will delete all records of the interviews within a six month period.

Use of data: as mentioned previously, the purpose of these interviews were to add another layer of substance to the quantitative and qualitative work. I anonymised each of the participants, referring to them as MEP1, MEP2, MEP3, MEP4, MEP5 and MEP6. I refer to the legal advisor as EP legal advisor 1. I transcribed relevant quotations and observations into one document. Where relevant, I embed some of the MEP comments throughout the thesis, but particularly in chapters 5, 6, 7 and 8 as a further level of substance to illustrate the quantitative and qualitative findings.

Chapter 5: When and Why Trilogues?

5.1 Background

The reasoning behind trilogues has changed across time. Initially these tripartite meetings were for the purpose of organising the outstanding and still-to-be-agreed issues that were evidently too contentious or difficult to be resolved by the EP and Council in reading stages one or two, to be discussed at Conciliation meetings (the end point of the formal legislative process). Over time, trilogues began to be used earlier in the legislative process to deal with files that were subject to contestation between the institutions. The Commission's own codecision guide in 1999 suggested that "technical and non-contentious" files should preferably be concluded at first reading but that more sensitive files might not follow this route without due consideration, especially in relation to budgetary and institutional terms. (European Commission 1999a: 8-9). As time progressed, legislative workload increased, working relations between the EP and Council improved and closer practice was established between the EP and Council. This meant that trilogues were used more frequently and earlier in the legislative process, so as to conclude legislation at the earliest possible stage.

Due to the now almost complete use of trilogues in all legislative files and an emphasis on efficiency and concluding earlier, these files subject to trilogues must still consist of highly sensitive material. These trilogue meetings between the three institutions became known as "Early Agreements." For every file that is concluded with the help of an informal negotiation, the agreement must be "rubber-stamped" at the next formal stage in the legislative procedure i.e. at first reading stage, at "common position" during the second reading stage or at third reading/Conciliation stage. In all cases, there is a decision made by the co-legislators to subject the legislation to informal negotiations and deviate

from the formal legislative route in order to (a) save time, (b) for preparatory/administrative reasons or (c) because files are highly contested and need a more focused and intimate examination by the co-legislators.

This chapter presents a set of three logistic regression models, an overall model of the database's 1448 files, one model which is post-declaration (files begun after the May 2007 joint declaration), and a model which is pre-declaration (before May 2007). The main purpose of this chapter is to (1) evaluate an **efficiency**-related hypotheses by examining the relationship between trilogues and (a) the time taken to complete a legislative file (Toshkov and Rasmussen 2012), (b) the stages in the EP term cycle and (c) treaty phase. Also (2), to examine a **policy characteristics** hypothesis (Broscheid and Coen 2006; Bomberg and Stubb 2012) to establish whether trilogues are more likely to occur in (a) decisions over highly sensitive policy areas and where the EU has the most competence (policy character: polity building, market building, market correcting, and market cushioning), using (b) the **most binding types of legislation** i.e. decisions, directives and regulations (Schulz and König 2000, Golub 2008) and (c), establish whether the hypothesis linking **budgetary impact** with the decision to “go informal” is supported (Rasmussen 2011).

5.2 Applicable variables and the theoretical rationale for their inclusion

Treaty period (“SEA and before”, “TEU”, “Amsterdam”, “Nice” and “Lisbon”) was created to understand the changes to the conditions under which trilogues are used as codecision is extended across policy areas and the length of time of trilogue practice increases. The “TEU” is used as the reference category in the case of the larger model because it is expected that this is the least likely predictor of trilogues and thus likely to

show the relative prevalence of trilogues in the proceeding treaty periods. The base category changes for the next two models. “Nice” is the base category in the case of the post-declaration model and “Amsterdam” is the base category in the case of the pre-declaration model for the same reason.

For each of the independent variables, I selected the category (base category, reference category) that I estimated to be the least likely category to predict trilogue usage. Selecting the category of a variable least likely to predict the outcome variable means being able to easily interpret the odds ratios as they increase and decrease.

Time taken to complete negotiations on a file (less than one year, between one year and less than two years; two years or above but less than three years; and more than three years) is captured to examine, firstly, the hypothesis that files taking more than three years are more likely to be trilogued than files taking less than a year, as an indication of controversy, and secondly, that by the time of the Lisbon Treaty phase, the trilogue has become such a practice norm that files should take less time to complete, indicating evidence of efficiency borne from the prolonged use of trilogues. In the full and pre-declaration models, a dummy variable with the reference category '1-12 months' is used because this is the category of the variable least likely to predict trilogues. Trilogues are not typically expected to occur this early in the process. In the case of the post-declaration model, the file duration category least likely to be trilogued is files which take over 36 months. Trilogues during this period are normally used to help conclude legislation early.

Policy character/policy type classification (polity building, market building, market correcting, and market cushioning) is captured to test the general hypothesis that high competence-high salience policy types are more likely to be trilogued than low competence-low salience types, with the added hunch that 'building' types are primed for

negotiations over the power to shape the EU policy architecture and are more likely to be trilogued than cushioning or correcting policy types, and that within 'building' types, that polity building is the most sovereignty sensitive and therefore most likely to be trilogued. In all three models, a dummy variable with the reference category 'market cushioning' is used because this is the category of the variable least likely to predict trilogues (as discussed above).

Legal nature (Repealing and Codification/Codification; Repealing; Recast and Repealing/Amending/Repealing&Amending; New/other; Amending) is created to understand the effect of the differing intent of legislation on the likelihood of trilogues. For example, is the legislation entirely new or is it amending, codifying, repealing or recasting of previous legislative files. Since Lisbon, it appears files are more inclined to be of the latter kind. New legislation is initiated where previous legislative framework does not exist. “Repealing and Codification/Codification” was chosen as the reference category in both sets of models. Due to the typically “joining up” (bringing legislative provisions together into one file without substantive changes) nature of codification files (Toshkov and Rasmussen 2012: 11), and notwithstanding the general efficiency enhancing role expected of trilogues in more recent times, it is anticipated that codifying files are, on the whole, less conflictual and that all other types are more likely to be trilogued.

Reading stage (First reading, second reading, and third reading (Conciliation)) is captured to understand the changes in the use of trilogues over time and across successive treaty periods that facilitated conditions leading to an increased use of trilogues e.g. the extension of codecision to new policy areas. Toshkov and Rasmussen (2012:4) note Rasmussen’s and Shackleton’s (2005) study and how negotiators are far less constrained and observed from their parent institutions during the earlier stages of policy-making. It is

hypothesised that under the Treaty of Amsterdam, trilogues are more likely to be associated with later reading stages since the formal passing of legislation only became possible from mid-1999. However, by the time of the Lisbon Treaty changes, trilogues are more likely to occur at the first reading stage since it has become the norm to agree at the earliest possible stage in the legislative process. In both the larger model and the post-declaration model, the reference category is “first reading.” The reference category changes for the pre-declaration model with “second reading” used instead. The 115 third reading files are omitted from the statistical models. This is due to their perfect success in predicting trilogues. This results in 1333 first and second reading legislative files being subject to empirical testing.

EP term year: the year of an EP five year term in which the file was concluded is created to test the hypothesis that years four and five are more likely to show an increased prevalence of trilogue use because the EP is trying to wrap up its policy agenda goals before its term ends and trilogues are supposed to enhance efficiency i.e. get the work done quickly. Leuffen and Hertz (2011:62) note that legislative acts tend to be adopted more so at the end of Council presidencies (June and December). This is perhaps a natural inclination to finish what you started but even more so, the credit for achieving policy aims/objectives during the Presidency term is a reward. MEPs similarly want to be seen to achieve their policy aims and deliver legislation. This is the kind of phenomenon that I am seeking to test using “EP term year”. Thus, this present database measures "EP term year," which is a similar concept to Council Presidency in that the closer we move towards the end of an EP legislative term, the more likely legislative files are to be adopted. “Year 2” is chosen as the reference category in the EP cycle. It is thought that this year is the least likely to predict trilogues because it is the first genuine 12 months of

EP policy-making activity, given the first year involves a settling-in phase combined with finishing off legislation left over from the previous 'administration'.

Type of legislative instrument (decision, regulation, directive) is created to test the hypothesis that the binding nature of regulations (and decisions which are the same as regulations but addressed to particular parties) should predict the use of trilogues more so than directives, because directives although binding as to the goal to be achieved, leave the means to achieve the goal up to the member state. Negotiations on regulations are expected to be more intense because there is no room for manoeuvre like there is for directives i.e. the “nitty gritty” is important to nail down for Member States. However, Schulz and König, (2000: 664) note that Member States are less likely to be flexible in negotiations around directives, thus extending negotiation length. This is due to the requirement on Member States to implement these files nationally. Golub (2008: 172) finds that directives normally deal with more significant information. I will return to these competing views on directives and regulations when I discuss the related hypothesis in sections 4 and 6.

EP committee is created to capture the EP committee responsible for providing the rapporteur and negotiating team for the trilogues and that are formally involved in the decision-making process vis-à-vis the Council of Ministers configuration. (There are 22 in total: AGRI; PECH; ECON; JURI; BUDG; EMPL; RETT; ENVI; LIBE; AFET; DEVE; CONT; ITRE; INTA; TRAN; REGI; IMCO; CODE; DELE; FEMM; CULT; AFCO). It is hypothesised that high value policy areas that are traditionally the concern of the EP because they are of concern to the EU demos (e.g. the internal market, the environment), are more likely to be trilogued than more procedural matters. In each of the three models, the reference category is 'Legal Affairs' because it is thought that this is the category least likely to predict trilogues.

Commission Directorate General is created because similar to the EP committee variable, it links the legislative file to a policy area via the Directorate General (administrative branch dedicated to a policy areas) responsible for drafting the legislative proposal. Both of these variables measure the file's policy realm which is in itself a predictor of trilogues i.e., controversy (e.g. in environment policy area). However, while Commission DG might provide a more raw policy proxy, EP committee is a more endogenous signal of importance of a policy area for the EP and reflects the high value policy areas which concern the EP due to the salience attached to these by the EU public. As mentioned previously, when the files completed at third reading are omitted, this left me with 1333 first and second reading files. All of these observations are included in the full model, while the declaration-stratified models have approximately half of these observations in each. It was decided to include EP committee in the three models but to include Commission DG only in the case of the full model. This was so as to reduce the loss of observations (omitted because of collinearity). The omission of observations due to collinearity is less of a concern when the number of observations are larger e.g. in the full model.

It is hypothesised that sensitive, high value and controversial policy areas (e.g. the internal market, the environment, energy and transport) are more likely to be trilogued than procedural matters (the reference category is 'Legal Services' and there are 36 DGs in total: Budget; Climate Action; Communications Networks, Content and Technology; Competition; Development; Economic and Financial Affairs; Education and Culture; Employment, Social Affairs and Inclusion; Energy; Energy and Transport; Enlargement; Enterprise and Industry; Environment; EuropeAid Development and Cooperation; European Anti-Fraud Office; Eurostat; External Relations; Health and Consumers; Home Affairs; Human Resources and Security; Humanitarian Aid and Civil Protection;

Informatics; Internal market and services; International cooperation and development; Justice; Legal Service; Maritime Affairs and Fisheries; Migration and Home Affairs; Mobility and Transport; Regional Policy; Research and innovation; Secretariat General; Taxation and Customs Union; Trade; and a non-DG affiliated category (for files that had no 'home')).

Budget impact (budget implication) is created to determine if there is a link between a legislative file's community budget implication and the decision to "go informal". It is hypothesised that files which have a sum of money "up for grabs"/or where this figure is open to revision will be trilogued when compared to files which have zero budgetary implications. Two such examples of these files are 2004/0153(COD) and 2004/0154(COD) and are dealt with in some detail in Chapter 6, section 2. The reference category is that of files which have "zero" budgetary impact. The other category is "no mention" i.e. files which fall into neither the "budget impact" nor the "zero budgetary impact" categories.

Months*Reading Stage is an interaction between the number of months taken to conclude a file and the reading stage where the file was completed. Its purpose is to account for the controversy of a file. Files which take many months to conclude and progress into a second reading stage are indicative of either intra-institutional or inter-institutional conflict. This variable was included so as to separate controversy and efficiency. "Timetaken" was intended to explore if trilogues were efficiency-enhancing. This relationship was previously quite unclear since the length of time taken for files to be concluded can be extended due to controversy. This interaction variable helped bring clarity to the efficiency-enhancing hypothesis linking "time taken" and the likelihood of trilogues where the model output shows that files that take 1-12 months are most likely to be subjected to trilogues. During discussions with MEPs, they (four MEPs and one EP

legal advisor who responded) agreed that this was a logical way to measure controversy. The interaction itself showed only marginally positive odds ratios of between 1.02 and 1.10 between the three models. The interaction was statistically significant in each of the models too, at the $p < 0.1$ range in the case of the stratified models and at the $p < 0.01$ range in the case of the full model.

5.3 Trilogues overview

This section provides a big picture of the database of files and its characteristics so as to allow the reader to get a feel of the data and how it falls across the different variables and their categories, and to permit them to easily link the empirical pictures to the theory as laid down in the hypotheses stated immediately after this section, ahead of the model output. The section includes a graph showing the breakdown of files between those that are trilogued and those that are not trilogued, including files that are trilogued and not trilogued broken down according to

- 1) Treaty (linked to hypothesis one); files
- 2) Reading stage (linked to hypothesis five);
- 3) Treaty and reading stage (linked to hypotheses one and five);
- 4) Policy character (linked to hypotheses three and four);
- 5) EP term (linked to hypothesis six);
- 6) Legislative instrument (hypothesis seven);
- 7) Legislative instrument and policy character (linked to hypotheses three, four and seven);

8) Time taken (linked to hypothesis two);

9) Budget (linked to hypothesis eight).

There are also graphs showing the breakdown of files trilogued and not trilogued according to policy area (as represented by EP committee and Commission DG); the breakdown of files trilogued and not trilogued according to the legal nature of files (new, recasting, amending etc.); the breakdown of files that are trilogued and not trilogued according to the availability of documentation; and the breakdown of files that are trilogued and not trilogued according to both document availability and treaty. These last two graphs help the reader to visually see the change between trilogues and redaction across time.

Table 1 Number of Files by Trilogue/No Trilogue

Observations	
1,1448	(n)
1,173	Trilogue (n)
275	No Trilogue (n)

As we can see below, trilogues (informal negotiations) account for 1,173 of the total 1448 legislative files. This means some 81% of all legislative instruments during the fifteen year period are subject to trilogues.

When I exclude the 115 Conciliation files, there are 1058 trilogued files remaining versus 275 files which are not trilogued. Almost 79.4% of files are subject to trilogues. Since

trilogues are being used more and more, this figure between those files trilogued and not trilogued will continually shorten across time. Earlier studies examining the 5th and 6th and 7th EP terms see a greater variation on the dependent variable e.g. Bressanelli et al's (2014)/Reh et al's (2013) or Rasmussen's (2011) studies on Early Agreements due to the absence of the 7th EP term (most trilogued) As well as this, and now including Brandsma's (2015) study, is their more restrictive measure of trilogues (Early Agreements) compared with my measure of trilogues more generally.

I mentioned earlier that the logistic regression models omitted the 115 Conciliation files due to their perfect prediction of the outcome (trilogues). In Chapter 6, I qualitatively examine three Conciliation case studies and include these 115 files in the statistical models in Chapter 7. The omission of these files from the statistical models in this chapter moves my study in line with other prominent studies in the field (Rasmussen 2011; Reh et al. 2013; Brandsma 2015) albeit; this study stretches across more than three EP terms.

Figure 5.1 numbers of trilogued files and non trilogued files

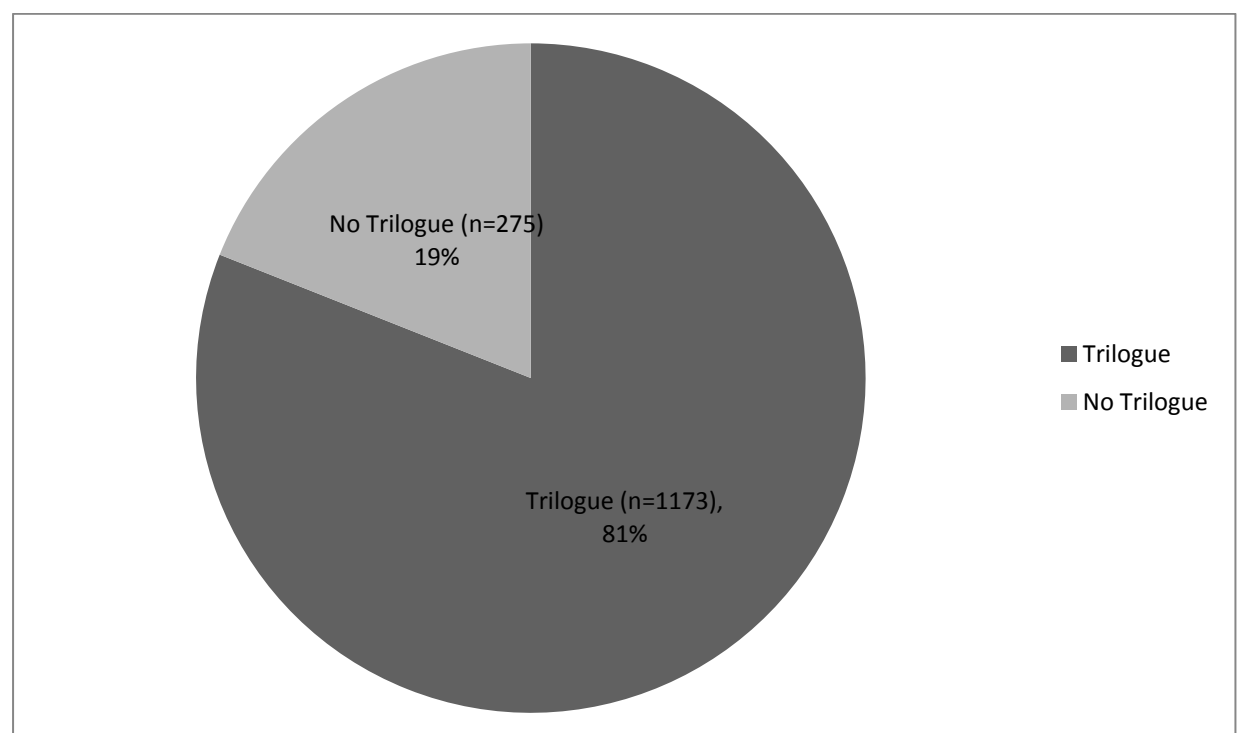
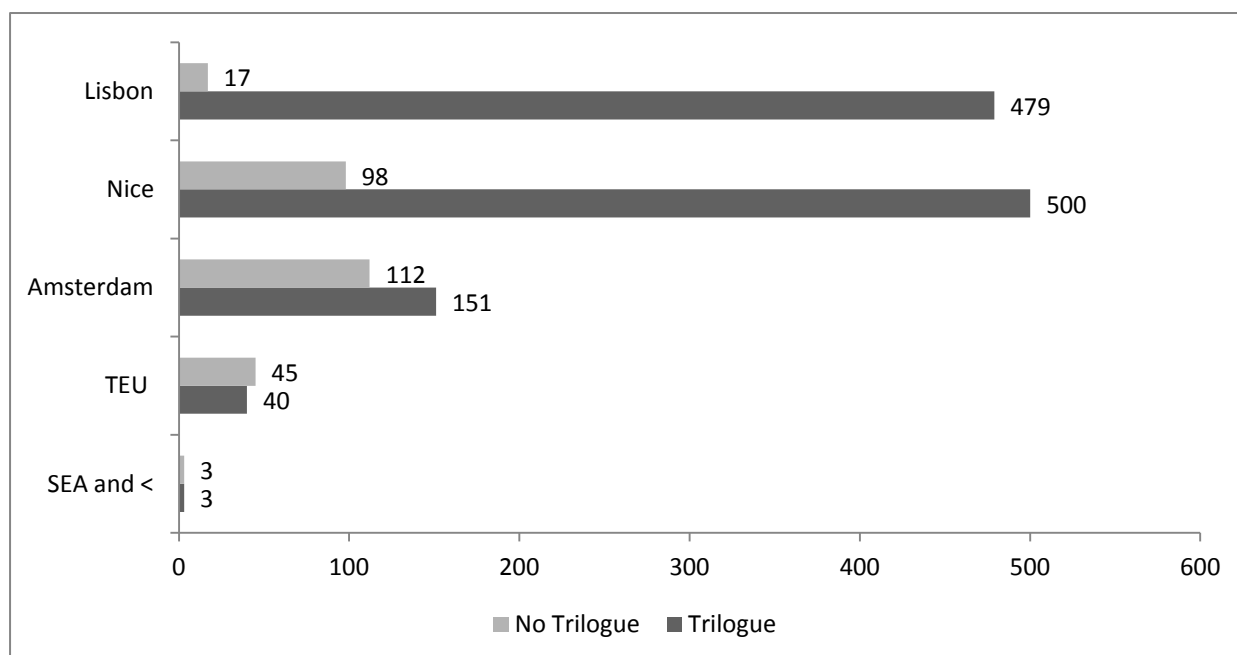
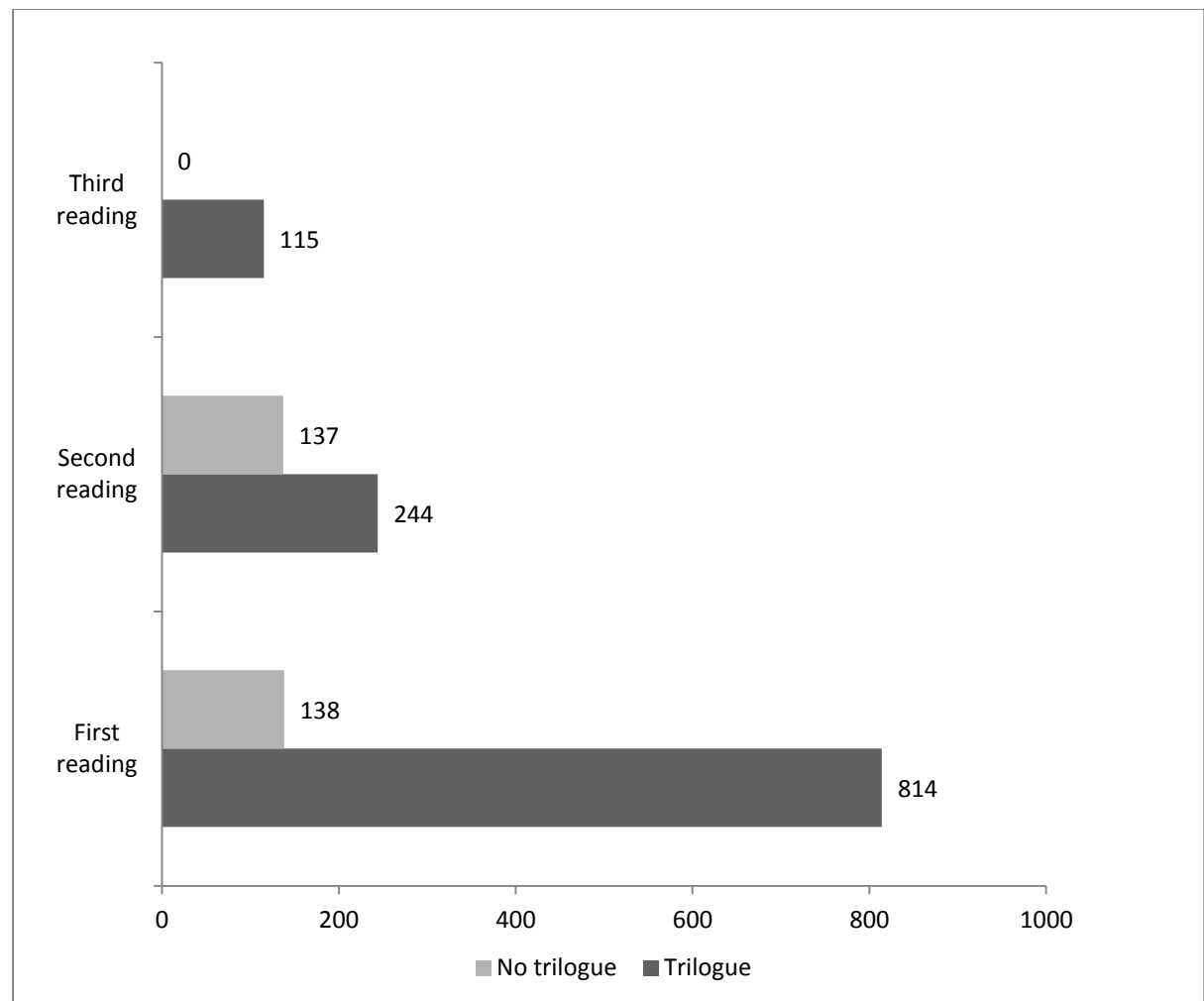


Figure 5.2 trilogued files and non trilogued files by EU treaty in force



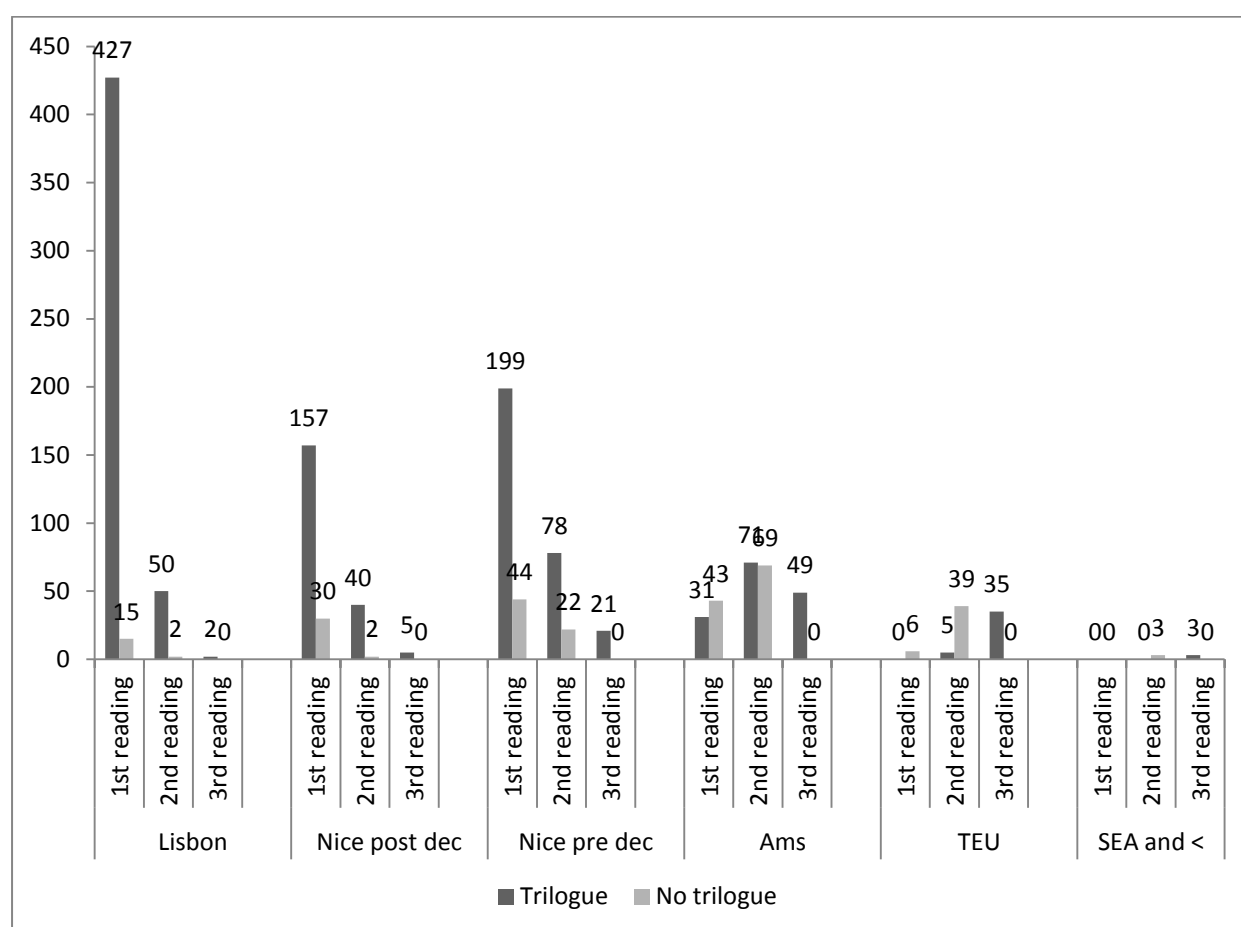
There is little in the way of difference between the number of files subject to trilogue and not subject to trilogue begun under the SEA and TEU treaty periods. In terms of files begun under the Treaty of Amsterdam, those subjected to trilogues present more regularly than those not subject to trilogues. For the periods "SEA and before", "TEU" and "Amsterdam", a large number of "trilogued" files were concluded at third reading/Conciliation stage. Files begun under the Treaty of Nice show a huge upturn in the use of trilogues. Almost five in every six files are trilogued. The ratio is even starker for the Lisbon period where 479 out of 496 files are subject to trilogues. The proportion of files not subject to trilogues is constantly shrinking as time goes by.

Figure 5.3 trilogued files and non trilogued files by legislative reading stage



As seen in the graph above, third reading files are always subject to trilogues since Conciliation is in itself a tripartite meeting of the Commission, Council and Parliament. Second reading files are trilogued in two-thirds of cases with some 137/381 files still free of trilogues. Files concluded at first reading are generally trilogued with nearly 86% of files “going informal”. This number is driven predominantly by the more recent concentration in the dataset of Early Agreements which sees files agreed in advance of a formal signing off at first reading. Again, this corroborates the work of Rasmussen 2011, Reh et al., 2013, and Brandsma 2015.

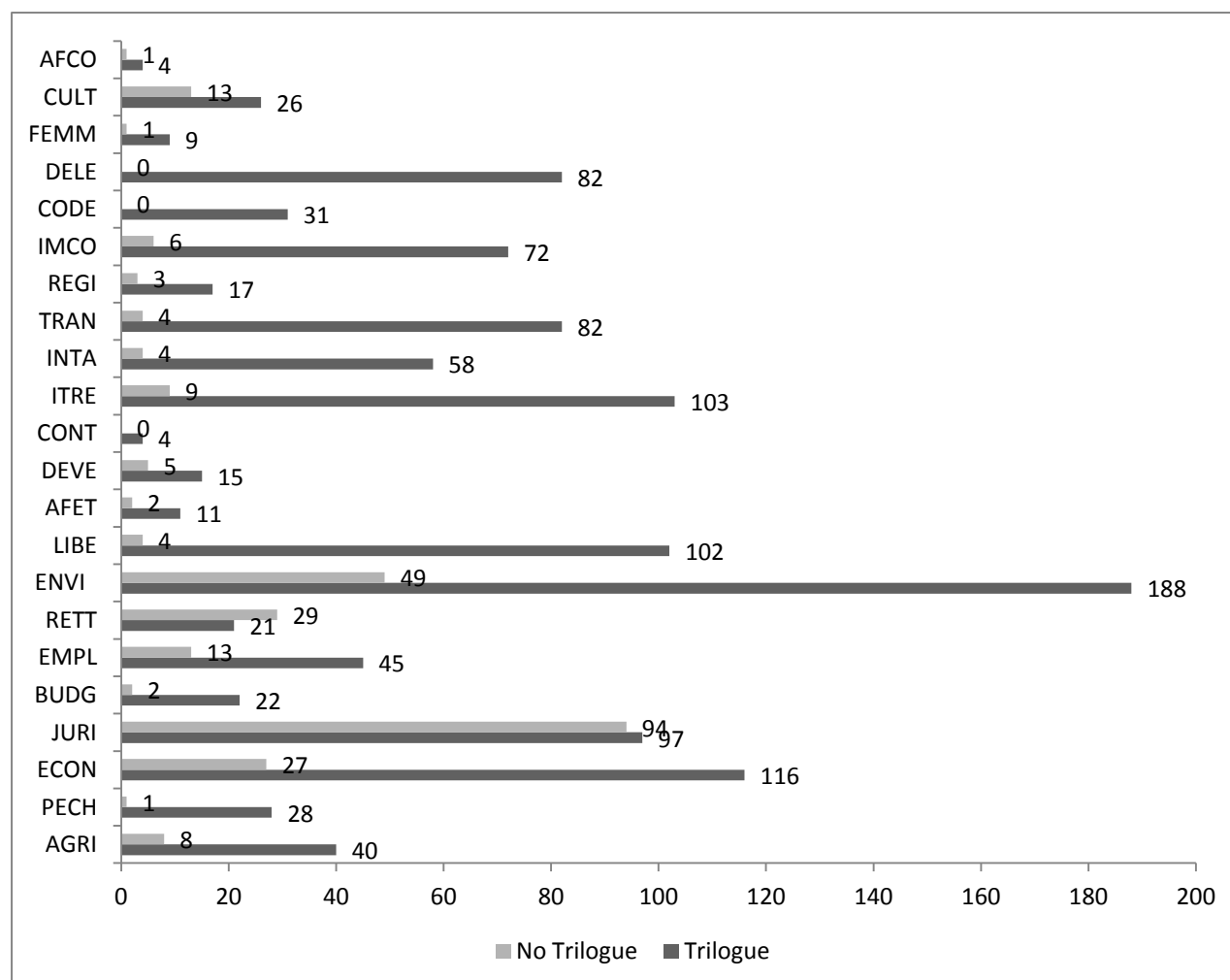
Figure 5.4 trilogued files and non trilogued files by EU treaty in force by legislative reading stage



The above graph is a summary of figures 5.3 and 5.4 in terms of how trilogue usage differs across reading stages for different treaty periods. This is included to allow the reader to visualise the increase in Early Agreements as a proportion of total files across successive treaty periods. The treaty periods are further broken down in the case of the Treaty of Nice into pre-declaration (before May 22nd 2007) and post-declaration (after this date and before the beginning of Lisbon). Among some of the most interesting observations might be that, as suggested above, nearly all files subject to trilogues under the TEU treaty were concluded at the third reading stage/Conciliation. This is expected

since files were typically subjected to the formal legislative apparatus since informal decision-making culminating in earlier agreements was yet to be normalised. Under Amsterdam, there is an almost equal spread of trilogued and non trilogued files at second reading with a fairly even spread under in the case of files concluded at first reading too. This is to be expected too since it was only after this point that the joint declaration on the practical arrangements for the new codecision procedure was in force. This properly laid the basis for the use of trilogues as a way of concluding legislation earlier. It is reasonable to expect that it took some time for this to become a more practiced norm. Pre and post-declaration Nice Treaty periods see a noticeable difference in the likelihood of second-reading concluded files being trilogued. All but two second reading files agreed in the post-declaration period are trilogued and a greater proportion of first reading agreed files are trilogued too. This demonstrates the use of trilogues to reach “Early Agreements”. Files begun under the Lisbon treaty are nearly always trilogued. Some 427/442 first reading stage concluded files are subject to trilogues and all but two second reading stage concluded files are also subject to trilogues. The primary thing to observe might be how post-declaration; nearly all second reading files are trilogued when compared with the same reading stage pre-declaration. This contrast shows the now normalization of trilogues used at the earlier stages of the legislative process towards the goal of Early Agreements being reached. The post-declaration period of the Nice Treaty sees a larger proportion of files being concluded at first reading than is the case in the pre-declaration period of Nice. The movement towards early legislative agreement with the help of trilogues is well and truly underway.

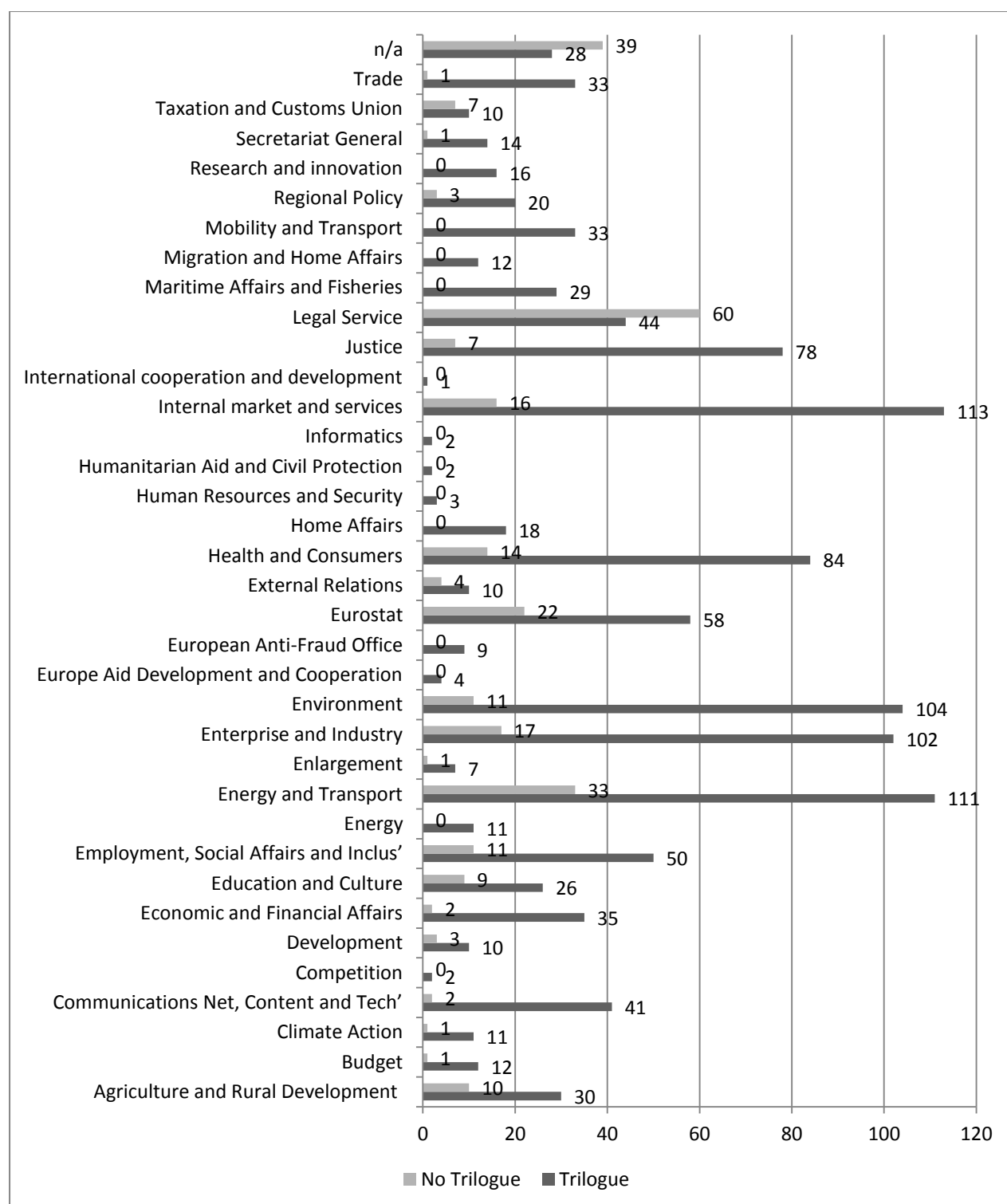
Figure 5.5 trilogued files and non trilogued files by EP committee



The policy areas (EP committee) where legislative files are most likely to be subject to trilogues include: Environment, Economic and Finance, Civil Liberties, Industry, Trade and Energy, Transport, International trade and Internal Market and Consumer Protection. These represent some of the policy areas which are considered high value to the EU populace. The proportion of files not subject to trilogues in these same policy areas are comparably far less with the exception of Environment which still has 49 files concluded without the help of a trilogue. However, some 80% of Environmental files are still subject

to trilogues. A closer look at the data reveals that all but two of these non-trilogued files occurred pre-declaration. This means that the policy area of “Environment” is far more likely to be trilogued in the post-declaration period. “Legal Affairs” has nearly the same amount of files subject to trilogues than not subject to trilogues. Only one category “Regional Policy, Transport and Tourism (RETT)” has more files concluded without the help of trilogues than those concluded with the help of trilogues (29:21). Reh et al. 2013 study the 1999-2009 time periods and focus specifically on “Early Agreements”. Their data showed that the LIBE committee concluded about three-quarters of its procedures early (Early Agreements) while the ECON, EMPL, IMCO and CULT committees concluded about half of their procedures as Early Agreements. My data is of course very different since the above figure (5.5) takes into account all files concluded between mid-1999 and the end of 2016, and separates files “trilogued” and “not trilogued” irrespective of which reading stage the file was concluded. The “LIBE” committee still features very highly in terms of informal decision-making in this present study. There is some common ground between both sets of findings with respect to the JURI committee and its tendency not to “go informal” so often. Both sets of data support “TRAN” as the EP committee which is least involved in informal negotiations.

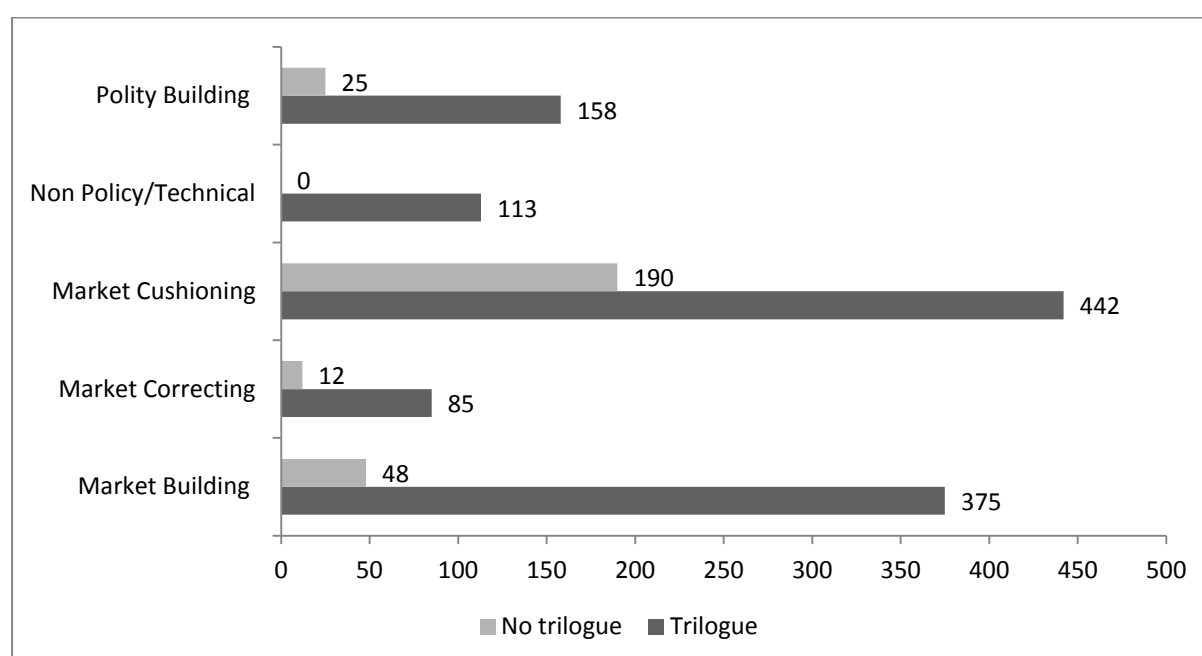
Figure 5.6 trilogued files and non trilogued files by Commission DG



Similar to “EP committee”, “Commission DG” is indicative of the policy realm with which the legislative file is associated. See Chapter 5, section 2 for a discussion on why both variables are included and how they differ in what they measure. The category “N/A” refers to where legislative files have no associated Commission DG included (Commission representation on a piece of legislation) when a file is checked on the online Legislative Observatory (EP website). This variable contains 35 different categories and allows a wider range of policy areas to be covered. Some of the most trilogued areas are “Energy and Transport”, “Internal Market and Services”, along with “Enterprise and Industry” and “Environment”. “Health and Consumers” and “Justice” are also highly trilogued. Similar to the previous paragraph discussing EP committee, the presence of “Internal Market” once again is unsurprising. While the DG “Energy and Transport” merges two distinct policy areas, and notwithstanding the difference in time periods and the fundamental differences in the dependent variable (i.e. trilogue versus Early Agreement), it was surprising to see this feature as one of the policy areas most likely to be trilogued. Reh et al. 2013 and my own findings (both EP committees) found Transport to be among the least likely to be trilogued, Perhaps this means Energy is highly likely to be trilogued. This is supported by the EP committee ITRE’s use of trilogues to conclude nearly all files. It is likely that there is sometimes policy area difference in representation between EP committees and Commission DGs. This is likely to occur where there is a multi-policy implication attached to a file e.g. a file that has Environmental and Transport implications. For example, perhaps the primary EP committee for the file is TRAN but the Commission DG is the Environment. In terms of policy areas least likely to be trilogued, “Legal Service” is more voluminous in the “non-trilogued” category (60/104 (58%)). This acts as the reference category. Theoretically and empirically it is the least likely policy area to predict trilogues. The variable otherwise has a relatively even spread

throughout a number of other policy categories with a number of non-trilogued files in the area of "Internal Market and Services" (16/129), "Health and Consumers" (14/98), "Eurostat" (22/80), "Environment" (11/115), "Energy and Transport" (33/144), Enterprise and Industry" (17/119), "Employment Social Affairs and Inclusion" (11/61), "Education and Culture" (9/35) and "Agriculture and Development " (10/40).

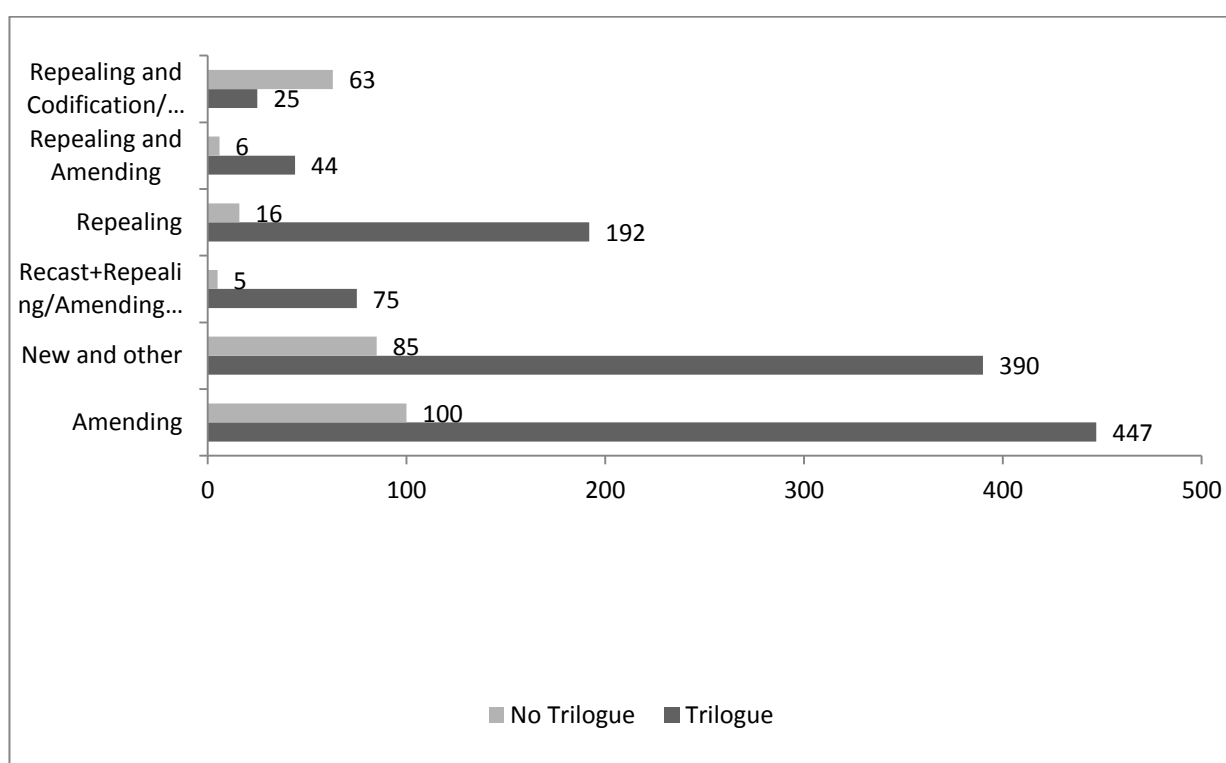
Figure 5.7 trilogued files and non trilogued files by policy character type



The EP committees, indicative of the policy realm under which the legislative files fall, are reorganised into five distinct categories in order to account for the group policy characteristics of the files as per Bomberg and Stubb (2012:131). These are 1.) "Polity Building", 2.) "Market Building", 3.) "Market Correcting", 4.) "Market Cushioning" and 5.), my own classification of the two technical EP committee "CODE" and "DELE" as "Non policy/technical". This differs from Broscheid and Coen's (2006: 9-10) distinction

between regulatory and distributive policy areas and Lowi's (1972) classification of policy types (see chapter 3.3 and 4.16). In terms of proportions, there is little between the amounts of files subject to trilogues and not subject to trilogues for the categories 1-3, as described. They are all between 86% and 89% trilogued. The category "Non policy/technical" is entirely trilogued. This category consists of two EP committees "DELE" and "CODE" which are technical committees which facilitate and enhance Conciliation and codecision. Their specific role in trilogues and in Conciliation mean that such files are perfect predictors of trilogues and are thus dropped from the statistical models. The category least trilogued is "Market Cushioning". Here, 30% of files are concluded without the help of a trilogue. While the "Market Cushioning" category contains policy areas that are of great importance to the European populace such as Employment, Environment and Transport, it also contains perhaps less salient policy areas like gender, legal affairs, and development. On the other hand, "Market Building" files involve trade, energy and the internal market or the "Market Correcting" areas of fisheries, agriculture and regional policy along with sovereignty sensitivity "Polity Building" issues like civil liberties, culture, constitutional affairs and foreign affairs. It is worth noting that still some 70% of "Market Cushioning" files are trilogued and that there is a time factor at play (i.e. how well developed/integrated is the European Union and its internal market at various stages throughout the dataset) but the cushioning nature of the policy area is just about less likely to cause the relevant actors (EP and Council) to engage trilogues as a way of intimately dealing with the most sensitive legislative files.

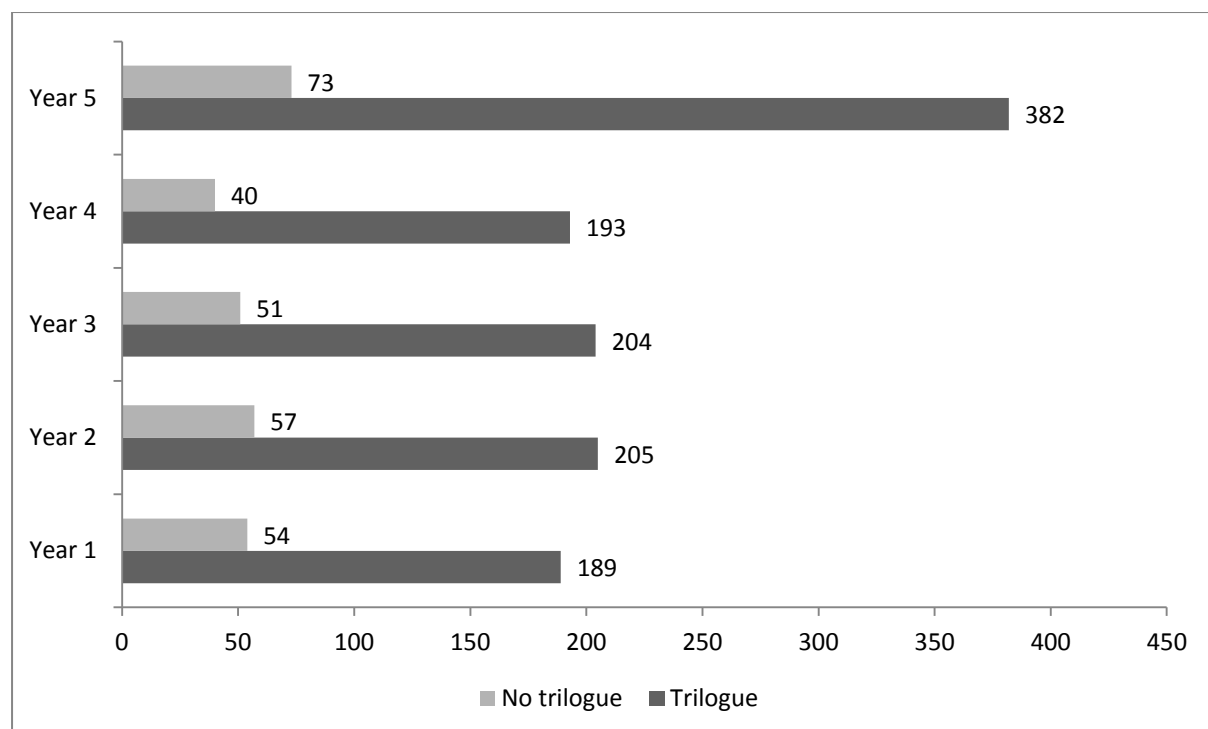
Figure 5.8 trilogued files and non trilogued files by legal nature of legislative file



Legal nature relates to the scope or intention of the legislation and is measured using the categories “Repealing and Codification/Codification”; “Repealing”; “Recast and Repealing/Amending/Repealing&Amending”; “New/Other” and “Amending”. “Codification” involves bringing legislative provisions from different files together without substantive change. Recasting is similar to codification but involves more substantive changes to the legislation. Legislation that is “repealing” in nature refers to where legislation has the sole purpose of revoking or annulling a piece of legislation. A file that is “amending” is making changes to a previous piece of legislation while a file that is “new/other” is brand new and does not relate to a previous piece of legislation. This variable is also discussed at the beginning of this chapter. The categories most likely

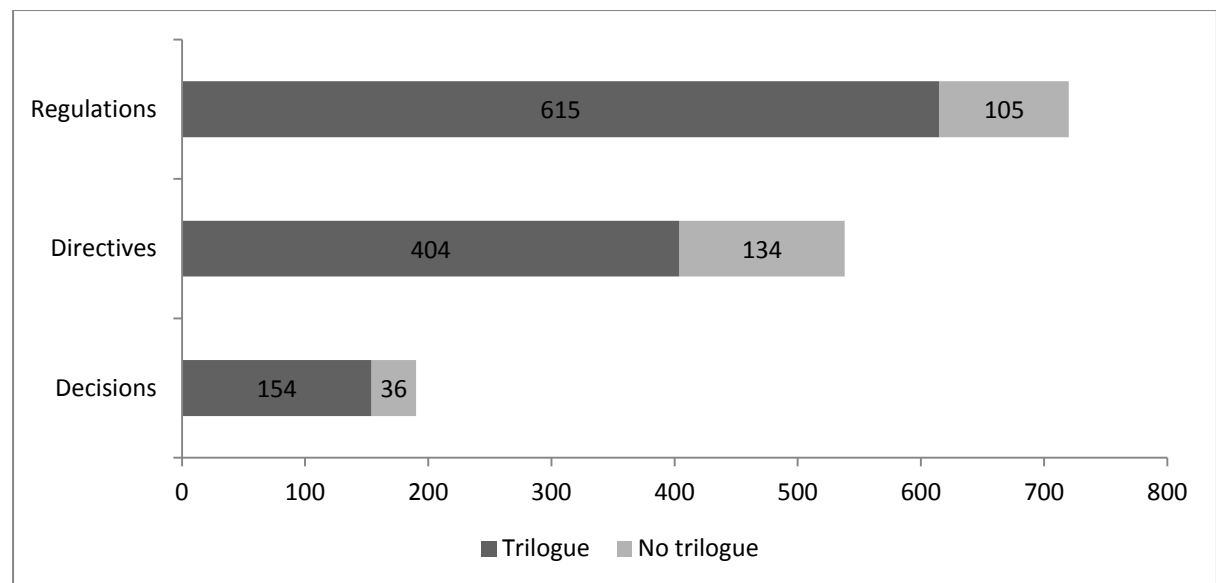
to be trilogued are those files which are “Recast and Repealing/Amending/Repealing Amending” (5/80) and “Repealing” (16/208). Both categories have very few files which do not undergo a trilogue. It is not surprising that these legislative files are heavily trilogued due to the substantive changes (and thus, discussion) required to deal transform or annul already agreed legislation. Files which are "New/other" and “Amending” are substantially trilogued in terms of their overall volume within the database. Only the category “Repealing and Codification/Codification” sees less files undergo a trilogue (63/88 (72%)). This acts as the base category. It is expected that there is little controversy attached with files that “join up” pieces of legislation without substantive change.

Figure 5.9 trilogued files and non trilogued files by EP term year



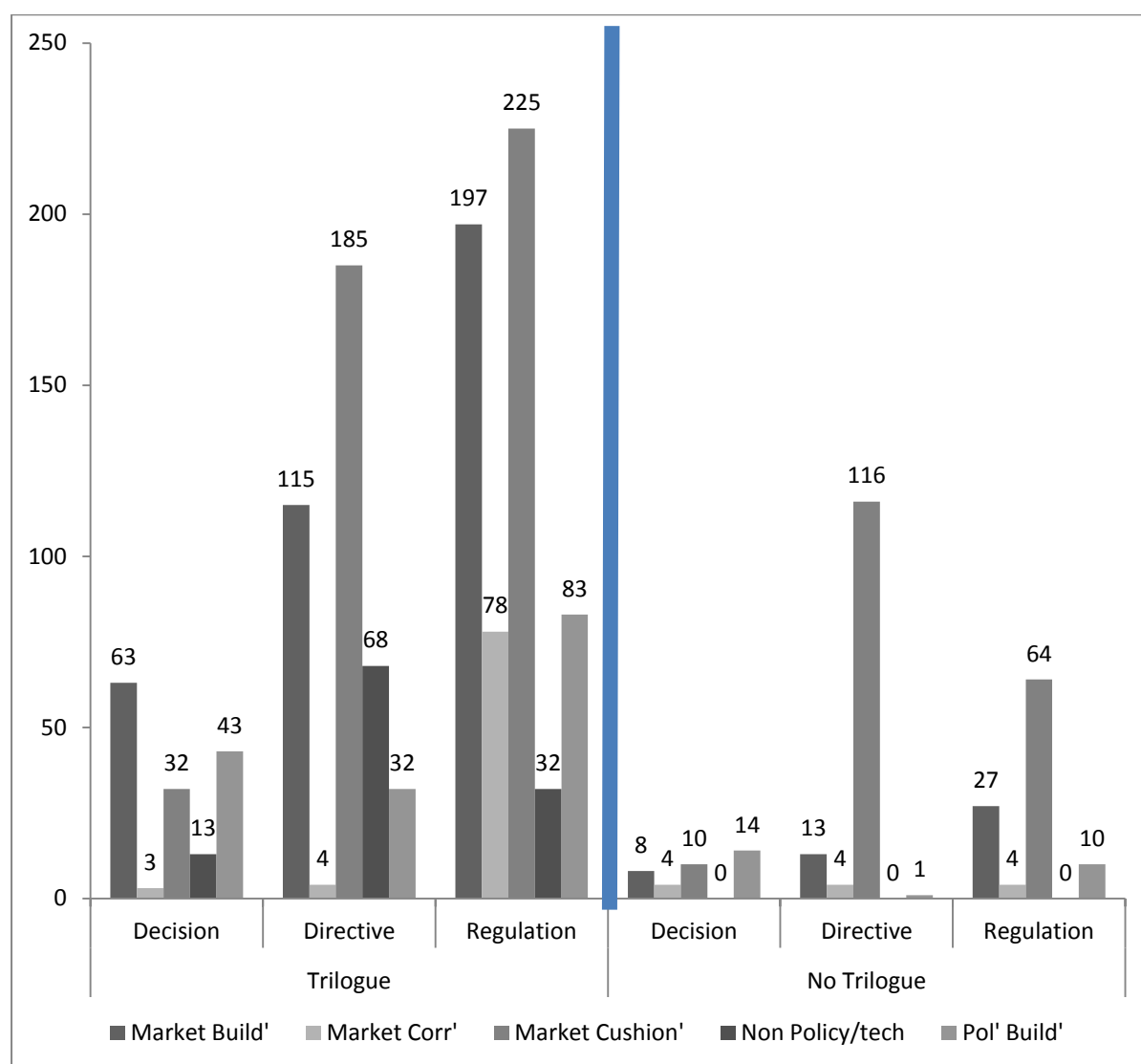
In terms of EP term cycles, there is a relatively even spread of files not subject to trilogues across all EP term years (15-23% of total files for each year). In terms of trilogued files, years four and five are proportionally more trilogued, most so year 5, when compared with each year previous to this. This is not surprising considering the upcoming EP elections and potential change in EP composition (different left, right ideological make-up of the EP), it is imperative for the Council to conclude the proposed version of legislation promptly. This may also be an opportunity to showcase successful legislation (related to transparency models) to MEPs' constituents. This endeavour is seen in year four too compared with year three.

Figure 5.10 trilogued files and non trilogued files by legislative instrument



Legislative instrument refers to whether the file is a directive, a regulation or a decision. Regulations are normally more binding in how legislation is to be transposed in Member States. Directives leave Member State governments some room for manoeuvre with respect to implementation. Decisions are similar to regulations but are specific in terms of whom they are directed at e.g. a specific band of persons or a company. Trilogues are used most in the formation of regulations (615 files). They account for 85.4% of the total number of regulations concluded. In the case of directives, trilogues occur in 404 files, or 75% of total directives completed during the applicable time period. 154 of the 190 decisions concluded were negotiated without trilogues (81%). Even though there is little variation between the three categories, directives are the least likely to undergo trilogues.

Figure 5.11 trilogued files and non trilogued files by legislative instrument by policy character type



This figure is useful to demonstrate that the base category of market cushioning used in the logistic regression models in Chapters 5 and 7 has variance and a large number of cases. For example, there are 116 market cushioning directives and 64 market cushioning regulations that are not trilogued, compared with 18 files of all other categories in total that are not trilogued and 41 files of all other categories in total that are not trilogued.

Figure 5.12 trilogued files and non trilogued files by time taken to conclude file

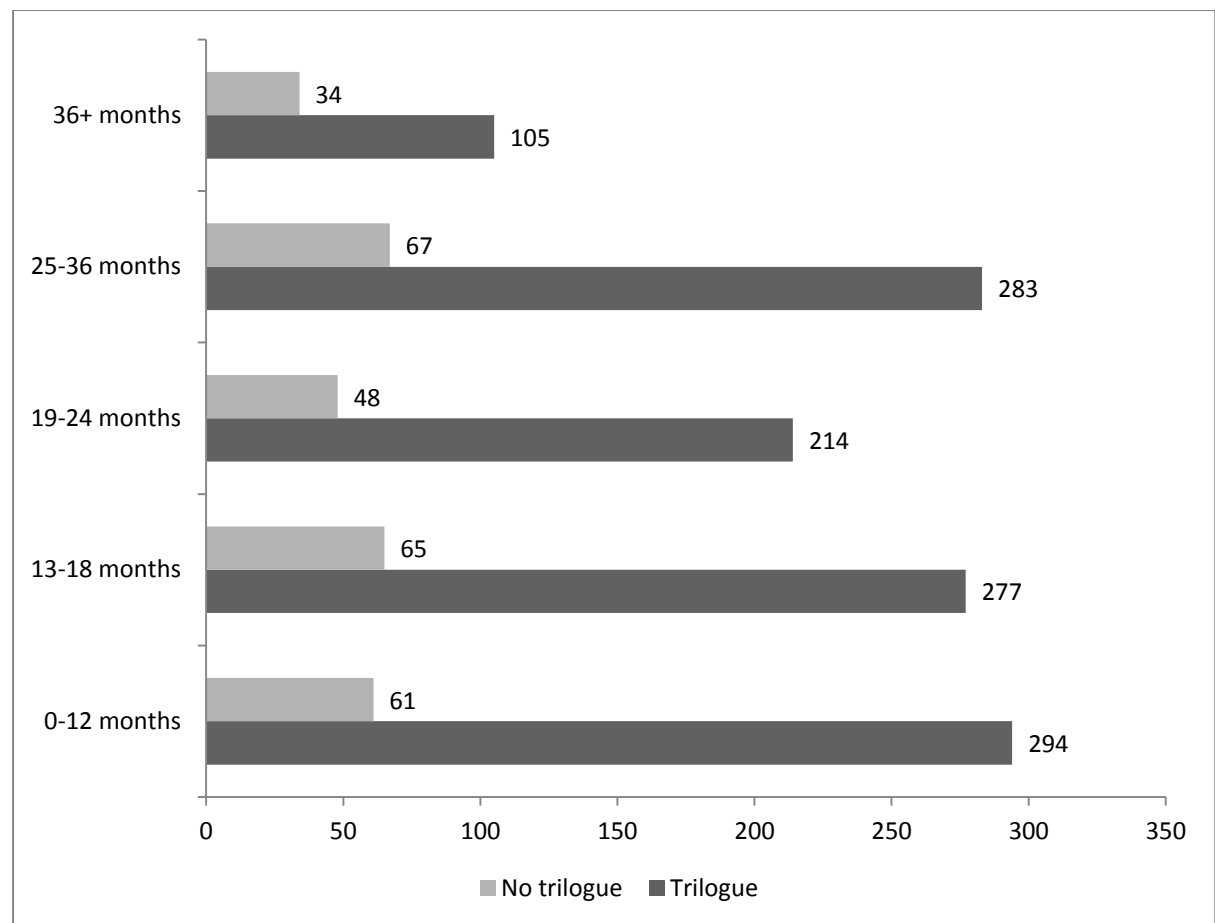


Figure 5.12 shows the duration of trilogued and non-trilogued files including the initial proposal, subsequent intra-institutional negotiations, inter-institutional negotiations and the publication of the file in the Official Journal of the European Union.

Overall, trilogues are most likely to be utilized either, A) to conclude the file very early in the legislative process, akin to the more normalized Early Agreements (Rasmussen 2011, Reh et al. 2013, Brandsma 2015) or alternatively, used to B) conclude highly contested and politicized files, requiring a lot of bargaining e.g. employing illegal immigrants (Regulation 2006/0142COD)²⁴ and also related to immigration, the adoption of a visa code (Regulation 2007/0094(COD))²⁵. These types of files can still be Early Agreements

²⁴File 2006/0142(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2006/0142\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2006/0142(COD))

²⁵File 2007/0094(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2007/0094\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2007/0094(COD))

and agreed at first reading stage/early second reading stage. There are no time limits for the first reading stage so files here can in theory still be long in terms of duration, allowing time for deliberation. Or C), to prepare for and conclude files at Conciliation.

Files that are not subject to trilogues are concluded pretty evenly throughout the different time taken categories. Interestingly, some 34 files take more than 36 months to be concluded and are subject to neither Conciliation nor any informal negotiation. It might be assumed that these files are not urgent or controversial or else the EP for some reason is unwilling to enter into informal negotiations and instead employed its resources in a more protracted process. Having observed the database, it can be seen that 34 files fall across EP committees in the following policy areas (CULT (1); RETT (1); TRAN (2) ECON (4); EMPL (3); ENVI (7); JURI (16)). Further research might be conducted to determine some of the explanatory factors related to these files, particularly those in the ENVI and JURI categories. In a nutshell, the proposition being put forward is that proposals which are technical are more likely to be concluded fast (when compared with files that are non-technical) and files which are politically salient will take longer than non-salient files.

Figure 5.13 trilogued files and non trilogued files by Consilium document availability

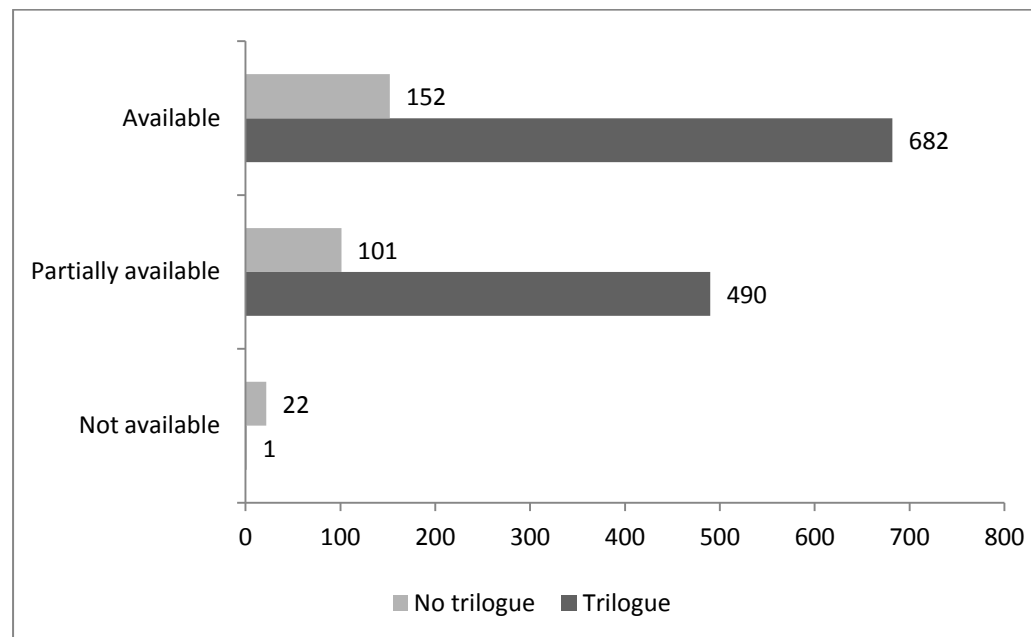


Figure 5.13 shows the relationship between files that are trilogued and not trilogued and the availability of documentation, for example, internal Council documentations detailing differing Member State positions, details of discussions in trilogues etc. related to these files. Interestingly, there is just 1 case where a trilogued file is entirely inaccessible with 22 non-trilogued files being wholly censored. However, partial availability, and thus redaction, applies to many more trilogued files (490) compared with 101 non-trilogued files. In order to remind the reader, partially redacted files are those where there are associated file document(s) subjected to a partial redaction (blackening out) of files, whereas files that are entirely inaccessible are those where associated documentation is entirely restricted. The PDF thumbnails for the latter documents are coloured grey, whereas the thumbnails for the former documents are coloured red with a black band indicating “p/a” or partial accessibility. See figures 4.2, 4.3 and 4.4. There are some 682

trilogued files which are entirely accessible and record no redactions (58%), while there are 152 (55%) entirely accessible of these in the case of non-trilogued files. Almost 45% of non-trilogued files face some redaction while just short of 42% of trilogued files face some redaction. This is not a huge difference but still, trilogues are less transparent when compared with files that are non-trilogued. While this graph is a snapshot in time of file documentation availability, it might be assumed that trilogue documentation being more redacted than non-trilogued documentation is due to typically more sensitive issues being discussed behind closed doors. According to the literature, trilogued files are most likely to suffer from redaction and face reduced accessibility (Bunyan 2007: 9; Huber and Shackleton 2013: 1049).

Figure 5.14 trilogued files and non trilogued files by Consilium document availability by EU treaty in force

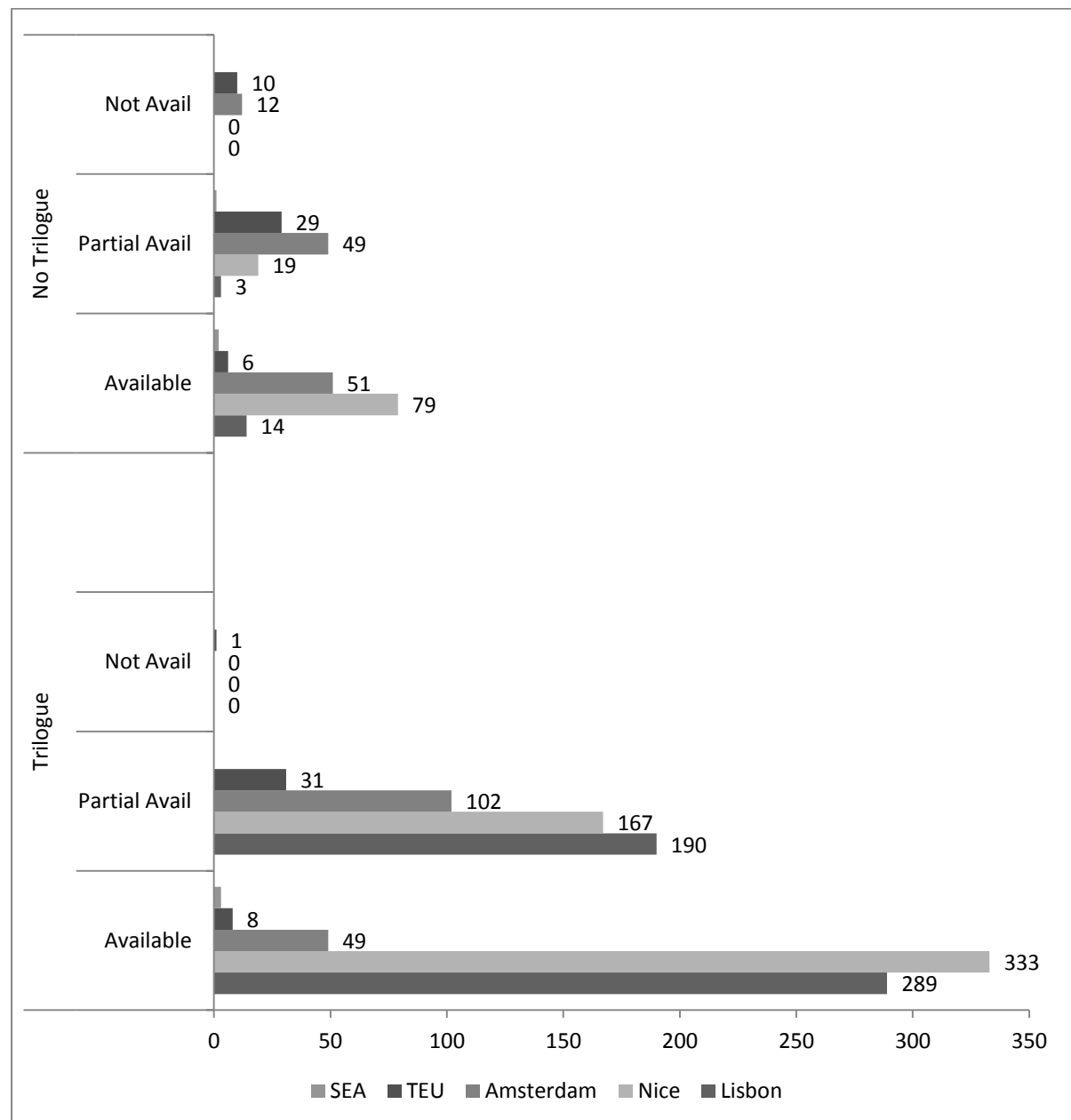


Figure 5.14 further focuses on the accessibility of documentation pertaining to trilogued and non-trilogued files but takes into account time passing by, measured by "treaty." It is worth asking if files are becoming more or less transparent over time. Among trilogued files begun during the Treaty of Lisbon period, it can be seen that while there are no files

entirely inaccessible, some 163 files (39.6%) have some level of redaction. When compared with Nice (33.4%), this is a worrying development. Trilogues are used more and more yet redaction appears to be increasing. A reduction in transparency potentially raises concerns about democracy and the legitimacy of this streamlined and efficient “Early Agreement” mechanism. The TEU, while having just 40 trilogued files, has the highest level of redaction at 80%. Many of these trilogued files under the “TEU” are Conciliation files (35/40 with the remaining 5/40 being files agreed at second reading). Since Conciliation files typically take a longer duration to conclude, there is the possibility for Member State positions to be leaked. Such leaks might result in the documentation being then made fully accessible (EP legal advisor 2017). However, this must be reconciled with the sometimes controversial or sensitive nature of Conciliation files, as illustrated by the length of time it takes for these files to be concluded. Sometimes the redaction of file documentation is eased over time. In other words, some documents are released when the time sensitivity of a file has elapsed. Since the TEU is the treaty period furthest back in this dataset, it is surprising still that passing time has not done a lot to ease redaction levels. The non-trilogued files in this period show roughly the same proportions of redaction and non-redaction across files. These are typically (39/45) agreed at second reading. Overall, 13.3% of non-trilogued files are entirely transparent under the TEU whereas 12.5% of trilogued files are entirely transparent. In the case of Conciliation, the length of file duration and the presence of a trilogue mean it might be expected that these are among the most likely files to undergo redaction.

Among non-trilogued files, Lisbon has 14/17 (82%) files that are entirely transparent. Nice is just behind with approximately 81% of files entirely transparent. Amsterdam performs poorly in terms of the transparency of non-trilogued files where only 45.5% of files are entirely transparent. In the case of the TEU, just 13.3% of files are entirely

transparent. While the overall population of non-trilogued files is decreasing, their transparency is increasing. These 14 entirely transparent files include 4 in the area of International Trade, 5 in the area of Legal Affairs and 1 each in the areas of Regional policy, the Environment, Employment, Agriculture and Civil Liberties. With the exception of Legal Affairs, these are EP committees normally involved in producing relatively salient legislation.

Figure 5.15 trilogued files and non trilogued files by EU community budget impact

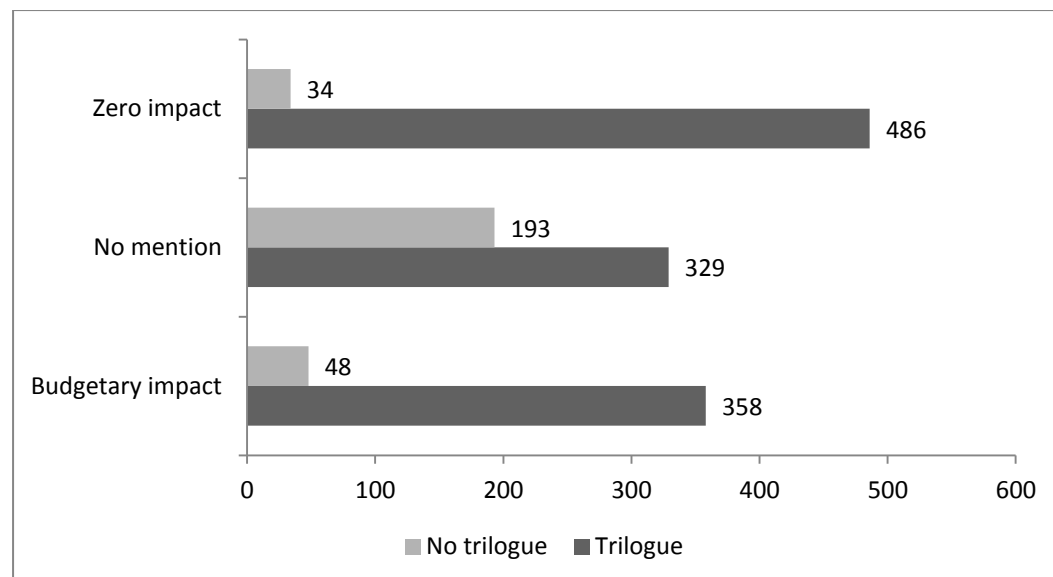


Figure 5.15 represents the European community budget implication of legislative files sorted by files which are trilogued and those which are non-trilogued. The category "budgetary impact" covers all files which have an explicit mention of the figure of money by which the EU community budget is impacted. The category "no mention" is where there is no explicit mention of budgetary impact or indeed where there is no impact

(mentioned or otherwise). "Zero impact" relates to the category of files where this is an explicit mention of the file having no impact on the community budget.

In looking at the breakdown between files that are trilogued and not trilogued across the three different categories of "budgetary impact"/budgetary implication, it can be seen that 93.4% of files that have zero budgetary impact on the community are subjected to trilogues. Some 63% of files which have "no mention" of budgetary impact are trilogued. Some 88% of files that have a budgetary impact are trilogued.

It is difficult to digest this finding. It is worth reminding the reader that the range of purposes for trilogues is varied. It is expected that money is a driver of trilogues (budgetary impact) but having "zero impact" too could mean that the file is pretty straight forward and could be expedited using Early Agreement trilogue mechanisms. Interesting is the 63% of "no mention" files which are trilogued. It might be expected these files are technical/procedural in nature with no great contestation.

5.4 Explicit hypotheses

- H1: trilogues are more likely to happen where legislative files occur during the most recent treaty periods.
- H2: trilogues are more likely to occur where legislative files take the most time to be completed.
- H3: trilogues are more likely to occur if the legislative file deals with politically sensitive issues.
- H4: trilogues are more likely to occur where legislative files deal with policy areas in which the EU has most competence.
- H5: trilogues are more likely to occur where legislative files are concluded at an earlier reading stage in the legislative process.
- H6: trilogues are more likely to occur where legislative files are concluded in the final years of the five year EP cycle.
- H7: trilogues are more likely to occur when legislative files are most binding (legislative instrument).
- H8: trilogues are more likely to occur where files have a known community budget impact.

Table 2 Logistic regression (trilogues)

	VARIABLES	Full Model odds ratio	Pre-dec odds ratio	Post-dec odds ratio
Trilogue (depvar)				
Treaty (ref: TEU)	Amsterdam	4.73* (4.015)	(ref.cat)	
	Lisbon	483.43*** (486.954)		7.22*** (4.023)
	Nice	44.57*** (39.387)	8.49*** (2.635)	(ref.cat)
	SEA and < omitted	dropped	dropped	
	TEU	(ref.cat)	0.15*** (0.101)	
Timetaken (ref: 1-12)	>1month<12months	(ref.cat)	(ref.cat)	53.79 (136.275)
	>12months<24months	1.61* (0.462)	2.31** (0.809)	29.92 (63.838)
	>24months<36months	0.84 (0.366)	0.95 (0.477)	40.66** (72.702)
	36+ Months	0.46 (0.385)	0.96 (0.928)	(ref.cat)
Policy Char. (ref: Cush)	Market Building	5.80** (4.110)	7.80*** (4.777)	0.22 (0.220)
	Market Correcting	5.67 (6.993)	0.85 (0.973)	0.70 (1.040)
	Non Policy/Technical	dropped	dropped	dropped
	Polity Building	7.79*** (6.105)	8.37*** (6.645)	3.40 (4.284)
Leg' nature (Ref.Codif)	Amending	5.12** (4.245)	3.27*** (27.337)	42.14*** (40.112)
	New/Other	8.92*** (7.526)	57.73*** (48.256)	323.71*** (444.385)
	Recast+	14.77*** (9.740)	107.81*** (156.763)	80.76*** (76.134)
	Repealing	9.60** (8.434)	49.07*** (43.086)	113.56*** (144.193)
	Repealing and Amending	5.30 (5.596)	116.46*** (136.44)	11.72** (14.559)
Reading Stage (ref: second)	First	4.85*** (1.878)	(ref.cat)	37.58** (61.057)
	Second	(ref.cat)	0.25*** (0.098)	(ref.cat)
	Third	dropped	dropped	omitted
EP Term (ref: year two)	Five	1.25 (0.407)	1.63 (0.617)	0.48 (0.348)
	Four	1.14 (0.424)	1.53 (0.621)	0.23* (0.189)
	One	1.22 (0.490)	0.53 (0.285)	1.93 (1.359)

	Three	1.15 (0.408)	1.40 (0.551)	2.52 (2.246)
Leg' Instrum' (ref: directive)	Decision	0.56 (0.237)	0.31*** (0.138)	4.11 (4.954)
	Regulation	0.90 (0.241)	0.35*** (0.107)	4.18*** (2.312)
EP Committee (ref: JURI)	AFCO	0.00 (0.000)	0.12 (0.236)	dropped
	AFET	0.19 (0.414)	0.20 (0.285)	dropped
	AGRI	1.26 (1.627)	2.38 (3.059)	2.99 (5.032)
	BUDG	6.31 (8.726)	4.76 (5.211)	dropped
	CODE	omitted	omitted	omitted
	CONT	dropped	dropped	dropped
	CULT	0.07** (0.088)	0.12** (0.109)	dropped
	DELE	omitted	omitted	
	DEVE	0.31 (0.598)	0.40 (0.378)	dropped
	ECON	0.29* (0.199)	0.12*** (0.068)	dropped
	EMPL	3.70 (3.673)	2.25 (1.538)	0.97 (1.029)
	ENVI	4.38** (2.764)	3.72*** (1.857)	4.02 (3.695)
	FEMM	7.44 (10.279)	19.47 (36.094)	dropped
	IMCO	0.27 (0.220)	0.23* (0.173)	14.14** (16.023)
	INTA	0.12** (0.110)	dropped	omitted
	ITRE	omitted	omitted	dropped
	LIBE	omitted	omitted	omitted
	PECH	0.23 (0.376)	dropped	1.57 (2.520)
	REGI	omitted	omitted	omitted
	RETT	1.96 (1.481)	1.73 (0.954)	
	TRAN	3.20 (2.641)	4.06* (3.246)	6.14 (7.538)
Comm DG (ref: legal affairs)	Agriculture and Rural Development	0.62 (0.678)		
	Budget	8.08 (14.178)		
	Climate Action	0.24 (0.355)		
	Communications Networks, Content and Technology	35.05*** (43.207)		
	Competition	dropped		
	Development	3.14 (6.452)		

Economic and Financial Affairs	5.91		
	(7.016)		
Education and Culture	14.93*		
	(21.345)		
Employ/Social	1.97		
Affairs&Inclusion/Regional Poli	(2.464)		
Energy	dropped		
Energy and Transport	6.88*		
	(7.094)		
Enlargement	11.10		
	(30.652)		
Enterprise and Industry	7.63**		
	(7.076)		
Environment	6.68*		
	(6.845)		
Europe Aid Development and C	dropped		
European Antifraud Office	dropped		
Eurostat	2.09		
	(2.034)		
External Relations	4.50		
	(8.635)		
Health and Consumers	6.54*		
	(6.604)		
Home Affairs	dropped		
HR and Security	dropped		
Humanitarian Aid and Protection	dropped		
Informatics	dropped		
Internal market and services	16.03***		
	(14.506)		
Internal Coop' and Development	dropped		
Justice	3.19		
	(3.103)		
Maritime and Fisheries	dropped		
Migration and Home Affairs	dropped		
Mobility and Transport	dropped		
Non Assigned	1.25		
	(1.605)		
Regional Policy	0.40		
	(0.559)		
Research and Innovation	dropped		
Secretariat General	6,138,527.		
	69		
	(3.014e+09)		
)		
Taxation and Customs Union	1.23		
	(1.440)		
Trade	7.52		
	(11.584)		
Budg' Impact	1.98*	1.24	2.51
(ref:zero)	(0.718)	(0.519)	(2.005)
No Mention	1.04	0.65	1.87
	(0.319)	(0.235)	(1.309)

Declaration	2.06*		
	(0.776)		
Month*reading	1.03***	1.02*	1.10*
	(0.011)	(0.011)	(0.058)
Observations	1,189	600	543
LRchi2(62;36;28)	608.58	308.45	150.08
Prob>chi2	0.0000	0.0000	0.0000
Log likelihood	-335.1285	-241.6754	-89.5376
Pseudo R2	0.4759	0.3896	0.4560

seEform in parentheses

*** p<0.01, ** p<0.05, * p<0.1

5.5 Discussion of model results and return to hypotheses

As mentioned earlier in chapter 4, section 17, odds ratios are intuitive since values above 1 mean an increasing likelihood of the dependent variable occurring while odds ratios below 1 demonstrate a decreasing likelihood of the dependent variable. Lower odds means the outcome is less likely while higher odds means the opposite. When I use the expressions "more likely" and "less likely" in my interpretation both here and in chapter 7, section 8, I am referring to odds ratios.

The Prob>chi2 statistics indicates that the three models are statistically significant. The p-value is less than 0.000. In terms of Pseudo R2, anything between 0.2 and 0.4 is thought to be a very good model (McFadden 1973). Each of the models range between 0.39 and 0.48 so this indicates a goodness of fit i.e. the model fits the data (summarising the difference between observed and expected values in the model).

Generally, the story about trilogues is one of two tales. Trilogues in the pre-declaration period (1999-2007) are typically "building" types with sovereignty and market efficiency and liberalisation implications. These types of files are more likely to be directives, agreed at first reading, taking between a year and two years to conclude and be new or recasting in terms of the legal nature of the file. Trilogues in the post-declaration period tend to also have sovereignty implications and be regulations, agreed at first reading. These files typically take less than a year to conclude and are new in terms of legal nature. Overall, there is evidence of community budgetary implication increasing the likelihood of trilogues. I will now discuss the results more thoroughly in reference to the hypotheses as laid out prior to table 2.

H1: trilogues are more likely to happen where legislative files occur during the most recent treaty periods.

Focusing first on the overall model, “treaty period” shows that trilogues are more than 483 times more likely to occur under the “Lisbon treaty” compared with the “TEU” period, reflecting the norm-status gained for trilogues over time. When compared with the “TEU” period, “Nice” is over 44 times more likely to be trilogued. These are highly statistically significant at the $p < 0.01$ range. Amsterdam is 4.73 times more likely to be trilogued but is statistically significant at the $p < 0.1$ range.

For the pre-declaration period, the earliest possible treaty period of Amsterdam is used as the reference category. The “TEU” treaty period has too few observations to use. However, compared with “Amsterdam”, “Nice” is some 8.5 times more likely to be trilogued. For the post-declaration period, the reference category is the earliest possible treaty period of “Nice”. Compared with this, “Lisbon” is 7.2 times more likely to be trilogued. The above odd ratios are highly statistically significant.

Overall, it can be said that there is a step-wise increase in the probability of trilogues occurring, per treaty period. H1 had expected that trilogues are more likely to occur where legislative files begin under the more recent treaty periods. For all three models, this hypothesis is corroborated with highly positive and significant effects. This normalization of trilogue use points to the importance of popular understanding of the trilogue mechanism, the conditions which most determine its use and in ensuring the output of this informal legislative process is as transparent as possible and not harmful to democracy.

H2: trilogues are more likely to occur where legislative files take between a year and two years to be completed.

In the full model, the variable “timetaken” indicates that, when compared to the shortest time period “1-12 months”, trilogues are most likely to occur (1.6 times) in files that take between 12 and 24 months to be completed. This is only statistically significant at the $p < 0.1$ range. This points to the overall efficiency-enhancing nature of trilogues, particularly during the post-declaration period.

The pre-declaration model is similar to the overall model. Compared with the base category of “1-12 months”, files which take “12-24 months” are some 2.3 times more likely to be trilogues. This is also statistically significant. This is somewhat surprising and more expectant of the post-declaration model. The use of Early Agreements is more of a post-declaration phenomenon. However, it is worth noting that Early Agreements do not necessarily equate with speed since there are no time limits attached in reaching a first reading agreement.

In the post-declaration period, there is no noticeable trend developing with respect to “time taken” and the likelihood of trilogues. The reference category in this case is “36+ months”. Compared with this, only the category “24-36” months is statistically significant, (at the $p < 0.05$) range. Trilogued files are 40 times more likely to occur during this period. This post 2007 period is the era where EAs (first reading agreements with the help of a trilogue) are most used. However, as mentioned above, this does not necessarily mean legislation is automatically concluded faster. There are generous time frames allowed for first reading agreements to be reached. It appears that these timeframes are used when the legislation is controversial.

So in summary, H2 expected that trilogues are more likely to occur where legislative files take between a year and two years to be completed. The most semantic pieces of legislation aside, (1-12 months; the base category), the efficiency-enhancing nature of trilogues means that files that are concluded in the next twelve month period are most likely to be trilogued. In the post-declaration model this variable has no notable or consistent effect. While so-called “Early Agreements” are rife during this time period, there is no support for this statistically. Or at least there is no support that Early Agreement trilogues are particularly fast. In terms of the other two models, the hypothesis is broadly corroborated. This variable has a positive and significant effect in both of these models. The explanatory power of this variable is sharpened due to the inclusion of the interaction “months*reading stage”. This variable, as discussed previously, is a measure of controversy. It helps refine “timetaken,” revealing the true relationship between trilogues and the relatively early conclusion (duration) of controversial files in the pre-declaration model. In the post-declaration model, trilogues are used to help conclude controversial files. Surprisingly, trilogues are most likely to be used for files which take between two and three years to be concluded. This is a welcome finding for advocates of trilogues. In the period between 2007 and 2016, the more controversial legislation subjected to trilogues are not files which are rushed. There is plenty of time left for deliberation. This confirms the findings of Toshkov and Rasmussen (2012: 17).

H3: trilogues are more likely to occur if the legislative file deals with politically sensitive issues.

H4: trilogues are more likely to occur where legislative files deal with policy areas in which the EU has most competence.

In terms of the variable “policy character”, it can be seen in the full model that “market building”, with complete and exclusive competence at the EU level vis-à-vis member-states, is a policy area expected to be one of the most subject to trilogues compared with “market cushioning”, and this is borne out with a log-odds ratio of 5.80. It was expected that “polity building” would be also more trilogued due to national sovereignty sensitivities, and it is 7.8 times more likely than files which are “market cushioning” (reference category). Both categories are statistically significant.

Pre-declaration, this variable performs in the manner which is hypothesised. Files that are “building” types are most likely to be trilogued and are highly statistically significant. “Market building” is some 7.8 times more likely to be trilogued compared with the base category, while “polity building” types are some 8.4 times more likely to be trilogued. There was greater variance in trilogue versus non-trilogue usage in this pre-declaration period. However, the most controversial files in the areas of sovereignty sensitivity and market building were subjected to behind closed door negotiations. A space for deliberation around some of the most salient pieces of legislation was closed to the public, and also, crucially to many of their political representatives.

For the post-declaration model, the variable policy character does not perform. However, files which are “polity building” are some 3.4 times more likely to be trilogued but this is not statistically significant. This model is perhaps affected by the near complete informalisation of all files during this post-declaration period. However, files being subject to trilogues still demonstrate sovereignty sensitive material, as indicated by the increased log odds of 3.4 for files that are “polity building”, although this finding is not statistically significant.

H3 expected the likelihood of trilogues to increase if the legislative file deals with politically sensitive issues. It can be seen that files which are “polity building” have a positive and significant effect. They are the most likely of all legislative files to predict trilogues. H4 expected that trilogues are more likely to occur where legislative files deal with policy areas in which the EU has most competence. Aside from files which are “polity building”, files which are “market building” are the next most likely to predict trilogues. With the exception of the post-declaration model, files which are “market building” have a positive and significant effect. In the lead up to this period, the internal market has been relatively “built.” Files with issues related to sovereignty still remain during this time period and are most likely to be trilogued.

In terms of the full model and the two stratified models, the variable “legal nature” as a measure of the type of legislation being formed, it was decided to use the “repealing and codification/codification” type as the reference category since these types of files are usually procedural in nature and not expected to engender controversy (just one of the potential factors leading to trilogues). For the full model, those types of files that are containing “recasts” are most likely to be trilogued (14.8 times more than files which are codifying). Files which are “new/other” and “repealing” are also highly likely to be trilogued. All categories are statistically significant.

For the pre-declaration period, all categories are statistically significant. The most likely to be trilogued are those that are “repealing and amending” at over 116 times and those that include “recasts” at 108 times (compared with the base category, files that are “codifying”).

Post-declaration, all categories are statistically significant with “new and other” legislation by far the most trilogued, (compared with files that are codifying) with odds

ratios of over 323. The variable “legal nature” acts as a control in the statistical models. It does not form the basis of any particular hypothesis. However, it shows some interesting information. Trilogues are used in the pre-declaration period for files that are “repealing and amending” while used most in the post-declaration period for files that are “new and other”. The dataset spans from files concluded between mid-1999 and the end of 2016. Perhaps it can be said that files that are “repealing and amending” during the pre-declaration period are genuinely controversial items whereas those that are “new and other” in the post-declaration period are trilogued in order to expedite the need for urgent legislation e.g. the Euro financial crisis. Overall, there appears to be a trend towards reducing “new/other” legislation in the post-declaration (n=174) period when compared with the pre-declaration period (n=301) and instead, an effort towards tidying up (recasting, amending, codifying) already existing directives, regulations and decisions.

H5: trilogues are more likely to occur where legislative files are concluded at an earlier reading stage in the legislative process.

In the overall model, it can be seen that when compared with “second reading” concluded files, “first reading” concluded files are some 4.9 times more likely to be trilogued. This is highly statistically significant. This is not particularly surprising due to the high volume of “Early Agreements” in the database. This means that many files were concluded at first reading with the help of a trilogue.

In the pre-declaration model, when compared with the then reference category of “first reading”, “second reading” is four times less likely to be trilogued. This is perhaps a little surprising. While first reading agreements with the help of trilogues (Early Agreements or Fast track legislation) was possible since the entry into force of the Treaty of Amsterdam,

the use of this procedure seems to have been embedded into the codecision mechanism relatively quickly. For the post-declaration period, reading stage category “first reading” trilogues are nearly 38 times more likely. In both cases, the finding is statistically significant.

H5 expected that trilogues are more likely to occur where legislative files are concluded at first reading. For both the three models, it can be seen that files that are concluded at “first reading” have a positive and highly significant effect. This points once again to the near entire informalisation of the codecision process and the use of this to conclude early in the legislative process. The changing voting majorities at second reading and the shorter time periods for legislating in the second reading stage play their part in the decision to conclude legislation at the first reading stage. However, as had been demonstrated above, this does not mean that legislation is rushed. First reading agreements can be long in duration, allowing reasonable time for debate and deliberation.

H6: trilogues are more likely to occur where legislative files are concluded in the final years of the five year EP cycle.

In terms of the full model, the variable “EP term year” when compared with the reference category “year two” in the EP cycle (the first genuine twelve months of activity, and expected to be least trilogued because the EP is getting used to the procedure and building relationships that become institutionalized as the term progresses), it can be seen that no category is statistically significant and all have similarly modest odds ratios. No category of this variable is significant for the pre-declaration model. However, it can be seen that each year sees a slight increase in the likelihood of trilogues being used.

For the post-declaration model, the variable “EP term year” does not reveal any real effect on the dependent variable. The main finding here is that trilogues are nearly four times less likely to be used for files which conclude in year four of the EP term. This is just statistically significant at the $p < 0.10$ range. Year 3 at 2.5 times is the most likely to be trilogued but this is not statistically significant.

H6 expected that trilogues are more likely to occur where legislative files are concluded in the final years of the five year EP cycle. For all models except the pre-declaration model, this variable records modest odds ratios. Even then, these are not statistically significant. The literature is relatively silent on EP term stage and the use of trilogues. If trilogues are to be considered as efficiency-enhancing mechanisms, it can be reasonably assumed that they would be used to help conclude legislative work-load. This view was supported following on from conversation with MEPs (2, 3, 6 and 7). Equally, the Council might be expected to expedite legislation where there is the likelihood of a deal before a potential change in EP composition following elections. “Year 2” is the first real year of legislative productivity with legislators having essentially used “Year 1” to clear the decks in terms of any outstanding legislation to be concluded from the previous EP term. MEP 6 noted that “the first 6 months is really about putting the Commission in place, but the second half of the EP term is definitely the time for trilogue increase”.

H7: trilogues are more likely to occur when legislative files are most binding (legislative instrument).

Overall, “directives” are considered to be theoretically the least likely predictors of trilogues because unlike the more binding regulations, there is some scope for Member States to transpose the legislative file. This is to do with implementation and the scope a Member state has for implementing directives as opposed to the more rigid regulations. It

is expected that when a more binding piece of legislation is being discussed, trilogues will be used to more intimately thrash out the institutions' positions and preferences.

In terms of the overall model, it was revealed that “decisions” and “regulations” have negative log odds ratio in reference to the base category “directives”. “Decisions” are binding for specific individuals, companies or states; the targeted nature of decisions suggests that given such few parties are involved, compared with regulations that apply to all member-states or companies, the conditions for intimate contestation via a trilogue are less likely to arise. Regulations are almost just as likely as directives to see trilogues occur. However, neither category is statistically significant.

For the pre-declaration period, “directives” are the most likely to be trilogued since both categories “decisions” and “regulations” are almost 3 times less likely to be trilogued and are both statistically significant, when compared with the base category, “directives”. For the post-declaration period, “regulations” are some 4.2 times more likely than directives to be trilogued and this is highly statistically significant.

Once again the shifting nature and reasons for trilogues means the independent variables vary in impact on the outcome, according to time. While “regulations” are binding and rigid in their application, it is thought that the theme of efficiency weighs most heavily in the decision to “go informal” in the post-declaration period. Before the declaration, when efficiency was not thought to be a principal determinant of trilogues, it is unsurprising that “directives” are instead the most likely files to be trilogued compared with regulations. Trilogues then would have been more expected to deal with politically controversial legislation, precisely due to this controversy as opposed to controversy and efficiency. To summarise this, neither Schulz and König's (2000) findings, nor those of Golub (2008) hold true across time. Directives are most likely to be trilogued in the pre-

declaration period and regulations are most likely to be trilogued in the post-declaration period.

H8: trilogues are more likely to occur where files have a known budgetary impact

The variable “budgetary impact” represents three categories related to European community budget impact: “budgetary impact”, “no mention” and “zero”. “Zero” is used as the base category since it is thought that budget has an impact on files being subject to the informal legislative decision-making arena. For the full model, when compared with the base category, files that have some budgetary impact are almost twice likely to be trilogued. This is significant at just the $p < 0.10$ range. Overall, having a budgetary impact means a trilogue is likely.

For the pre-declaration model, neither category is statistically significant. Also, neither category is significant in the case of the post-declaration model. However, while not statistically significant, budgetary impact is 2.5 times more likely to be trilogued.

H8 expected that trilogues are more likely to occur where files have a known budgetary impact (budget). In the larger model, compared with the reference category, “budget impact” has a positive effect (1.98) but is just marginally statistically significant ($p < 0.1$). This variable has an even greater effect (2.51) on the post-declaration model but is not statistically significant at any level. In the case of the pre-declaration model, the odds ratios showed that budget increases the likelihood of trilogues. But this effect was not statistically significant either.

Rasmussen (2011:58) found that there was no significant relationship between budgetary impacts and when a file was concluded (first reading agreements aided by an informal

negotiation). While this thesis captures a broader dependent variable, and across a longer period of time, it does find that budget influences the decision to “go informal”. Budgetary impact can influence the decision to “go informal” in two respects. There is a “pie” to be divided with each actor looking to spend more/less money or to gain more/less financial spoils for its policy preferences. Also, it is possible that money is itself indicative of the salience of a legislative file with the items on the agenda further illuminated on the back of this expenditure. Essentially, there is an increased potential for horse-trading on other items during the file negotiations other than the allocation and/or distribution of this money. This potentially raises concerns for those that claim trilogues are undemocratic. The spending of EU monies is being decided behind closed doors and among few representatives of the wider population. However, further research is needed to determine if the institutions act differently with respect to formal and informal decision-making and their behaviour with respect to budgetary allocation/distribution.

Two other variables included in the model were “declaration” in the case of the full (all observations) model and “Month*Reading Stage” as a measure of controversy in the case of the full model and the two declaration-stratified models. The former represents the time period before and after the May 2007 joint declaration which more formally recognised the use of trilogues in the codecision process. The latter variable is an interaction between the variables “Months” taken to conclude a file and the “Reading Stage” at which the file was concluded. It is included as a measure of controversy.

“Declaration” in the fuller model shows an odds ratio of 2.06 and is statistically significant at just the $p < 0.10$ range. It can be observed that since the 2007 joint

declaration, files are more likely to be trilogued. The use of trilogues is continually normalised over time.

In terms of “**Month*Reading Stage**” interaction variable, it shows a positive effect in the case of the three models. In the fuller model, the odds ratio is 1.03 times but is highly statistically significant. In terms of the pre-declaration model, the variable shows an odds ratio of 1.02 which is marginally statistically significant ($p < 0.1$). The post-declaration model has a similar margin of statistical significance but has an odds ratio of 1.1. This suggests that the interaction effect sees an increase in the likelihood of trilogues occurring i.e. that controversy predicts the use of trilogues. The interaction was also included to gauge its effect on other variables in the model including “time taken” which helped bring clarity to this variable in terms of indicating the efficiency of a file.

5.6 Summary of hypotheses

In summary, the models mainly confirm the hypotheses but with some exceptions. As expected, trilogues are on the increase across each successive treaty. There is mixed news for those concerned that "Early Agreement" trilogues see files speedily concluded, perhaps leaving little or no time for deliberation. In the full model and the pre-declaration model, trilogued files are most likely to take 1-2 years. Of course, this does not control for the quality or inclusiveness of the deliberation. The post-declaration period shows support for trilogued files most likely being concluded very quickly (1-12 months) or takes much longer (24-36 months). There is strong support for the linkage between first reading agreed files and the use of trilogues. The general trend towards speedier legislation and increasing use of trilogues to aid this leaves questions about the democratic legitimacy of the codecision procedure. Files with sovereignty sensitivity

(polity building) implications are more likely to be subject to trilogues. More generally, the building types of files are most likely to be trilogued. Directives are most trilogued in the earlier stages of the database while the more binding regulations are more likely in the latter stages. There is also support for the influence of community budgetary implication and the decision to “go informal”.

On the face of it, the behind closed door practice of trilogues and the concerns of those that allege the existence of a democratic deficit in the EU can be understood. The models show that this informal and less inclusive, somewhat secretive and closed arm of the codecision procedure is most devoted to files which are agreed at the first reading stage (without true EP involvement), and more and more quickly. They are generally the most binding types of files with direct sovereignty and budgetary implications for the community. Going forward, as trilogues now become almost entirely the norm, the EP must work hard to sell this new model of legislative decision-making to the EU citizenry who feel further distanced from policy-making. The EP must be seen to be an effective co-legislator and not a passive participant in trilogues at all costs. Further work must be done to determine how well the EP performs in trilogues. As things stand, it looks as though the EP is the biggest loser in terms of its loss of democratic credential via the inability of citizens to hold their representatives to account.

The next section consists of a range of case studies presented to illustrate some of the above dynamics arising from the set of quantitative trilogue models including (a) Policy Character; (b) Budgetary impact; (c) Time taken to complete a file; (d) Legislative Instrument; and separately, (e) Conciliation files which are trilogues but omitted from the statistical models due to their perfect prediction of trilogue usage.

Chapter 6: Illustrative case studies “When and Why Trilogues”?

This next section will introduce case studies designed to illustrate the findings of the statistical models. This section will include case studies on **6.1 Policy Character: 6.1.1 Polity Building, 6.1.2 Market Building; 6.2 Budgetary impact; 6.3 Time taken to complete a file; 6.4 Legislative Instrument 6.4.1 Regulations and 6.4.2 Directives); and 6.5 Conciliation files** (omitted from statistical models). These five sets of case studies were chosen since they are the key hypotheses which were tested empirically. Following on from the model output related to these hypotheses, the case studies will serve to illustrate these dynamics.

6.1 Policy Character

6.1.1 Polity building

The following four case studies are situated under the label of “polity building” during the pre-declaration period. The quantitative analysis points to these as some of the legislative files most likely to undergo trilogues during the pre-declaration period (odds ratio of 8.37) when compared with “market cushioning files” (the least likely to be trilogued). During the post-declaration era, polity building files are by far the most likely to be trilogued when compared with the base category and all other categories. This category is not statistically significant but for the full model (including both time periods) it is the most likely Policy Character category to be trilogued. Of course, immigration and asylum was only moved from the “third pillar” to the “first pillar” in 2005 (Bunyan 2007:6). This gave the EP co-legislative power in these policy areas as opposed to its previous consultative role. According to Bomberg and Stubb, (2012:131), legislation which is “polity building” might typically see the co-legislators subordinate to Member States and

thus the Council of Ministers (Council) has a strong role as the principal actor. This type of legislation normally includes sovereignty sensitivity concerns e.g. foreign affairs, civil liberties, immigration etc.

The following four case studies: 2005/0106; 2006/0088; 2006/0142; and 2007/0094 will be used to illustrate the main points of contestation between the actors in trilogue in order to demonstrate the types of trilogue dynamics. The main objective of each piece of legislation will be briefly outlined bookending an attempt at the end to draw together some of the common themes from each of the cases. Some of the trilogue dynamics that arise in the following case studies centre on sovereignty concerns related to immigration policy, power, control and access, administrative burden and financial burden on Member States and/or their domestic industry.

Regulation 2005/0106(COD)²⁶

This Regulation set down a legal framework to govern the Schengen Information System (SIS) and put in place measures to implement policies around the movement of persons. While the SIS could be used to assist security authorities around criminality, it can aid the issuing of residence permits and visas too. After the 2004 enlargement (the EU increased in size from 17 to 27 Member States) the Council passed on the duty of developing the SIS to the European Commission. This particular regulation is focused on processing data on the free movement of persons in accordance with the Schengen acquis (rules and legislation (EU law) which rid border controls within the Schengen area and strengthen external borders around Schengen.). By using a regulation, this means that rules will be

²⁶Case 2005/0106(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2005/0106\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2005/0106(COD)); Consulted: Council document 5709/06; www.data.consilium.europa.eu/doc/document/ST-5709-2006-INIT/en/pdf; Council document 11310/06; www.data.consilium.europa.eu/doc/document/ST-11310-2006-INIT/en/pdf; Council document 11654/06; www.data.consilium.europa.eu/doc/document/ST-11654-2006-INIT/en/pdf

applied uniformly throughout the Community. Provisions will be incorporated into national law and the EU legal framework, unlike the previous SIS which was solely inter-governmental. Unlike under SIS, SIS II will see the European Parliament (EP) gaining greater input. The use of SIS II is broadened and sees harmonisation on when and how alerts (information on a person and what to do if they are found) can be issued under SIS II which reduces the inefficient diverging alert warnings currently in place. Immigration and asylum authorities can now issue alerts to third country nationals (normally non EU nationals who are neither from the EU country in which they are staying nor another EU country). Data quality is improved along with identification (biometrics) procedures which see persons entered onto the SIS II database when their identity has been abused and they consent to be entered onto the database. The European Data protection Supervisor will monitor the Commission around its processing of SIS II data.

Some of the key issues that arose at trilogues for the co-legislators were typically around the protection of personal data in SIS II. The EP was adamant that if fingerprints were to be used as a main search criterion, a decision must be taken under the codecision procedure. The EP also requested that there be provision for a speedily exchange of supplementary information between MS. With regard to the right (for persons on whom information is stored) to the access, correction and deletion of inaccurate data and right of information, the EP insisted that personal data would be communicated to such persons in less than sixty days and that when a person requests deletion or rectification that there is a reply to them in less than three months. Related to this sovereignty sensitive issue, there is a control/access dynamic at play here. The EP wants to remain involved (under codecision) in controlling any changes around the salient issue of the fingerprinting of persons. The EP is also advocating for the protection of the rights of persons whereas the

Council is more aware of the administrative struggles of its state infrastructure in replying to requests around personal data which it stores.

Regarding article 29 and the right of information (right of information versus the effort of Member State authorities), the EP requested that written information should be provided to an individual including why the alert arose in the SIS II. The Council was not overly concerned about what the EP asked in terms of scope but felt it created practical difficulties. This difference existed too in relation to the transitional period. The Council wanted three years where the alerts can be governed by the old rules (SIS I) whereas the EP wanted this set at one year for alerts relating to persons (and in a separate piece of legislation, a decision related to this) and three years for alerts on objects. The Council again pointed that this was dependent on Member State resources. On this highly sovereignty sensitive issue, the institutions clashed on the time scale around updating these rules. The Council sought to advocate for Member States in trying to avoid increasing their administrative burden. The above regulation demonstrated the dynamics of control/access struggles between the co-legislators around the security/provision of personal information as well as a clash around administrative workloads for Member States in switching from SIS I to SIS II. The EP wanted this transition to be done more quickly than the Council was willing. Regulation 2006/0088(COD) illustrates some of the same dynamics but also introduces the dynamic of financial burden.

Regulation 2006/0088(COD)²⁷

This Regulation set out to amend the Common Consular Instructions (CCI) which would permit mandatory biometric identifiers from visa applicants and to offer Member States

²⁷File 2006/0088(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2006/0088\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2006/0088(COD))

different options on how to organise together the reception of visa applications and their processing. With respect to biometric identifiers, a photograph will be taken and finger prints scanned according to international standards. Biometric identifiers will be stored on the Visa Information System. Common Applications Centres (CACs) will allow for Member State resources to be shared and saved. Along with existing representations, Member States could consider the use of new consular offices based on co-location, common application centres and outsourcing. Essentially, the CCI's amendment will: 1) open up the possibility of outsourcing (issuing visas remains the responsibility of the MS. External providers can arrange appointments and take the biometric identifiers but must be cognisant of the data protection rules; 2) Member States can choose themselves if they wish to set up the CACs; and 3) any such cost sharing or the setting up of centres must be negotiated among Member States themselves. They must outline the chosen solution for each country or third country region.

Some of the issues that arose at trilogues were around the finger printing age, with the Commission wanting finger prints collected from children above six years old but the EP objected and the compromise saw children aged 12 and above being subjected to fingerprinting. On additional service fees, the Commission proposed that when outsourcing, the processing of a visa should not cost more than the normal fee. The EP supported this but the Council was against this (it would cost Member States to outsource the service (each consumer's service fee)) with a compromise instead providing that this service fee can be included on top of the visa fee but that this fee should be capped at no more than half of the regular visa fee. The trilogue dynamic, whereby the Council shows its reluctance to be inflicted with financial burden, is illustrated here. On the transfer of data, the EP was anxious about the safety of data transfers between MS, and Member States and External Service Provider (ESPs). Member States must ensure to make

provisions for the protection of data when this is an outsourced contract. Consular offices should supervise this. Further to outsourcing, the EP was unhappy that ESPs would be used in countries where data encryption is not permitted due to concerns over security. The Council did not want limits put on Member States in respect of ESPs. This would increase the Council's administrative burden of managing the provision of visas. The Council suggested that alphanumeric data be collected by ESPs with consulates responsible for biometric data. The EP wanted the same level of protection for both. The EP wanted a strengthened legal instrument binding Member States and ESPs in return for agreeing to give up its insistence on ESP premises being granted diplomatic protection. This is an example of typical EP/Council horse trading/bargaining. The Council disagrees with the EP's request on having a consulate officer being based within the ESP as this takes the good away from externalisation. The Council disagrees with the EP's suggestion that an ESP is legally responsible for a subject's personal data and instead Member States are responsible for protecting this data during outsourcing. This is another example of the sovereignty sensitive dynamic which presented in Regulation 2005/0106(COD) with respect to the security of information access. In terms of Honorary Consuls, the EP felt these should be under the same expectations placed on ESPs but there already exists protection for these Consuls under Member State national law and the data collected through visa applications would be protected under the Vienna Convention (treaty setting a framework regulating diplomatic relations between independent countries). Finally, the EP was concerned that the Visa code could be revised under comitology which would bar the EP from a right of scrutiny but the Presidency said Member States were committed to revisions under codecision. It is unsurprising that on such a sovereignty sensitive matter, that the issue of EP maintaining equal control over the Visa code (codecision) arises at trilogue along with the above mentioned dynamics of administrative/financial burdens.

Whereas the two previous sovereignty sensitive regulations identified the clashes between the institutions at trilogues as being based around administrative burdens for MS, financial burdens for Member State governments and persons, and the EP maintaining control over these sensitive issues, Regulation 2006/0142(COD) further looks at these trilogue dynamics as revealed by the quantitative models but also illustrates other Member State sovereignty concerns with respect to potential abuse of visas by “visa shopping”.

Regulation 2006/0142(COD)

This Regulation sought to establish a community code on visas which would harmonise visa policy which would assist in the battle against illegal immigration. In light of the Hague Programme’s objectives, harmonising one code on visas would include the issuing, refusing, extending, annulling, revoking and shortening of visas; a new way of issuing visas (including all Member State exchange of data on short stay visas and introducing biometrics); developing the *acquis* (maximum issue time, clearer distinction between applications which are not admissible and those that are refused, transparency on which third country nationals will be consulted in advance, etc.; the improvement of transparency and legal certainty by clarifying the legal status of the Common Consular Instruction (CCI); harmonisation of the “Code on Visas” (with the code containing legal provisions on short stay, transit visa and airport transit visas). Member States are asked to draft one set of common instructions on how to apply the legislation.

Some of the issues that presented at trilogues were around the resource implications for Member States including giving a statement of reason for refusing a visa with the majority of the Council against this due to the resources needed to respond in detail to

such refusals. The EP and Commission felt this was absolutely imperative with the Council agreeing to the granting of reasoning for refusal of a visa where the proposed visit was for business or family as opposed to the larger numbers related to tourism. The EP was adamant that the right of appeal must exist. The Commission supports this but the Council was wary of the huge burden this right of action would lead to in terms of its national judicial case load. This dynamic of administrative burden for Member States arises in trilogue discussions. Similarly as before, the financial cost attributed to Member States arises as a subject in discussions.

For a second time in this case, the financial burden being inflicted on Member States arose. With regard to the visa fees, the EP wanted the fee of €35 to be re-introduced. Member States felt the administrative cost of processing visa applications (including biometrics) meant a cost closer to €60 was more appropriate and that the EP should consider this since there are already a number of fee waivers. The Council suggested a reduced fee for children below six years of age to be extended to children up to twelve years of age. There were no biometrics involved and thus the cost was less. There would also be waivers for “representatives of non-profit organisations up to twenty-five years participating in seminars, conferences, sports, cultural or educational events.” On the issue of receiving applications, the EP wants applicants to be able to apply to any of the Member States in the Schengen area whereas the Council is against visa shopping (applying for a visa at a consulate a person might think is more favourable/sympathetic than the one where they live). This is a very pertinent clash on the attitudes of both actors towards regulating the free movement of persons. It was decided to allow the applicant lodge their papers at the consulate of their Member State at their main (final) destination. With regard to representation (MS acting on behalf of other Member States in examining applications and issuing visas), the EP rapporteur wanted “competence by default” so that

applicants did not need to travel to a third country to apply for a visa when a consulate of another Member State is present there. The Council persuaded the EP that non-binding rules were best for its delegates. Here, this dynamic around flexibility in implementation arises. The Council wanted to retain its members' sovereignty in terms of how much they could tailor policy to fit with each of their own country-specific circumstances. Finally, on visas for multiple entries, the compromise permits the consulate to issue multiple entry visas for "one or more stays up of to 3 months per period of 6 months" with a period of validity of 6 months to 5 years provided the applicant can prove they need to travel frequently and that this was genuine. The EP had wanted multiple entry visas at a systemic level but the Council argued the compromise protects travellers that are genuine and reduces risk.

The above case study again illustrated the dynamics arising at trilogues which included issues around sovereignty, and financial and administrative costs. The final case study again illustrates some of the dynamics arising at trilogues, particularly around sovereignty and the Council's unwillingness to burden its Member State administrations.

Regulation 2007/0094(COD)

This regulation is part of the EU's overall approach to develop migration policy and targets the illegal employment of immigrants. Illegal immigrants are often employed in construction, cleaning, hotel and agriculture. Employers are to be held responsible for carrying out checks on their employees' immigration status before being contracted and Member States must undertake inspections (10% of companies each year). Employers will be subject to sanctions which might include fines, returning the third country nationals to their country of origin, repaying taxes, wages and social security

contributions. Member States must also provide for more punitive and criminal sanctions in the case of repeat offenders, where there are many third country nationals employed illegally at any one time, where the working conditions exploit the third country nationals and where the employer is aware that the worker is a victim of trafficking. Also, the regulation will make provision for a complaints mechanism to permit third country nationals lodge complaints directly or with the help of a third party.

In terms of the main issues arising at trilogues: the EP felt that the scope was quite restrictive and did not cover nationals of Member States who had acceded to the EU in 2004 and were still party to arrangements which limited their access to the EU 15 labour markets. “Third country national” was considered to be too narrow and was then changed to instead be a person who is not a Union citizen under Article 17.1 and not enjoying the right of free movement (Article 2(5) of the Schengen Borders Code); also when employers are “natural” persons, and employment is for their own private purpose, there will be a simpler procedure for notification and Member States can determine that notification is not required where the employee is long term resident. This is another clear example of Member States clinging to their sovereignty on the back of such a politically salient issue as immigration.

Immigration and asylum moved from the third pillar to the first pillar in 2005 (Bunyan 2007:6). This means the EP now had a co-legislative role on these issues distinct from its previously consultative role. On this very issue, Bunyan notes how prior to this, the EP was being consulted on biometric passports (fingerprinting). This would have become a first pillar co-legislative measure if competence was transferred but it was told by the Council that if it did not agree with the passports measure, immigration and asylum competence would not be moved to the first pillar until May of 2005 as opposed to the start of 2005.

There was agreement around making the employment of minors a criminal offence. Also, the EP sought the inclusion of a clause which allowed third country nationals to be informed of their rights before return is enforced. One of the most contentious points to arise at trilogues was around public authorities seeking the recovery of the third country national's pay. The Council did not want to burden Member States to do this. As seen in each of the three previous cases, it can be seen that the Council is unwilling to burden its MS.

Conclusion: In the above four case studies, the main theme coming through at trilogues is the EP's attempts at protecting the rights of the ordinary person (data protection, the very young should not be finger printed, costs of visas being kept down, speedy responses to requests on data, information on why an alert (SIS) rose, information of persons' rights before return is enforced, making multiple entries possible for visa applicant) versus the Council's resistance to seeing Member States being burdened with financial, legislative and administrative costs (practical difficulties, Member State resources, can't subsidise costs of visas, can't expect Member States to place consulate officers, diplomatic protection, Member States not making ESPs legally responsible for personal data, not making Member States recover third country national's pay due to the burden involved).

The above is a typical political contest fought out between the EP and the Council in trilogues. The type of content is relatively similar across each of the four case studies. Sovereignty sensitivity is a common theme, seen in the legislation dealing with free movement, visa applications and illegal immigrants in employment. Bunyan (2007:7) details how the EP wanted more than consultative power (giving an opinion which the Council could be ignored) so that it could protect "the rights and liberties of refugees, asylum-seekers and migrants". Since 2005, eight immigration related pieces of legislation have been adopted under the first pillar codecision mechanism. In each case, they were

agreed at first reading "through secret trilogue meetings (Bunyan 2007:7). This point is corroborated in the case of five MEPs and one EP legal advisor who responded on this question, when asked about the link between files that are sovereignty sensitive and trilogues. They all agreed files dealing with sovereignty sensitivity were most likely to be trilogued since discussions "get stuck" where the "Council is not budging". They also noted that these files were normally "highly controversial" and it was likely that there would be an attempt to "keep the content quiet from the media until it is too late". This raises questions on the EP's ability to be seen to do its job in the eyes of the public. Despite these policy areas moving from the third to the first pillar, there exists a deliberate attempt by the Council to co-opt or resist encroachment from the EP in having discussions separate from plenary among a smaller number of MEPs to help maintain Council power over the policy area.

Generally it can be seen that the Council on behalf of Member States has rejected measures put forward by the EP which increases the financial or administrative costs to be borne by Member States or which affects the sovereignty of Member States to control immigration matters domestically. The purpose of this selection of case studies was to illustrate the dynamics as seen in the quantitative models where files which are "polity building" are the most likely of all files to be subjected to trilogues. The next section of case studies seek to illustrate the dynamics coming from the quantitative models which also show files which are "market building" to be among the most likely to undergo trilogues.

6.1.2 Market Building

The following three case studies are situated under the label of “market building” during the pre-declaration period. The quantitative analysis points to these as some of the legislative files most likely (odds ratios of 7.80) to undergo trilogues during the pre-declaration period. Interestingly, in the post-declaration, these types of files are far less likely (nearly five times) to be trilogued when compared with the base category. There appears to be a tale of two stories where trilogues helped enable the building up of the single market during the first half of this database. As discussed in the previous cases, polity building files are alone the most likely to be trilogued in the post-declaration period. It appears as though efforts are instead focusing on dealing with the effects of the internal market’s construction, the increased power of the EP (pillar three to pillar one) in areas such as immigration. This results in a power dynamic developing between the EP and Council, worked out behind closed doors at trilogues. According to Bomberg and Stubb, (2012:131), legislation which is “market building” might involve the EU’s nearly exclusive competence with an emphasis on liberalisation and an increase in economic efficiency. Four MEPs and one EP legal advisor supported the view that market building files would be among the most trilogued. Their comments were mixed and ranged from "often legislation is brought as done deals", "The EP seeks to puts its foot down", "The EP tends to concede more", such deals "are controversial" and market building deals are "contentious due to corporatism". Some of the dynamics that will be illustrated in the following trilogued case studies include the Council’s preference for simplifying and achieving economic efficiency in the European market and its protection of business interests whereas the EP demonstrates a willingness to slow down this liberalisation and advocates the importance of transparency and choice for consumers.

Regulation 2006/0197(COD)²⁸

This regulation was proposed on the back of the Lisbon Agenda and the belief that higher employment across the community can be driven by innovative discoveries. The backdrop to this are studies that suggest Europe is behind in terms of innovation since it does not link education, research and innovation like in the US, Japan and other countries in Asia. It was felt that a step toward addressing this would be to develop a European Institute of Technology (EIT). This would help link innovation to positive employment opportunities. This legislation would lay out the EIT's tasks, legal status and structure, knowledge and innovation communications (partnerships between private sector, research centres and universities), structure of Knowledge and Innovation Communities (KICs); degrees and diplomas (innovation degrees and doctoral programmes) and their recognition by MS; management of Intellectual Property; budgetary implications and resources and where the funding for the EIT will come from.

The agreement between the institutions reflected some of the following compromises at trilogues: agreement on how HEI diplomas and degrees are defined; KICs in community programmes (all administration cost will not come from the EU's budget). This theme of financial burden on Member States arises a lot at trilogues; on the issue of the EIT label (on qualifications), the EP wanted compulsory labelling where the Council wanted it to be voluntary (compromise allowed it to be additional). Again, the potential for administrative burden with respect to Member States arises; the Council also agreed to the EP's request that the first KICs would include "renewable energy and the next generation of ICTs".

²⁸File 2006/0197(COD); www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2006/0197

The EP felt it achieved a lot in the compromises since the aim of innovation is preserved and the first KIC will focus on renewable energies, new information communication technologies and climate change. While the EP felt that KICs should have autonomy around their composition and working methods, they must work towards helping to address economic need through education at level 9 and 10. The compromise gives a lot of autonomy to the EIT and KICs but lays out that the co-legislators should in the longer term provide strategic guidance which will provide EIT activities in the long term. Finally, the EP wanted "more open and informative identification process", so a declaration of the Commission was added to the minutes of the Council.²⁹ Principally, the main dynamics that arose at trilogues in this regulation were around administrative and financial burdens on Member States and the extent to which the co-legislators could agree on control of KICs. In the next case, the dynamics of efficiency (lessening of burden) for business and Member States arises in trilogues.

Regulation 2006/0133(COD)³⁰

This regulation was proposed in an attempt to bring about a harmonised reduction in mobile roaming charges across the Community. It is argued that by allowing customers to avail of these reduced charges while abroad improves the welfare of all of the Community including the 147 million EU citizens, 37 million tourists and 100 million business users. In response to consumer organisations and regulators, the Commission has been very active in trying to encourage action at the Member State domestic level but the cross border dimension of roaming charges has impeded progress in this respect. The regulation sets out to "address specific market failures" and it is intended that this would be

²⁹Council document 6178/08, www.data.consilium.europa.eu/doc/document/ST-6178-2008-INIT/en/pdf

³⁰File 2006/0133(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2006/0133\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2006/0133(COD))

“complementary to and supportive of rules provided for in the 2002 Regulatory Framework for Electronic Communications”.

In terms of the compromise achieved at trilogue, the EP introduced the definition of “euro tariff”; the EP set a cap on wholesale charges; with regard to retail charges, the EP included that while a euro tariff for these might differ, it should not be more than 49c for a call made or 24c for a call received. Price caps for calls made should go from 46c to 43c and calls received should go from 22c to 19c in 2008 and 2009. The Council delegations’ opinions had initially diverged substantially. This dynamic links back to the Council being protective of the interests of business in its MS or the Council’s “protection of corporatist interests,” as per MEP 5’s observation. While the Council might ordinarily prefer efficiency in the market, in this case it encounters the difficulty of achieving this due to the disparity in pricing across the EU. The EP also made provision that those customers currently benefiting from a roaming charge deal must be allowed to choose any roaming tariff within a month of the regulation coming into force and that upon expiry of a deal, that they can move to or from a euro tariff within one day of the request being made. Many Council delegations favoured an absolute opt out (for new and existing customers of roaming charges) in terms of otherwise applying a CPT by default. This is unsurprising since it links back into the above mentioned dynamics related to the Council’s preference in reducing the burden on business, enabling them to perform as well as they can in a business-friendly environment.

The EP made a number of changes to the clause around transparency of retail charges; the compromise also laid down that national authorities, with reviews in mind, will observe and monitor wholesale and retail charges in providing “voice and data communications including SMS and MMS, including in the outermost region.” The Council wanted an implementation period of two months and three months respectively for wholesale and

retail levels after the entry of the regulation, with retail facing the same three months period so as to manage to comply with transparency obligations. The Council wanted the review to be carried out by the Commission after 18 months and not 24 months which the Commission had proposed (this allows revision within codecision too). The Council can be seen to be in favour of limiting the duration of the regulation's exposure with respect to its effect on Member State businesses. The Council was also in favour of "an automatic sunset clause" with the regulation duration set at a maximum of three years. Generally, the regulation divided delegations during working party discussions. Many felt this proposal would not necessarily decrease prices, increase flexibility for operators while increasing unnecessary additional administrative burdens on MS. Similar to the previous case, the concerns of administrative burden for Member States arises among the Council delegates. Since Member States pick up the costs (administrative, financial) of implementation of these regulations, its attitudes towards such legislation is naturally different to that of the more idealistic EP and Commission. In this particular case, EU Commissioner for telecoms, Viviane Reding said "for years, mobile roaming charges have remained at unjustifiably high levels, in spite of repeated warnings to the industry." The networks collected €8.5bn in roaming fees in 2006 (Neate 2010). Ministers from Britain and France were among the leaders in challenging Reding's proposals. They wanted the regulation to come into force if companies failed to lower consumer fees to "an agreed average rate within six months of the law coming into force." A Vodafone spokesman said: "we believe this whole initiative is illegal because the EU treaty protects companies and customers from arbitrary and unjustified regulation. The proposals are the most prescriptive imaginable. We think the customer has been forgotten by the Commission. It's actually about commission politics and populism" (Lunn 2006).

The above has demonstrated the dynamics which arise at trilogues around business and Member State efficiency dynamics preferred by the Council. The final case will demonstrate once again the Council's commitment towards the reduction in administration affecting its MS.

Directive 2003/0300(COD)³¹

This directive was proposed with the view to increasing the efficiency and cost effectiveness of energy in MS. The proposal envisaged removing barriers to allow competition in the internal market for energy. This might be achieved by some subsidy/government programmes that can help address market failure without upsetting the plans to create competition. Supports and subsidies should see energy services being provided alongside energy efficient measures. The proposal is to cover “retail supply and distribution of extensive net bound energy carried like electricity and natural gas along with district heat, fuel, coal and lignite, forestry and agricultural energy products and transport fuels.” The proposal sets down Member State savings targets so as to measure the extent of energy efficiency improvements and to help reach market demand for energy services. The public sector is also challenged in this respect and Member States must ensure that distributors and retail supply firms offer energy services. The proposal should go alongside the recent legislation seeking to improve supply side improvements around energy efficiency. This proposal is also situated against the backdrop of recent EU blackouts and the need to lessen EU reliance on the import of energy. From an efficiency point of view, the proposal would also help reduce greenhouse gas emissions in accordance with the EU's Kyoto emission reduction target of 8% between 2008 and 2012.

³¹File 2003/0300(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2003/0300\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2003/0300(COD))

The compromise at trilogues saw 9% energy savings targets set across nine years which most delegations could accept. Member States may set themselves higher targets. The Council had wanted a 6% reduction across six years. EP had wanted mandatory targets set at 11.5% with action taken against Member States where they did not achieve this but later gave up this request. This demonstrates a clash between the two institutions in terms of administrative burden, the EP idealistically wanted this, whereas Member States wants this staggered, less shocks to the system... The Council wanted to gradually reduce its energy inefficiency and for delegations to have control over any further efficiencies that are achieved. Member States should set one interim target in year 3 with Member State Energy Efficiency Action Plan (EEAP) including plans for additional measures and their effects if the target is not met. The Commission might put forward proposals which could include mandatory targets if its assessment deems that reasons for not meeting the target are unsatisfactory.

The public sector should communicate to citizens and companies “best practice nationally and internationally” with the public sector also adopting “public procurement measures in at least two areas” and publishing guidelines on “energy efficiency and energy savings as an assessment criterion in competitive tendering for public contracts”. The EP had initially wanted more from the public sector (was not clear, again). This example illustrates the difference in attitudes between the institutions with regard to workload and expectations where the EP sets a high standard for the Council to deliver while not being so mindful of the administrative difficulties which this could create. In terms of benchmarking, the Commission will develop harmonised energy efficiency indicators and benchmarks with Member States integrating them into their EEAPs. In terms of reporting, Member States will submit EEAPs in June of 2007, 2011 and 2015, assessing these against the targets set in January of 2008. In terms of measuring savings on total energy

use, a “target range of 20-30% for a first phase and a 40-60% for a second phase” will be set out with a review where this second more ambitious phase proves unrealistic. The EP insisted on the third EEAP being brought forward to 30th June 2014 and the Commission’s report to be before January 2015 with the EP flagging extra national savings by way of the second and third EEAPs. The EP had initially wanted 4 EEAPs but the second and third EEAP reports would instead be presented earlier. This trilogue compromise, on the back of some horse-trading between the institutions, meant that the Member State administrative burden (as noted by the Council) was not increased unduly.

Conclusion: Generally the theme of contestation across each of the three files centres on the Council's preference for administrative efficiency and simplicity in achieving liberalisation and economic efficiency for the European market. It showed Council reluctance to be governed by burdensome frameworks as seen in the case of mobile roaming tariffs (and its insistence on automatic sunset clauses and reviews) or for example, where the EP preferred compulsory labelling on EIT. The EP was willing to take its time in achieving energy reduction targets or implementing the mobile phone roaming tariffs. Compared with this was the EP's reluctance to be rushed in policies aimed at liberalising the market. It advocated the importance of transparency (acquisitions and mobile roaming charges), and savings for consumers (mobile roaming charges). It encouraged freedom of choice for European mobile phone users with respect to tariffs. Also, the EP demonstrated ambition around energy savings, asking more of the public sector and noting the need for compliance. It also advocated freedom and autonomy for the makeup and management of KICS while insisting on their initial use being related to important societal causes affecting the European community such as climate change and renewable energies. The trilogue quantitative model showed that files which are market building are when compared to market cushioning files, amongst the most likely files to

be trilogued (as well as those that are polity building). In the above three cases, the dynamics at trilogues pointed to the Council's enabling of business and its member state authorities to engage in a more economically efficient market place but without undue administrative or financial burdens.

6.2 Budgetary Impact

Files which have a budgetary impact are more likely to be trilogued. I ran the quantitative models and the results showed that when money and resources are at stake (odds ratios of just under 2 times more likely with budgetary impact than without), institutions will negotiate more closely at trilogues to achieve influence over the policies resulting from the expenditure. (Rasmussen 2011) had found that budget did not have an effect on the decision to "go informal". It is also possible that there can be direct disagreements specifically on the amount of money to be spent which increases the need for use of a trilogue to aid negotiations and improve efficiency. The following two cases 2004/0153(COD) and 2004/0154(COD) are files containing significant community budgetary implications, which see contestation arise and budget allocation discussed at trilogues. Along with the potential for a direct clash over the community budget arising, the budgetary implication attached to the file is likely to even further illuminate the typical political clashes which occur between the EP and the Council. When the link between community budgetary implication and trilogues was put to 4 MEPs and 1 EP legal advisor, 3 MEPs and the 1 legal advisor corroborated the view that budgetary implication increases the likelihood of trilogues. MEP 6 specifically mentioned the European Social Fund.

Both the trilogue-agreed compromises of 2004/0153(COD) and 2004/0154(COD) see reductions in Community expenditure when compared with the initial Commission proposal amounts. The Council was responsible for reducing this in the case of 2004/0153(COD) and the EP was responsible for a reduction in the Commission-proposed budget in the case of 2004/0154(COD).

Decision 2004/0153(COD)³²

This decision is a proposal to set up an “integrated programme for Community action” in the area of lifelong learning between 2007 and 2013. The aim is that this will build on current programmes like Leonardo da Vinci and Socrates and others, and to continue to support training and education. The Erasmus Mundus programme would be incorporated as an additional programme within the above mentioned programme. This new approach comes off the back of public consultation and recognition that the programme is currently very fragmented. This new programme seeks to enhance the community’s “knowledge society” while creating sustainable economic development, environmental protection, more employment and increased social cohesion. In particular the programme pushes for linguistic diversity and a commitment to lifelong learning. It has targets which include “1 in 20 school pupils involved in Comenius (general education up to secondary school) actions 2007-2013; 3 million Erasmus (education and training at higher education level) students by 2011; 150 thousand Leonardo (other vocational training and education) placements by 2013, and 25k Grundtvig (adult education) mobilities by 2013.” The Jean Monnet programme meanwhile covers European integration and when European institutions and associations are involved in training and education. The Commission

³²File 2004/0153(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2004/0153\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2004/0153(COD))

proposed that €13.62 billion will be the budgetary implication across the period 2007-2013.

In the context of the Interinstitutional Agreement on the Financial Framework for 2007-2013, the three institutions at trilogues agreed to a more than 50% reduction in the overall allocation (now €6.2 billion). The EP had wanted expenditure of nearly €1 billion more than the Commission's initial €13.62 billion. Despite this, the overall objectives were to remain the same including the targets set for all of the sub programmes. The Council did insist on more emphasis on adult education due to the employment and demographics facing the EU and thus the minimum allocation for these types of programmes were increased to 4% (Grundtvig). This dynamic arising at trilogues is an example of sovereignty/control in terms of Member States requiring that they be able to respond directly to some of the state-specific trends they are noticing nationally e.g. if demographic information reveals that there is a need to focus on adult education due to increases in that age group or where that age group, or youths, are most unemployed.

The Council insisted on simplified administrative processes for applicants and that national agencies would select and manage more of the projects (currently seen under the Leonardo da Vinci projects). As seen in many of the cases mentioned before, the issue of administrative efficiency arises for the Council with respect to the constraints Member States face on their resources. The Council also wanted a management committee reintroduced to deal with selection process for projects which have a Community cost of over €1 million. This is quite an interesting dynamic arising at trilogues. It links in with a general theme of salience in relation to the appropriate spending of community money and the preference for control or monitoring of same. The Council wanted the inclusion of references to the need for "quality, high performance and innovation" and has

committed to the monitoring of programmes so as to help develop lifelong learning policy. The Council accepted the EP's request on increased mobility (including cross border mobility) for vocational trainees so as to improve learning on best practice, and also the Council took on board the EP's request to include the European Agency for Development in Special Need Education in Middelfart (Denmark), and the International Centre for European Training in Nice (France). These were two of four of the projects which the EP requested would be included for funding. The Council did reject the EP's amendment on the overall budget and its breakdown across the sub programmes, as well as its quantitative targets. This is an example of the central trilogue dynamic related to budgetary implication. The Council is advocating for a more moderate expenditure of public monies while stating explicit expectations on how this money will be spent. EP reference to disparities between different EU education systems and their potential convergence was rejected by the Council on account of subsidiarity demonstrating an example of the Council holding firm on its value of sovereignty. The amendment which mentioned interaction between scientists, high education and enterprises was meant to be about a means of achieving an objective and not an objective in of itself.

The Council rejected the amendment around learning second/additional languages since its Member States felt it was "far reaching". This is yet another example of the EP perhaps being somewhat idealistic in terms of expectations whereas the Council is unwilling to burden its domestic education departments with this increased work load and indeed, the corresponding funding needed from MS. This relates to capacity in terms of Member State scope for education cuts in cases of austerity budgets. While this case demonstrated a range of dynamics including contestation of allocation amount; sovereignty and control and administrative burden, the second case in this section will demonstrate once again, the trilogue dynamics around the contestation of budgetary

allocation, control of policy agenda and efficiency. However, this time the EP appears to achieve more of its preferences.

Regulation 2004/0154(COD)³³

This regulation was proposed to revise the rules around the granting of Community finance so as to speed up trans-European energy and transport networks. The TEN projects are an important part of completing the internal market and for ensuring the EU's future energy supplies are secured. The Council has continually flagged the delays in implementation. For example in 1994, it was agreed that the TEN projects would be finished by 2010. However, in 2003 only 3 out of 10 were finalised and less than 25% of the funding needed for cross border projects had been sourced. This is off-putting for national governments and those in the private sector in terms of committing their time and resources to these types of projects. This regulation is proposed within the EU's financial perspective 2007-2013 and sees the Commission's financial responsibility over the TEN projects increase in line with its current role of planning and management. To do this, the budget is to be increased and the Community can authorise aid of 50% in the case of cross border projects (currently 10% of costs can be offered to governments and investors). The budget would be set to €20.35 billion with the energy budget set at €340 million (set down to co-finance feasibility studies for gas and electricity connections). The regulation also sets down that future aid will be dependent on four principles: (1) simplification: decisions based on comitology to speed up implementation; (2) conditionality: aid dependent on complying with "principles of the common transport and energy policy" with environmental methods of transport favoured; (3) selection and

³³File 2004/0154(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2004/0154\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2004/0154(COD))
Council document 7985/07; www.data.consilium.europa.eu/doc/document/ST-7985-2007-INIT/en/pdf

concentration: aid granted will be towards a reduced set of projects that can be of most value to the community and (4) proportionality: in terms of transport, co-financing of 30% for some priority projects with some exceptional cross border cases getting up to 50%.

In terms of the compromise at trilogues, the EP agreed on the financing of between 30% and 50% provided implementation begins before 2010 and Member States give a plan to the Commission with regard to timetables and the Member State guarantee of financial support. The EP was adamant that eligibility should also be dependent on complying with already existing community policies on health, sustainable development and “linkage of networks including inland, coastal and maritime navigation, inland waterways and short sea shipping.” The EP was determined that the Council would be expeditious and adequately contribute to the plan. The EP also felt that the Community should be open to the use of tolls so as to speed up the TEN projects. The EP also wanted priority given to projects that decreased inefficiencies in transport, those which “eliminated bottlenecks” and “cross border railway transport” and “traffic management systems in the field of air, maritime, inland waterway and coastal transport” (this is quite interesting that the EP is advocating the tolling of EU citizens albeit for reasons of efficiency); the EP also deleted article 8.3 of the proposal. This had barred co-financing where projects already received other community financing. At the EP’s request, the financial amount was to be €200 million less than what the Commission proposed with €140 million put aside for energy instead of the €340 million initially earmarked. This is quite a contrast from the previous case study which showed it was the Council that typically wanted to reduce the monies being demanded from MS). It is difficult to determine why the EP favoured a cut here. While the annual programmes may be adopted under comitology (where EU countries control how the Commission implements EU

law), the multi-annual ones would be subject to adoption under codecision. The EP was determined to retain co-legislative control over these programmes and not be side-lined by the Council and Commission. The Commission must be able to inspect sites since it has budgetary responsibility. Cross border projects that are reliant on Commission granting must have a bilateral agreement in place between the two countries with regard to plans on the completion of the project. Finally, the co-legislators saw the introduction, via an annex, of two new methods of granting community aid for public-private-partnership projects in the area of transport (supported by the Commission and European Investment Bank) and the EP felt the EU should encourage effective public private financing via legal guarantees that are consistent with competition law and the internal market.

Conclusion: Both of the above cases saw reductions in community expenditure in the final compromise between the institutions compared with the initial Commission proposal. The Council was responsible for this reduction in the first case (over €7 billion) with the EP insisting in a reduction in the second case (€200 million reduction). It can be seen in the quantitative models that files having a community budget implication are more likely to go to trilogues. Four out of five MEPs and EP legal advisors supported this view with MEP 6 mentioning the ESF more specifically. While trilogues provide the avenue for compromise on the budgetary figure itself, having a community budgetary impact means there is a contestation weighting to the issues that arise on policy. Also, as MEP 4 noted “while the EP does not get to decide budget, it gets to fight over how it is spent.”

In addition to the actual dispute on resources to be spent, a community budgetary impact attached to a legislative proposal means the institutional actors taking positions not

dissimilar to other cases already discussed in relation to polity building and market building. Between the two proposals, certain themes develop.

The Council once again can be seen to wrestle with control and unwillingness to overstretch the administrative capacity of its national governments. For example, the Council's insistence on simplifying administration duties for applicants, having its Member State authorities select and manage the projects, a management committee to select projects with a community cost (above €1 million). It also rejected the EP's position on the budget, convergence of education systems and the concept of a second/additional language on the grounds that both of these points are essentially over-reaching in terms of the burden that is being placed on Member State resources and to some extent, sovereignty.

On the other hand, the EP was seen to insist on increased mobility to help trainees learn according to "best practice" and how it advocated the inclusion of a "European Agency for Development in Special Need Education in Middlefart, Denmark." Also, how in the second proposal, the EP agreed to co-finance Trans-European projects provided they were implemented according to plan and timetabling and with the Member States guaranteeing financial support. Its commitment to efficient conclusion of the projects can be further seen by its willingness to consider tolling. However, despite this tolling of private road users, it wanted deletion of the suggested barring of co-finance when projects already received some community financing. The EP wanted compliance with pre-existing community policies on health, sustainable development and other transport linkages. It wanted prioritisation for works that would reduce inefficiencies in transport. Also, multi annual programmes would be subjected to codecision and not comitology like in this case of annual programmes. This would permit the EP to continue its co-legislative role in monitoring the progress on this. While budgetary allocation was a key component in both trilogue compromises, so too were the previously examined themes of efficiency and the

avoidance of burden on Member State administrations. There was variation in both files. The Council and EP were divided in both cases on budget and they each took a position on efficiency in one case.

The purpose of these illustrative case studies is not to test hypotheses and certainly not to determine if legislation is better or worse for having “gone informal”. Equally, I don’t intend on these cases identifying an institutional winner at trilogues. However, these two cases illustrating the trilogue dynamic of budgetary implication has shown the EP to push more forcefully for its preferences when compared with the previous seven cases (polity building (4) and market building (3)). Perhaps this can be understood in the context of EP powers on budget existing for a long time in either areas of compulsory or non-compulsory spending leading to a type of institutional memory developing. On the other hand, perhaps on more intergovernmental policy like immigration, the Council tends to dominate the EP in these files.

6.3 Time taken

The following two case studies are representative of legislation that is speedily concluded with the aid of a trilogue in the pre-2007 period. Whereas in the post-declaration era, many files are routinely trilogued to aid agreement and result in the early conclusion of files (Rasmussen 2011; Reh et al. 2013; Brandsma 2015). It can be seen from the statistical output that in the pre-declaration era, when compared with files that are concluded in 1-12 months, files which take 13-24 months are 2.3 times more likely to be trilogued. It is the only category which has a positive odds ratio and is statistically significant. The description of the files below will indicate that files which take this amount of time to be concluded do still contain some room for contestation, yet manage

to enhance efficiency in coming to a compromise, essentially a marriage between controversy and efficiency. Some of these files see agreement/compromise reached in about 12 months before being published (and thus, officially concluded) a few months later. For similar files without trilogues, the time period required to conclude files is on average much longer. Regulations 2007/0032(COD)³⁴ and 2005/0007(COD)³⁵ will be used to primarily illustrate the dynamic of efficiency.

Regulation 2007/0032(COD)

This regulation was proposed to set down common rules on "the decennial provision of comprehensive data on the population and on housing". This information is needed by institutions at the national, European and International level in a harmonised, consistent, comparable and punctual manner. For example, the last Population and Housing Census was undertaken in 2001, yet not published until the last quarter of 2005. This proposal seeks to clarify roles and responsibilities on the "decennial provision" of housing and population data. It sets down harmonised requirements around quality and transparency underpinning results and methods. Member States can choose their way/source of producing the data for their country but there is an EU-wide emphasis with respect to data quality and comparability. In particular, this proposal is aimed at collecting housing-relevant information due to its impacts on the population. Access to decent housing is a fundamental component of social policy. The 2001 Laeken European Council saw Member State governments point to the need to set down common indicators related to social inclusion, with particular reference to housing and the need for accurate statistics in this respect. Private households (based in housing buildings) are important consumers of

³⁴File 2007/0032(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2007/0032\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2007/0032(COD))

³⁵File 2005/0007(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2005/0007\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2005/0007(COD))

supplies and services with environmental impacts (e.g. water, waste, energy) and also; housing is economically significant (supply and demand for houses, necessary finance, building and refurbishment etc.).

This regulation had the potential to be highly sensitive and even controversial due to the social policy linkage or comparison between Member States. Member States being able to choose the way/source of producing the data, and the possibility of criticism and embarrassment, meant that they could be tempted to deviate from the requirement to ensure their data is comparable to other MS.

Compromise agreed at trilogue: Type of statistics: a new part recital instructs the collection of comprehensive information on housing with respect to Community activities like social inclusion promotion and social cohesion monitoring at regional level, environmental protection and energy efficiency promotion measures. It did not make any amendments according to same-sex and mixed-sex partnerships as per the listed items with respect to derived topics.

Data protection: Member States must ensure to meet data protection requirements. Their national provisions with regard to data protection should not be affected by the Regulation. Article 4.4 states Member States must notify the Commission of any revisions to statistics or to methods and data sources one month prior to the release of this data. Member States must work towards matching the data sources and methodology to the main features of the population and housing censuses.

Data quality: article 5(a) is inserted. This is related to quality assessment and lays down definitions for terms like "relevance", "accuracy", "comparability" and "coherence". Member States must provide the Commission (namely Eurostat) with a report detailing the quality of the data and the extent to which the data sources and methodology are in

line with the above mentioned censuses. The structure of these reports should be in line with the regulatory procedure. Eurostat will determine the quality of the data it receives and will liaise with the relevant Member State authorities to provide methodological recommendations to support the quality of the produced data/metadata, with particular reference to the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing.

Reference date: Each Member States must decide a date which is its reference date. This must fall inside a year laid down on the basis of the Regulation. The first of these must be 2011. The Commission will lay out other future years according to the regulatory procedure with scrutiny. They will be all at the beginning of each decade. All Member States supply Eurostat with the finalised and validated data and metadata no later than 27 months after the reference year ends.

Housing: This is "defined as living quarters and buildings as well as housing arrangements and the relationship between the population and living quarters at the national and regional levels at the reference date". The EP defined "buildings" as "permanent buildings" that consist of living quarters for human living or "conventional dwellings" used for "seasonal or secondary" use or that are empty. In terms of defining "usual residents of the geographical area", the following can only be considered for this purpose: those that lived in their "place of usual residence" for 12 months or more (not interrupted) prior to the reference data; as well as those that arrived in their "place of usual residence" within a 12 month period before the reference data and intending to stay for a period of at least 12 months. "Local" has been inserted to the definition of "population".

While this file has officially taken 18 months to be published from the time it was first proposed, agreement was reached in just less than 12 months. It took a little longer for the compromise to be rubberstamped and for the legislation to be published. The Council was in a position to accept the EP's decision at first reading in February 2008, following on from trilogue discussions. Contestation between the two institutions was narrowed down to a couple of issues: feasibility studies and data protection. The Council Working Party on Statistics met on three occasions between March and July 2007 and came to a "broad consensus" on the Commission's proposal. A "required majority of delegations" were willing to agree to a compromise allowing an agreement at first reading. The concept of feasibility studies had caused opposition among delegations and this was removed. Also, the EP wished for data protection to be added (article 4(2a) of the final compromise) as opposed to where it had been previously addressed in a recital.³⁶ This file contained minimal points of contestation between the institutions and permitted a speedy agreement on the back of the intimate and close surroundings of trilogues.

Regulation 2005/0007(COD)

The regulation was proposed to strengthen the rights of persons with reduced mobility when travelling by air. This proposal exists in areas where EU rules are required, and desired by stakeholders. It prohibits air transport companies/tour operators from refusing to carry persons on the basis of their reduced mobility. There are some exceptions/derogations allowed where justified by reasons of law. The role of this proposal is to provide for help to be given to such passengers both at airports and while on aircrafts. It does not define such assistance in detail or in terms of how it should be

³⁶Council document 5060/08; www.data.consilium.europa.eu/doc/document/ST-5060-2008-INIT/en/pdf

provided. It also does not cover facilities to be provided while on board the aircraft. This regulation seeks to guarantee help moving from the check in point to the aircraft, from the aircraft to the baggage hall (normally the case prior to this regulation) but also from the point of arrival at the airport to the aircraft and from the aircraft to a determined point of departure at the airport of destination. One person at each airport will be responsible for this purpose, reducing delay, interruptions (even where the passenger changes carriers/is transferred across different terminals). This service will be paid for by placing a levy on all airlines proportionate to the number of customers it delivered/collected at an airport. This charge is not decided by the number of passengers it carries with reduced mobility, meaning the airline would not be encouraged economically to cut these numbers. As noted in Annex II, the regulation will require free on board assistance for persons with reduced mobility. It requires these companies/tour operations to make provisions permitting advance notification of assistance needs on board aircraft.

Compromise agreed at trilogue: The expression "persons with reduced mobility" was changed by the EP to say "disabled persons and persons with reduced mobility". Increasing the scope of the regulation meant including other passengers with visual/hearing/intellectual disabilities who may face difficulties at airports.

Reservation/boarding can only be refused on safety consideration when the aircraft size (or size of its doors) means embarking/carriage is not physically possible. Having an insufficient number of cabin crew is not a legitimate excuse (originally suggested by the Commission). The passenger can only be refused according to safety requirements under national, international or Community law or where the safety requirements as handed down by the authority granting the aircraft operator require refusal.

When a refusal is considered to be valid, the passenger should be given the option of reimbursement or re-routing. (This was not included in Commission proposal).

If a carrier or agent/tour operator applies derogation, it needs to tell the above named categories of persons the reasons. If requested, this must be in writing no later than 5 days from the time of the request.

The airport's management must designate particular places within the airport under its control for the purpose of arrival/departure of persons with disability or reduced mobility. Those points will allow such persons to inform the airport of their arrival there and to be given assistance. These points of contact will be labelled and have relevant information on the airport in the required formats.

A person in the above categories must notify the air carrier with their need for assistance 48 hours (not the 24 as suggested by the Commission). This notification covers both the outwards and return flights if the same carrier is responsible for both.

A new paragraph lays down provision for accommodating a "recognised assistance dog" once this notification is made to the air carrier/agent/tour operator according to the national rules on this (when these exist).

Assistance should be provided to the passenger for free. The cost will be covered by a levy on aircrafts using the airport. This will be done proportionate to the number of passengers travelling to and from an airport as a customer of each air carrier.

The managing body can either supply this assistance itself or contract other parties to provide this assistance. In engaging with the Airport Users Committee (where such exists), the management can contract ("on its own initiative or on request, including from an air carrier") while considering the services already existing at the airport. Where requests are refused, the management must justify this reason in writing.

The EP laid down a requirement that air carriers and airport management to train their staff on the provision of assistance to disabled persons/those with reduced mobility.

Standards on quality of assistance to the above named categories of passengers should be set out in airports with annual traffic above 150 thousand passenger movements. The Commission had suggested this requirement would be applied only where airports handled more than two million passengers a year.

A new clause was to be inserted requiring Member States to inform the above categories of persons of their rights according to this regulation and the possibility of complaints and the bodies who would receive such complaints. This is perhaps an example of the EP's prescriptions winning out over the Council's reluctance to place further administrative burden on its MS.

The regulation lays out new provisions around compensating the loss of/damage to wheelchairs and any other mobility/assistive equipment.

Other additions/amendments are made to the Annexes of the Regulation. The EP added that when one of the persons from the above mentioned categories is assisted by another person who is accompanying them, the air carrier will make "all reasonable efforts" to place those persons together.

While this proposal contained a number of different provisions and room for potential controversy, it took just ten months to reach an agreement at first reading. In this time, the Council had two debates, in April and October of 2005. This was where much of the delay occurred. To summarise, the Council took some time to reach agreement on who was responsible for assisting certain categories of passengers. They finally agreed that it should be the responsibility of the airport management, with costs reversed onto air carriers via a levy. On board help for passengers was the responsibility of the airline.

Generally the Council was reluctant to place too much burden on airports/airlines, and noted the need for advance notice by passengers where they required assistance. While the Council might agree to an improvement in the rights of passengers, it is worth noting that it still advocates for industry and seeks to balance this with reference to the need for advanced passenger information.

As seen by the summary of the compromise, there were a number of points of contestation, yet once the Council reached its internal position, trilogue contacts with the EP meant the EP being in a position to adopt the compromise as its first reading position and see the file concluded in an expeditious manner. The above two files represent legislation which despite having some points of contestation and controversy, are still concluded efficiently. The commitment towards efficiency appeared to grease the wheels of agreement via close interaction at trilogues. When the question posing a link between efficiency and trilogues was posed to MEPs and an EP legal advisor, all responded that efficiency was a big consideration in "going informal". Some of their comments were as follows: Efficiency means "the earlier the better"; efficiency "might be a consideration for files with less controversy"; but that "it is bad for democracy", "efficiency is a facade for democracy" or "bad for legislation". In one case, an MEP noted that more "substantive policy positions are left aside if there are upcoming elections."

6.4 Legislative instrument

6.4.1 Regulations

The statistical models show that regulations are far more likely to be trilogued from 2007 (4.18) while directives are far more likely to be trilogued prior to 2007 (over 3 times). This in itself might be explained somewhat by the volume of both types of files in either

time period. For example, after 2007, over 60% of files concluded were regulations. Directives accounted for just half of this amount. Before 2007, directives were just over 45% of all files concluded while regulations accounted for 39%. In the post-declaration period, just fewer than 86% of directives were trilogued while just fewer than 96% of regulations were trilogued. In the pre-declaration period, 68% of directives were trilogued while 69% of regulations were trilogued. Directives tend to be less prescriptive than regulations and instead set out a goal for all EU Member States to achieve. Each Member State has autonomy in setting their own laws towards achieving this goal whereas regulations are binding and must be applied uniformly and completely across the EU (Europa 2017b). Therefore it might be expected that directives, while often still being very controversial (Golub 2008: 172), were used during the early days of the Single market whereas regulations were used more and more to help regulate the market towards the end of the 2000s and beyond. In both of these cases, trilogues were used to help achieve compromise between the institutions.

The decision to choose Regulations or Directives over the other is often expressed in the following terms: e.g. in the Commission proposal of the legislative file 2011/0359(COD)³⁷, it was decided that "a regulation is a suitable and proportionate legal instrument to ensure high quality of audits of PIEs. The direct applicability of a regulation offers greater legal certainty. Also, the legislation would become applicable at the same date across the Union, thus avoiding problems associated with the late transposition of legislation by MS." Furthermore a regulation offers the highest degree of harmonisation statutory audits would be carried out under substantially identical rules in all MS". Similarly, in the case of 2014/0032(COD)³⁸, the Commission proposal noted that

³⁷File 2011/0359(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0359\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0359(COD)&l=en)

³⁸File 2014/0032(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2014/0032\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2014/0032(COD))

legislation was "drafted in more precise and consistent language in the format of a regulation, in order to avoid obstacles to trade resulting from national transposition."

On the other hand, in the case of 2011/0439(COD)³⁹: it was decided in the Commission proposal that "a regulation is not permitted; therefore a directive is used-since the proposal is based on Articles 53(1), 62 and 114 of the TFEU and the use of a regulation for the provisions applying both to the procurement of goods and services would not be permitted by the Treaty, the instrument proposed is therefore a directive". Similarly, in the Commission proposal for 2012/0065(COD)⁴⁰, the "choice of instrument is a directive since it is only about minimum standards".

Regulation 2013/0398(COD)⁴¹

This regulation was proposed with the purpose of enabling the provision of information and the promotion of measures to permit the agricultural sector to meet the challenges of increased competition as a result of new markets via the internal market being realised, as well as new markets in third countries. The EU is the world's number one importer and exporter of agricultural produce, rivalled closely by the US. This competition is expected to continue on the back of the potential Doha round and other regional agreements. It is claimed that too few EU consumers recognise the "quality and added value" of EU farmers' produce. As few as 14% of European people recognise the logos of produce which fall under "protected designation of origin" (PDO) or "protected geographical indication". This regulation seeks to reform the provision of information and promotion of measures so as to help support agriculture and particularly SMEs and producer

³⁹File 2011/0439(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0439\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0439(COD)&l=en)

⁴⁰File 2012/0065(COD); [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0065\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0065(COD)&l=en)

⁴¹File 2013/0398(COD); [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0398\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0398(COD)&l=en)

organisations. Some of the main points of the reform are around targeting the internal market and the European quality systems; measures increasing the authenticity of Union products; guidelines around mentioning the origin of products or brand names; measures to increase information provision and promotion of Union products in third countries; including producer organisations in the scheme; setting up a work programme to lay out the target groups; development of new technical and support services to help with campaigns around exports; and a simplification of administrative procedures which will allow easier formation and implementation of programmes, reducing duplication.

Main points of compromise agreed at trilogues: the EP and Council agreed that information provision and promotion measures should increase the competitiveness of agricultural sector and should aim to improve consumer's knowledge on the Union's agricultural products and recognition of the quality schemes; help increase both the competitiveness and consumption of such products and other food products, raising their profile inside and outside the EU; improve awareness and recognition around existing EU quality schemes; increase the market share of such products (EU agriculture and other foods) with a focus on external countries to the EU which are likely to grow the most; help bring normality to market conditions if the market is disturbed, consumers lose confidence etc. There is to be systematic regulation of information provision which is very regulatory.

Information provision and promotion measures: There was "one class of action" that may still be funded inside and outside the Union and this will be aimed towards: honing in on agricultural production methods and standards in the EU, in terms of "food safety, traceability, authenticity, labelling, nutritional and health aspects, animal welfare, respect for the environment and sustainability" and the characteristics of such products with respect to "quality, taste, diversity or traditions". Also there should be awareness raised

"about the authenticity of European protected designations of origin, protected geographical indication and traditional specialities guaranteed". This should be done through PR work and information campaigns, but also includes events and exhibition at the national, European and wider International level.

Characteristics of the measures: provision of information and other promotion measures should be neither brand nor origin oriented but have the most effect in terms of promotion and tastings etc. It is acceptable to mention the brand and origin of the product provided the consumption of a product on the grounds of origin is not promoted. Similar to the previous two paragraphs, a very prescriptive text was agreed on during trilogues. This can be seen again in the next paragraph with respect to the list of specific eligible products.

Eligible products: only where wine has "designation of origin or protected geographical indication status and wine carrying an indication of the wine grape variety" should it undergo promotion and information provision campaigns. Also, only fishery and aquaculture products as laid down in Annex 1 to Regulation (EU) No 1379/2013 will be eligible to promotion/information provision only where products are associated with another such agricultural/food product. Similarly, eligibility will only apply to products coming under quality schemes of Member States or the Union, the "organic production method" and the "logo for quality agricultural products specific to the outermost regions". The Commission will supplement the list of eligible products with respect to market perspectives and via adopting delegated acts.

Financial provisions: EU contribution to "simple programmes" should amount to 70% of internal market expenditure with 80% in the case of countries outside the EU. The EU will contribute 85% of the financial support in cases of serious market disruption, a loss of consumer confidence etc. A previous theme of community budgetary allocation arises

here. The very specific breakdown of spending is enclosed in the binding nature of a regulation agreed in close contact between the institutions at trilogues.

As can be seen above, many of the components underpinning the compromise achieved at trilogue were highly regulatory and specific. For example, very prescriptive objectives were laid down with specific measures around measures for information provision and promotion. The very essence of the measures was outlined very closely with only very specific types of products being eligible. More and more beneficiaries were added to the list required to promote and inform on agricultural products.

Regulation 2014/0014(COD)⁴²

This regulation was proposed to establish a common legal and financial framework for fruit and vegetable and milk distribution to children in schools throughout the Union. This will coincide with educational measures to reaffirm the link with agriculture and other issues such as public health and environmental matters. The School Milk Scheme (1977) and the School Fruit Scheme (2007) already exist but with different legal and financial frameworks. This proposal seeks to streamline the programmes so as to respond to reductions in fruit and vegetable consumption and the rise in obesity. The proposal suggests the following: distribution of fruit (including bananas), vegetables and milk to schools (milk to be decided on by health authorities at the national level. Distribution will be within a fixed budget. Also, there will be a harmonisation on the financial provisions and an improvement of financing conditions: different envelopes across the Union to take into account products and their supply changes and also, consumption patterns. €150

⁴²File 2014/0014(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2014/0014\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2014/0014(COD))

million will be set aside for fruit and vegetables and €80 million for milk. There is some flexibility for transferring between Member State shares between envelopes, according to needs. There will also be some thresholds within envelopes for supporting measures and evaluation, monitoring and communication. There will be an EU contribution "maximum EU aid per portion for fruit and vegetables and for milk" in place of co-financing (school fruit scheme previously). This helps to address the disparities in price for products that are distributed. Also, the EU subsidy for milk is increased. Aid is allocated to each Member States according to the number of 6-10 year old children within the population, the degree of development of the Member State region and for milk, the historical use of funds. In terms of education, measures should focus on issues of agriculture, nutrition/health and environmental matters. There is potential for some other agricultural products to be provided other than the above mentioned ones e.g. honey, yoghurts, olive oil but all products and their nutritional value should be approved by national health authorities.

The following points outline the main points of the compromise achieved at trilogue:

to continue and improve two already existing EU school schemes: in response to the drop in fresh fruit, vegetables and milk consumption among young people and rising obesity among children, the EP felt EU aid should allow the provision of particular agricultural products aimed at healthy eating and consuming products sourced locally.

Participation in the scheme: Member States must give priority towards distributing one or both groups of: fruit and vegetables and fresh products of banana sector; and drinking milk and lactose free versions. For reasons related to nutritional needs, Member States can provide for processed fruit and vegetables in addition to the first category, and "cheese and curd, yoghurt and other fermented or acidified milk products without added flavouring, fruit, nuts or cocoa" in addition to the second category. Member States can in

addition to distributing fermented milk products "without fruit juice, naturally flavoured or non-flavoured or milk based drinks with cocoa, fruit juice or naturally flavoured (cat 1) or naturally flavoured and non-flavoured milk products with fruit, fermented or not (cat 2). This is perhaps unusual for a regulation since while it references very specific products across the EU, it has some flexibility. This same theme is seen in the paragraph after next and this space for flexibility is perhaps a bit unusual for regulations.

In the cases described above, the Union will only pay for the milk part of the product which must be at least 90% of the weight for cat 1 of annex v and 75% of the weight for cat 2 of annex v. Unlike the paragraph preceding this point and the next paragraph, this type of specific detail is expected in a regulation. These details can be worked out closely in the confines of a close-knit trilogue setting.

Excluded element from the distributed products: school scheme products should not contain added fat, sugar, salt or sweeteners, nor artificial flavour enhancers E 620 to 650. However, there is some scope for derogation, with Member States being allowed limited amounts of added sugar, salt and/or fat provided Member State Health and nutrition authorities approve such. This is an interesting deviation again from the more strict prescriptive detail seen in the regulation more generally. Member States manage to retain some of their sovereignty allowing their own authorities to decide some details.

Financing: total aid for the school scheme should cost no more than €250 million for each school year with fruit and vegetable seeing provision of €150 million while school milk is allocated €100 million. The aid should be awarded according to numbers of 6-10 years olds in Member States and the extent of regional development so that these are prioritised for aid. All Member States will receive a "minimum amount" of EU aid per child. The amended text also permits Member States once per year to transfer "20% of one or the

other of its indicative allocation" (without exceeding €250 million) with up to 25% permitted in some cases where justified in the case of "outermost regions" according to market conditions/low consumption of one good/societal changes. Also, EU aid can be used to further existing Member State schemes where fruit, vegetables and milk are provided but funding for these schemes should not replace this, "except for free distribution of meals to children in educational establishments". Member States can pay for these schemes by the placing of levies on particular sectors or contributions from the private sector. The EU will also pay for information awareness, and monitoring and evaluation connected with the scheme and the networking involved at "exchanging experience and best practices" with respect to successful implementation and management of the scheme. This type of text demonstrates the need for the measure to be uniform to address EU problems in agriculture and human health and prescribes very specific details regarding finance.

Visibility of EU aid: the Commission should have the power to adopt delegated acts with respect to Member State obligations to publicise the EU's support for the scheme's implementation, including raising publicity and where necessary, "the common identifier or graphic elements". Member States must publicise the scheme on school grounds and other places, noting the school's participation but also that the Union is helping to fund this. Member States may use any other tools for publicity includes online resources, posters, graphics and any other information awareness.

This legislative file saw four Council debates and points to less cohesion among its delegations with respect to negotiating positions vis-a-vis the EP. However, like in the above regulation, the issues which arise in respect to the compromise best illustrate the distinct features of regulations in so far that contestation is concerned. The regulation is specific in respect to the types of products to be targeted towards school children, with the

Union requiring specific percentages of the product as part of any funded products being distributed. Similarly, the excluded elements are very specific, as is the funding allocations. The educational measures to exist alongside this regulation are quite specific in terms of the learning outcomes, as is the means of publicity related to the EU-funded scheme. Slightly surprising however, was willingness to allow some derogation in the products funded (notwithstanding the composition requirements as mentioned above) and the allowance of some added sugar/salt etc. according to national health authorities and their guidelines. This is relatively uncommon for a regulation but still, the salient points as laid out in the compromise are very prescriptive and worked out in the close confines of a trilogue.

The quantitative models had shown that regulations were nearly 4.2 times more likely than directives to be trilogued in the post-declaration period. Both cases illustrated the use of regulations in the intimate surroundings of trilogues to work towards very prescriptive and rigid legislation, including details on budgetary expenditure. Of the MEPs and the EP legal advisor questioned on the link between regulations and trilogues, three could answer this question and all agreed that regulations were most likely to be trilogued. Trilogues are used more for regulations due to the investment needed to work out details. This is worrying for democracy if such rigid, specific and binding detail is being worked on behind closed doors without reports on these negotiations being made entirely public. Directives on the other hands require less investment and permit greater leverage for the institutions. This leads me into the next two illustrative case studies, focusing on directives.

6.4.2 Directives

Directive 2005/0283(COD)⁴³

This directive was proposed with the purpose of creating a market for "clean" vehicles so as to reduce pollutant emissions throughout the transport sector. The sector is growing and this is seeing increased dependence on oil and the corresponding pollution with road transport seeing one quarter of the EU's total energy consumption and carbon emissions. While there is potential to reduce these significantly, the cost of these technologies remains very expensive. EU community action is needed on this since vehicles are less likely to take into account national incentives at reducing energy and emissions. Producing energy reducing vehicles at the community level is likely to see new markets created and economies of scale permitting a larger scale of production. This proposal obliges public bodies and operators working on behalf of these to see one quarter of their fleet (annual procurement, purchasing or leasing) of heavy duty vehicles above 3.5 tonnes be "enhanced environmentally friendly vehicles". At a later stage, this scheme will be extended to lighter vehicles.

Main points of compromise between EP and Council: Contracting authorities, entities and certain operators must consider long term energy (consumption) and environmental (carbon emissions) impacts when buying road transport vehicles. A recital notes the Directive seeks to promote an emphasis on the market for clean and efficient vehicles so as to make it viable for increased demand for these types of vehicles and thus encourage manufacturers to see the worthiness in investing in this type of manufacture going forward. While this is an important objective of the community, it appears that the EU is

⁴³File 2005/0283(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2005/0283\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2005/0283(COD))

happy for Member States to come to this outcome themselves but a directive simply provides the harmony and uniformity to encourage manufacturers of such cars.

Exemptions: Member States can exempt "contracts for the purchase of road transport vehicles" (article 2.3 of Directive 2007/46/EC) which do not require type or individual approvals in their state. This provision demonstrates some room for Member State flexibility, notwithstanding the importance of the directive.

Scope: the Directive covers contracts for the purchase of road transport vehicles for contract authorities/entities where they are obliged to apply procurement procedures in Directives 2004/17/EC and 2004/18/EC; and operators acting under a public service contract (within meaning of Regulation (EC) No 1370/2007) on public passenger transport by rail or road (where Member States can set the threshold but not exceeding that set out in Directives (mentioned above)). The “flexibility and leverage” afforded by directives as told by MEP 7 can be seen here.

Purchase: Contracting authorities, entities and operators when buying vehicles should take into account long term energy and environmental credentials with the compromise text stating they should apply one or more of the following options: setting technical specifications for energy and environmental performance impacts in documentation associated with purchase (including any other environmental impacts); or by including such environmental impacts in the purchasing decision. This allows local environmental issues to be taken into account. Here, if procurement procedure is required, such impacts will be award criteria. Where these impacts can be "monetised" so as to include these in the purchasing decision, methodology for calculating lifetime costs will be used. Again, this provision demonstrates the scope and flexibility for Member States in the absence of the more prescriptive text as seen in the trilogued regulations above.

Directive 2006/0005(COD)⁴⁴

This directive was proposed with the aim of reducing and managing the risk of floods on human health, the environment, infrastructure and property. This proposal comes against the backdrop of the 100 major floods experienced by Europe between 1998 and 2004 leading to 700 deaths, half a million homes being destroyed and known economic losses of above €25 billion. 10 million people live in areas of extreme flooding risk along the Rhine alone, with potential damage of €165 billion. Floods can also affect waste water treatment, or cause damage to factories holding toxic chemicals, destroy wetland areas and reduce biodiversity. This Commission proposal comes on the back of a Council request and following consultation with other stakeholders.

The Commission's intervention is based on the need for community action to mitigate flood risks in light of the shared river basins and coastal areas between countries. The Directive makes provision for flood mapping in areas of heightened risk, coordination where river basins are shared, permitting a flood management plan through a wide process of participation. River basins, sub basins and regions not at particular risk can be exempted from the Directive's measures. The Directive permits Member State flexibility which allows them to determine levels of protection, which measures to be taken and the time needed to implement these.

Main points of trilogue compromise between the EP and Council: Member States will complete a provisional assessment on flood risk by 22 December 2011. Any flood risk management actions taken by one Member State should not significantly increase the risk of flood along the "same river basin or sub basin" for another country unless the approach

⁴⁴File 2006/0005(COD) [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2006/0005\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2006/0005(COD))

has been coordinated with the other Member States concerned. The provision requires the consideration of the effects on other Member States when they take risk management actions but there is a great deal of flexibility left open.

MS should consider the impact of their land use policies in terms of associated flood risks. Also, management plans should consider how to make land use practices sustainable and help retain water.

Flood risk maps should include information on potential avenues of environmental pollution due to floods. Member States should consider any activities that are likely to increase the risk of flooding. MS must base their "assessments, maps and plans" in accordance with "best practice" and "best available technologies" but which are not overly costly in the area of flood risk management.

The above trilogued compromise provisions demonstrate, despite the directive dealing with significant information (Schulz and Konig 2000: 172), that there is great flexibility and “leverage” (MEP 7) associated with directives.

In summary, the common types of issues arising at trilogues in the above two directives are as follows: flexibility in Member States setting their individual thresholds for purchase of environmental road transport vehicles by authorities' contractors (where public procurement in place); flexibility regarding energy/environmental credentials when purchasing vehicles; a place for exchange of best practice (as a way of helping Member States reach their targets). In the second directive, the compromise notes Member States should be conscious of increasing the risk of flooding to other Member States but leaves

great flexibility; gives Member States great scope in terms of considering how their land use practices promote sustainability and retain water. Similarly, Member States should consider in their flood risk maps, activity that could increase the risk of flooding. Similar to the previous directive, Member States should consider "best practice" with respect to their "assessments, maps and plans" but with cost considerations in respect to their flood risk management. In both directives, it can be seen that a range of controversial points arise in the final compromise but in each case, this is with some flexibility. In the pre-declaration period, directives are far more likely to be trilogued than regulations (approximately 3 times more likely). At the time, as demonstrated by these two files, directives did still deal with "significant information" (Schulz and Konig 2000: 172) but trilogues allowed a forum to work out legislation. Trilogues were relatively new during this stage and it can be seen that the Council enjoyed flexibility and leverage in terms of the implementation of the files being proposed at this time. As the internal market developed, following on from EU enlargement, the need for more enforced compliance arose. Along with this, the EP's policy competence grew across successive treaties. The increased use of regulations and trilogues meant the potential for closer cooperation and contestation over time between the institutions around high stakes legislation in the intimate forum of trilogues. The absence of reports detailing these trilogued negotiations resulting in this binding and more rigid legislation has potentially corrosive implications for the EP's democratic credentials and for accountability to its electorate.

6.5 Conciliation files

There are 115 conciliation files in the database. These are files which were not subject to trilogues in pursuit of an Early Agreement but rather files which exhausted the formal legislative reading stages (first and second) before being subjected to trilogues ahead of

and during a Conciliation Committee meeting (third reading stage). The following is a brief overview about the policy areas in which the files are categorised. These files were omitted from the statistical models since they are considered to be a 100% perfect predictor of trilogues. Before the Conciliation Committee meets at third reading, trilogues between the institutions occurs to narrow down the number of issues (and people) taking part in the main committee meeting. These trilogues are normally preparatory in nature. Conciliation is used less and less across time but these files are normally time-consuming and difficult to conclude due to controversy or simply the sheer level of technical detail that must be agreed.

It is best to look at the Commission DGs for an indication of the policy areas involved since the EP committees of CODE and DELE are generally responsible for all but two of these files. 82 files come under the responsibility of the EP committee for Delegation to Conciliation and a further 31 of these come under the EP committee for Codecision and Conciliation. These EP committees are technical in nature and do not take the different policy spheres into consideration.

The Commission DG variable does take into account the variation across different policy areas and is included in the full (pre and post-declaration) trilogue quantitative model. There are 22 files which are "not assigned" a DG. The following DGs are responsible for the corresponding number of Conciliation files (in brackets) Energy and Transport (30); Environment (34); Health and Consumers (9); Enterprise and Industry (8); Employment, Social Affairs and Inclusion (6); Internal Market and Services (4); Development (3); External Relations (3); Justice (1); Mobility and Transport (1); Eurostat (1); Education and Culture (1); Economic and Financial Affairs (1); and Communications Network, Content and Technology (1). Similar to the overview of trilogues more generally (which include conciliation files in the case of the earlier graphical overview (Chapter 5, section

3), the Commission DGs of "Energy and Transport"; "Environment"; "Health and Consumers"; "Enterprise and Industry"; and "Internal Market and Services feature prominently among both Conciliation files and trilogues more generally.

A brief overview of some of the legislation titles connected with the earliest Conciliation files in the dataset points to files that are highly technical in nature. It was decided to focus the case studies on one that is early in the dataset (case study 1; (Enterprise and Industry) begun in 1997) and one that was begun later in the data set (case study 3; (Mobility and Transport) begun in 2008) so as to see if the general characteristics of Conciliation files changed across time. Conciliation drops off steadily in the post-declaration period. Files are now typically concluded at an earlier reading stage with the help of trilogues (Early Agreements). One other case study is included (case study 2 on Conciliation). It is related to the Environment and is begun in 2001.

Directive 1997/0176(COD)⁴⁵

This directive was proposed so as to set out a community-wide system of "type-approval/technical provisions applicable to buses and coaches". The legislative provisions would include: even distribution of weight throughout the vehicle so as to prevent an overloading of any of the axles; provisions around emergency exits on board the vehicle; technical specifications regarding the doors and power operated doors; better access steps into the vehicle; adequate provision of handrails and other safety holdings for standing passengers; minimum size of seats and the space between each row; and ensuring there is easy access for wheelchair users. The Commission will propose technical conditions which are to be applied to interurban services at another date following the conduction of

⁴⁵File 1997/0176(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=1997/0176\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=1997/0176(COD))

studies exploring this. The Commission will also investigate the suitability of longitudinal seats (sideway seating) and the possibility of installing seat belts for these types of seats. The proposal takes account of technical features of some minibuses (including UK-built buses) and provides some potential for exemptions regarding criteria being made generally applicable as per the proposal.

Main points of the Conciliation compromise: The EP had been very determined with respect to ensuring persons of reduced mobility were guaranteed full access to public transport.

Improved facilities for passengers with reduced mobility by the use of technical adaptations to vehicles;

The EP sought the inclusion of more persons in the directive definition of "persons of reduced mobility". This would help all persons as well as the elderly and disabled who have difficulty using public transport. Here it can be seen that the EP has sought to further the rights of EU citizens by seeking to increase the scope of legislation. Normally this type of action is not supported by the Council which seeks to limit the administrative or financial burden on its Member State governments or businesses in complying with such demands.

This all-encompassing definition would include people with "sensory and intellectual impairments", persons who use wheelchairs, have impairments to their limbs, are small, are carrying heavy luggage, have trolleys, are pregnant and those with children (including those in prams).

The sloping areas of the public transport vehicles will have a slip resistant surface; and buses involved in urban transport will require either a ramp/lift along with a kneeling system to permit access for wheelchair users to help where the pavements and bus surface

is not level. The slip resistance surface of buses with fitted ramps/lifts, along with the technical adaptations referred to in point two means an increase in costs for business.

The EP typically amended the following groups of amendments: (a) accessibility with extension on this to vehicles used in inter-city traffic; (b) safety requirements regarding technical specifications but also rules to make the crew and driver safe; and (c) a third bunch regarding technical amendments on the proposal. The Commissioner (Bangemann) would not accept EP's amendments which altered or added to proposal technical requirements or where this was to do with sensitive points (traditions of Ireland and UK and double decker bus). The Council agreed to accept a number of EP amendments while accepting much of the Commission's original proposal leading to a solution which has considered safety and user friendliness. The EP managed to get its preference in extending the scope of persons covered by this proposal, sloping areas being fitted with non-slip surface and the continued manufacture of those buses with low floor (gangway slope of 12.5%).

It can be said that this file was heavy in technical detail rather than controversial. However some of the provisions relate to increased business costs borne against the increasing of access for all passengers.

Directive 2001/0291(COD)⁴⁶

This directive is proposed for the purpose of "revising the Directive on Packaging and Packaging Waste in the field of recovery and recycling targets". This initial Directive was agreed in 1994. It sought to help increase environmental protection while limiting the effects of this on the internal market. The Commission must propose new targets in the

⁴⁶File 2001/0291(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2001/0291\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2001/0291(COD))

two areas of recovery and recycling for each five year period no later than four and a half years into each five year phase. The proposal here is to set out the targets to be achieved by 30th June 2006 and to provide clarity on the definition used for this particular purpose. The other provisions around prevention reuse and producer responsibility will be addressed at a later stage. This proposal clarifies the definition of packaging; includes new references to "mechanical, chemical and feedstock recycling". The proposal also laid down that the new targets for recovery and recycling must be implemented no later than 30th of June 2006 and insists on 60% to 75% of packaging waste (weight) to be recovered and between 55% and 70% recycled. With respect to minimum recycling targets for other packaging (by weight): these are 60% for glass, 55% for paper and board, 50% for metals and 20% for plastics. Recycling must be done by mechanical and/or chemical means. Greece, Ireland and Portugal were all given some leeway by the Commission with respect to the targets but this target date should not be later than the end of June 2009. The proposals lays out that industry must provide the identity and classify the type of packaging being used.

The main points of the Conciliation compromise: the compromise saw agreement around reducing discarded packaging and an increase in recycling of packaging waste (25% to 55% minimum by 2008). The EP was highly supportive of this aim. The Environment is something which affects all of the EU citizenry so this is perhaps unsurprising. On the other hand, obliging Member States and industry to obey increased environmental regulation and protection means an increase in costs.

Derogations to targets: one of the issues here was the setting of the dates for those countries that were given additional time to meet waste recovery and recycling targets. Greece, Ireland and Portugal had been giving additional time due to the less effective schemes then in place in each of those countries. It was decided that by the end of June

2001, they must reach 25% targets for recovering/incinerating at waste incineration plants with energy recovery. Other targets may be postponed until the end of 2005, whereas targets to do with recycling glass and metals may not be postponed past the end of 2011. This provision was quite technical but the recognition of attempts to lessen Member State burden was seen with the allowance of these derogations.

In terms of the accession countries and applicable legal bases: the EP wanted these dates to be determined under the codecision procedure. The Council preferred article 57 of the Accession Treaty. This permitted Member States to decide by QMV to amend the directive without the EP being consulted. The agreement instead included two recitals where all the institutions agreed to allow "temporary derogation" on targets for the accession countries. Derogations will be determined by the "appropriate legal procedure" in terms of the requests already made by the accession countries i.e. 2012 for Cyprus, Czech Republic, Estonia, Hungary, Lithuania, Slovakia and Slovenia; 2013 for Malta; 2014 for Poland and 2015 for Latvia. The dynamic of control is evident here as seen in other case studies looking at the more ordinary trilogues. The EP wishes to retain its co-legislative powers whereas the Council wants to have sole authority over future changes.

Implications of recent Court judgments and the scope of the directive: The Conciliation committee sought to determine if incinerating package waste was equivalent to "recovery". The ECJ had recently made judgements which found that incinerating municipal waste is "disposal operation" where the main aim was to dispose of the waste. This meant that incinerating packaging waste no longer counts towards recovery targets set down in the Packaging Directive. The EP and Council set out to clarify "recovery" following the Court's ruling. Instead of "recovered", the revision will read "to be recovered or incinerated at waste incineration plants with energy recovery". All three of the institutions have committed to reviewing this at an early stage, with the Commission

planning to "propose amendments as appropriate to the relevant legislation". This provision was highly technical in nature and perhaps not too dissimilar to what might be expected to arise at Conciliation more traditionally.

In summary, some of the issues that arose in inter-institutional bargaining were maximum targets on packaging waste, minimum targets of recycling of materials found in packaging waste; new targets each five years; need for consumer awareness; producers' compliance; hazardousness of packaging waste material; definitions of recycling; extra time for Portugal, Ireland and Greece. These are quite controversial points, and at times, technical in nature. Also, like many of the trilogues discussed above, there is a classical clash between the EP chasing the ideal of better environmental protection while the Council considers softening the impact of this burden on industry and national administration, while gaining total control of the legislation in terms of future changes.

Regulation 2008/0237(COD)⁴⁷

This regulation seeks to ensure sufficient levels of protection for passengers in bus and coach transport, particularly persons with reduced mobility. After cars, at nearly 83%, bus and coach transport holds the second largest share of transport across land at 9.3% and in total, across all transport modes available to the public, it has an 8.3% share. The sector continues to grow and the annual volume of bus and coach passengers internationally is in the region of €73 million. Unlike other modes of transport, there is no international agreement governing this sector, with the exception of a UN convention which is ratified by just three Member States. There is no community legislation providing and protecting right for customers of these services. There is instead variation throughout Member States

⁴⁷File 2008/0237(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2008/0237\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2008/0237(COD))

with regard to levels of protection of bus and coach passengers. Rules governing the liability of operators vary substantially and compensation in the case of journeys interrupted differs. Overall, the Commission is seeking to protect the rights of passengers in the following three ways: (a) right of persons with reduced mobility, (b) issues of liability and compensation and (c) assistance where travel is interrupted. The proposal is in line with the Amsterdam Treaty's priority around protecting consumers.

Separately, this proposal seeks to help combat social exclusion and with reference to Article 21 of the Charter of Fundamental Rights and Article 13 of the EC Treaty which encourages Community action in fighting discrimination where the Community's competence permits. The main provisions of this Regulation are based on liability in the case death, of injury to passengers, or damage to their luggage; non-discrimination on the grounds of nationality/place of residence, assistance for those who have reduced mobility; the requirements of bus and coach providers where a journey is delayed or cancelled; information obligations; handling complaints and general rules on enforcement.

Main points of the Conciliation compromise: the Regulation applies to all services (internal and cross border) where the distance is equal to or exceeds 250km. Where travellers are only travelling for a part of this, they will still be covered. The Council had originally wanted 500km or further as being "long distance" and not 250km, now agreed as that definition. There are also other provisions granting basic rights to passengers who travel on shorter journeys. This will be aimed at persons with disability/reduced mobility e.g. compensation for loss of mobility equipment, training of staff in the area of disability etc.). The Council sought to be more restrictive on the length of distance due to the associated costs imposed on transport firms.

Time derogations: Apart from the more basic rights, Member States can give "domestic regular services" an exemption from the Regulation, for up to 4 years (renewable once). The Council had wanted exemptions of up to 15 years. This is another example of the Council wishing to reduce the burden on its own domestic services.

Compensation and assistance in the event of accidents: passengers are covered in the case of death, personal injury and damage to luggage. Member State national law should not set the ceilings below the Regulation amounts. This amount to €220 thousand per passenger and €1200 for each item of luggage. Any damage to "assistive devices such as wheelchairs" must be fully compensated.

In the case of accidents, passengers are entitled to claim financial assistance for practical necessities like transport, accommodation for a maximum of two nights (€80 per night per person (Council wanted €50)), food and clothes. The rights of passengers are advanced here and in the previous point despite attempts by Council to reduce the corresponding financial burden imposed on business as a result of this.

Passenger rights regarding cancellation or delays: If bus/coach transport is cancelled, overbooked or delayed by more than two hours, passengers have the option of continuing the journey/diversion on route to their destination at no extra cost or a refund of the ticket. If the company does not provide this choice, passengers are entitled to a full refund and compensation of 50% of the cost of the ticket.

If the vehicle breaks down during the journey, the firm must provide another vehicle to continue the service or transport to another point from which the journey can be continued.

In the case of cancellation/delay: all passengers should be updated with information (electronically, if possible), including those that are entering the service from another

point other than the terminals (in the case that passenger requested such updates and provided their contact details). If a journey exceeding 3 hours is cancelled or delayed (at departure) for more than 1.5 hours, passengers should be given snacks, or refreshments, including hotel accommodation (as outlined above). This obligation around accommodation is not applicable where the delay is natural (adverse weather conditions etc.).

Rights of disabled persons/persons with reduced mobility: firms must provide help to the above named categories of persons where the passenger has informed the firm of their needs no fewer than 36 hours before departure. If this assistance is not possible, the passenger can be joined by another person of their choice at no additional cost. Also, as mentioned above, loss of, or damage to, assistive equipment must be compensated by the operator at the responsible station. The rights of passengers are improved here and in the previous three points despite attempts by the Council to reduce the financial burden imposed on business as a result of this.

In summary, the EP and Council reached agreement on the Regulation around the following compromise: delays on long distance journeys of more than 250 kilometres; help in the case of delays; help for passengers with reduced mobility; compensations where luggage is damaged or lost; and time-related derogations. This Regulation was proposed in the post-declaration period. Conciliation was used less and less at this stage and more early agreements were reached. Unlike the first Conciliation file (discussed above) which is very technical in terms of what is discussed at Conciliation committee level, this file sees a lot of salient content discussed at Conciliation, much of which is relatable to the public interest. There is a classical political clash here between the EP advocating for the ordinary EU citizen versus the Council's reluctance to over-burden

businesses with monetary and/or administrative costs as per MEP 5's note linking the Council to being a protector of "corporatism".

The earlier Conciliation file from 1997 on technical provisions for buses/coaches and the later Conciliation file of 2008 on rights for passengers travelling on buses/coaches (particularly for those with reduced mobility) while similar to each other in terms of the topic, differ in terms of the types of issues requiring compromise. In the earlier file, there was a lot of technical detail underpinning the compromise. The later file saw a much more pronounced political battle between the interests of the EP and Council.

Conciliation was unusual at the time of the third case study above. It was not considered the best forum for reaching agreement because of (increases in EU competences and an extension of the codecision procedure to more policy areas which led to an increase in legislative workload and a corresponding need to expedite the passage of legislation (Shackleton 2000: 334). However, in the case of regulation 2008/0237(COD), there appears to be a great deal of controversy which was more publically played out by exhausting the full formal legislative procedure of codecision. Perhaps it can be said that Conciliation files are often technical in nature, contain some of the same dynamics as more regular trilogue meetings (sovereignty, budgetary costs, control, avoidance of Member State administrative burden) but as Conciliation is used less and less, these procedures are more likely to mirror trilogues as we know them today and have thus being replaced-albeit in favour of a more "efficient" and speedy behind closed doors process.

As mentioned earlier, although informal trilogues were first introduced typically to help prepare for Conciliation meetings, Conciliation meetings began to be used less since 1999 (Konig et al. 2007: 286), and trilogues began to be used more (Farrell and H  ritier 2004:

1197) with legislators now encouraged to be speedier in agreeing legislation and as a result, the Conciliation process has almost disappeared in recent years (Fox 2012). There are just seven post-declaration (2007-2016) Conciliation files in the dataset.

Chapter 7: Transparency, Democratic Legitimacy and the Ombudsman

7.1 Background

Earlier, the time-efficiency characteristics of trilogues were established in the first set of empirical models focusing on when and why trilogues occur. Now, this project examines the "transparency versus efficiency" hypothesis. The EU can be said to gain its legitimacy from two sources 1) its values, aims and powers, and 2) "from democratic, transparent and efficient institutions" (European Council, 2001: 22-23). Trilogues are thought to enhance efficiency and after becoming institutionalised as a "norm" of decision-making between the Council and the EP, with 85% of EU laws agreed at first reading, attention has turned to the transparency of the process. With the rise in the use of trilogues to aid the early conclusion of legislative files, it is important to respond to those that are anxious about the potential for democracy to be damaged in this less participatory and behind closed door forum of legislative decision-making.

7.2 Definitions of transparency and accountability

Moser (2001:3) defines being transparency as "to open up the working procedures not immediately visible to those not directly involved in order to demonstrate the good working of an institution." Cross and Bolstad (2014:2-4) review varying definitions on transparency. They note that Mitchell (1998: 10) defines transparency as "the availability of regime relevant information', [is] crucial for evaluating the performance of key actors in a political system". Mitchell (1998: 111) notes transparency creates the grounds on which a regime can "do well" and for observers to "know how well it is doing". Meijer (2013: 430) is more specific in defining it as "the availability of information about an

actor that allows other actors to monitor the workings or performance of the first actor". Meijer (2013: 429) notes that government transparency is formed from interactions between actors with different views yet within the same "institutional playing field" where these interactions lead to a change in the nature of the field. Perhaps most relevant to this project is the definition of transparency by Grimmelikhuijsen and Welch (2012). They define this as "the disclosure of information by an organization that enables external actors to monitor and assess its internal workings and performance".

To open the definition of transparency up further, Grimmelikhuijsen and Welch (2012) note three different kinds of transparency. Related most to this project is the first which contends that the transparency of decision-making relates to the extent to which steps taken towards reaching a decision within a political institution are open to scrutiny (Cross and Bolstad 2014:3). H  ritier (1999: 270) among others have highlighted the role of transparency as a way of legitimizing political decisions. H  ritier (2003: 815) notes that access to information and transparency are important for the input of democratic legitimization while associative representation and negotiative democracy are output-oriented in terms of democratic legitimization. She notes that both of these are important. While information and transparency do not constitute democratic legitimacy alone, they help fulfil this aim (2003: 825). Follesdal and Hix (2006: 6) raise concerns about the gap that many observers feel has developed between the EU populace and the EU's legislators. The EP is in itself the only directly-elected EU institution. This gap between the citizenry and the legislature can be said to contribute to a sense of democracy deficit. This remains of particular importance today since more and more legislation is being concluded informally with a reduced number of EP representatives present.

Grimmelikhuijsen, Stephan, et al (2013:566-7) explain that transparency is more than just the decision, and rather, a vital aspect of transparency centres around visibility related to

the decision-making process itself. Only then can the public know why the outcome was as it was. Grimmelikhuijsen, Stephan, et al (2013:566-7) note decision-making transparency "concerns the degree of openness about the steps taken to reach a decision and the rationale behind the decision" and that "democratic decision-making transparency has traditionally been a cornerstone of accountability" allowing citizens to have the necessary information about decisions which affect them and if they are in line with "acceptable norms or election promises". Bovens (2007) notes that citizens, officials and researchers recognise that "when government processes and outcomes are not transparent", accountability is negatively affected. The Global Accountability Framework identifies transparency as one of the dimensions related to increasing accountability and notes that transparency is reliant on the "provision of accessible and timely information to stakeholders and the opening up of organisational procedures, structures, and processes to their assessments" (Bovens 2010: 959). The definition provided above by Grimmelikhuijsen, Stephan, et al (2013:566-7) is also very appropriate for this study. Holding the EU institutions to account means being able to observe the steps and rationale leading to decisions on legislation affecting EU citizens.

7.3 Brief overview of EU transparency rules

Article 42 of EU Charter of Fundamental Rights notes the right of access to documents. "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium" (EUR-Lex 2012). Regulation 1049/2001 sets out the provisions for a right of access to EU documents and regulating transparency of disclosure procedures (Augustyn and Monda 2011).

As noted by Steve Peers (2008), the first article of the TEU notes that the EU should be “as open as possible”, while a new title II of the TEU relates to “democratic principles” which require that “citizens and representative associations have the opportunity to make known and publicly exchange their views” in terms of EU actions with Article 11.2 providing for “open, transparent and regular dialogue with representative associations and civil society.”

Article 15 of the TFEU deals with the openness, replacing Article 255 of the EC Treaty, which is the legal base underpinning the adoption of legislation on access to documents held by the Council, Commission and European Parliament. Article 255 underpinned the adoption of Regulation 1049/2001 (Peers 2008).

The 2008 attempts at reforming the 2001 Transparency Regulation saw the definition of “document” and scope of application become very specific and states that for an item to be a “document”, it must be “formally transmitted to one or more recipients [...] or otherwise recorded,” meaning that it would result in less access rather than more access to documents. This rules out internal information with no regard to the purpose of the document which sees informal exchanges like trilogue documents separate from public scrutiny. The definition of document laid down in the 2001 regulation could be argued to include databases as documents too (Augustyn and Monda 2011).

The Lisbon Treaty (2009), Article 15.3.5 was aimed at bringing greater openness and stated that “The European Parliament and the Council shall ensure publication of the documents relating to legislative procedures,” and gives effect to Article 15.2: “The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.”

Between 2001 and 2012, 103,839 out of 117,000 “RESTRICTED” documents were excluded from the Council’s public register because of the “originator’s” right of veto. This was provided for under Article 9.3 of Regulation 1049/2001. The “originator principle” is typically used by staff of the Council’s General Secretariat, national governments or third parties like agencies.

The Council also attempts to bar the publication of unreleased “LIMITE” documents which are “sensitive unclassified documents.” (Recall my earlier discussion on inaccessible and partially inaccessible documentation. I will return to this point when I discuss my application for inaccessible documentation related to Fisheries legislation in Chapter 8, section 3.4). The Lisbon Treaty provisions have not seen legislative documents published in line with the time they are produced; instead 60% of these Council documents are not made public until the adoption is finalised (Consilium 2012). The Council may use article 4.3, the “space to think”, to refuse access to 50% of requests for access to legislative documents under discussion (Bunyan 2014).

7.4 Ombudsman’s “own initiative” investigation into the transparency of trilogues

The political significance of the transparency of trilogues led to the launch of an “own initiative” investigation by the European Union Ombudsman Dr. Emily O'Reilly into the transparency of trilogues (Case OI/8/2015/JAS) on the basis that "Trilogues are where deals are done that affects every EU citizen. They are now an established feature of how the EU adopts laws.....Parliament, Council and Commission have a Treaty obligation and an interest in legislating as openly as possible to maintain public trust" (28 May 2015). O'Reilly holds that the transparency of Trilogues is a key element in ensuring citizens'

rights to hold their representatives accountable for the political choices made on their behalf and to participate in the EU's democratic process through access to information are made effective, and in legitimising the laws made by the EU (2016: 1). Indeed as noted above, many academics are of the same view. Cross and Bolstad (2014; p1-2) note that questions related to transparency and censorship of the EU's legislative process has been of real concern to the public, civil society and policy practitioners as it is "intimately connected" with the chance to hold decision makers accountable for their behaviour in negotiations and decision-making. Therefore much of the debate surrounding transparency in the EU has been around the trade-off between granting access to legislative records (to legitimate decisions) and the censoring of same to protect the decision-making process. The transparency of documentation is just one facet of determining the overall legitimacy of EU decision-making. For example, having directly elected representatives (MEPs) participate in trilogue meetings means the process cannot be said to be entirely without legitimacy. However, the non-timely release or non-release of documentation related to these meetings helps exasperate the distance between the citizenry and legislative practitioners, perhaps creating a suspicion that the EP's party to trilogues is not representative of the wider population i.e. that the rapporteur is not representative of the preferences of the median MEP. The EP appears to recognise that transparency has in fact been traded off against efficiency and there is need for reform (TI 2016: 1).

Transparency International (TI) in their reply to the Ombudsman's public consultation on the transparency of trilogues, claim that "in these meetings large concessions are won and lost with very little oversight and without public disclosure"; the majority of Parliament plenary votes rubber stamp the deals secured by a handful of negotiators from each institution in trilogues, effectively "side-lining 99% of MEPs in the process" (2016: 1).

The EP considers, “while the need for transparency remains a challenge given the generalization of trilogue negotiations, it has to be reconciled with the need for efficiency in order to reach agreements” (2015: 38) which TI interpret as the EP’s recognition that transparency has in fact been traded off against efficiency and there is need for reform (TI 2016: 1). In a report on decision making in the seventh term 2009-2014, the European Parliament did note the need to “address certain understandable concerns about the transparency of the decision making process, particularly given the now widespread recourse to informal negotiations between the co-legislators and the Commission” (European Parliament CODE, 2014: 45).

The objective of this project is to examine whether files subjected to trilogues are more likely to have redactions of part or all of a text than files not subject to trilogues, to provide an indication of the relationship between trilogues and transparency. Redaction of parts, or the entirety, of documents shared in trilogue negotiations is carried out [on the] basis of legitimate reasons. These include in particular, the need to protect the Council's decision-making process and public interest with regard to international relations and public security (European Council 2017).

The Transparency Regulation (EC 1049/2001) was as a result of efforts to agree formal rules around the release of legislative records to the public. However, exceptions to these include around issues to protect private and public interests, and the protection of the integrity of the decision-making process. Therefore, there is an opportunity for legislators to censor sensitive legislative records. Cross (2013) has shown that this regulation was used to extensively deny public access

Since the negotiating positions of individual Ministers of the Council of the EU, i.e. Member States, are at times closely guarded for internal political reasons, it may be the

case that trilogues are used for particularly sensitive policy decisions, and the closed-door nature of the process facilitates the veiling of positions. It is intimated that the closed-door, informal nature of the trilogue may lead to a lack of information on negotiating positions before and during the trilogue process; this thesis examines a variation on this theme, by hypothesising that files subjected to trilogues are more likely to be redacted than files not subjected to trilogues, to examine whether there is a link between process and withholding of information. It is not that that trilogues necessarily cause redaction, but redaction is most likely to occur in a trilogued file rather than a non-trilogued file. Therefore, trilogues can be used to facilitate a redaction position and are therefore associated with a redacted file.

Cross and Bolstad (2015) note that following on from the Transparency Regulation in 2001 (EC) 1049/2001, policy records were released in a timely fashion but not all were publicly available. Hagemann and Franchino (2016) dispute that an increase in transparency means an increase in the time taken to complete a file. However, Cross (2014) finds that there is a lag in releasing these documents except where they are entirely inaccessible (fully redacted).

The Ombudsman's enquiry concerns the difficulty in finding out when trilogues are taking place, what issues are being discussed (relates to transparency), and by whom. She recommended the creation of a trilogues database containing lists of documents tabled during trilogue negotiations, something also suggested by the European Commission (European Parliament CODE, 2014: 45). The institutions are slated to inform her by 15 December 2016 of action they have taken in relation to her proposals (European Union Ombudsman, 2016). Based on available data, this project has contributed along these lines, having already collected variables measuring the presence or absence of trilogues in 1448 legislative files over a sixteen and a half year period.

By the time I finished coding up the variables; about six months had passed since the last file had closed. This gave ample chance for the institutions to make data accessible. It is expected that in time, some files will move from a position of complete redaction to partial redaction/full accessibility, and that some files that are partially redacted can become entirely accessible. It is not possible to build in a time lag to the statistical models (it is difficult to determine what this lag should be) but allowing six months due to the coding up period meant that the most recent files were given a greater chance of documentation becoming more available. It is far less likely that files concluded much earlier in the dataset would still be undergoing a reversal of redaction, or at least not nearly at the same rate.

7.5 Applicable variables and the theoretical rationale for their inclusion

Trilogue (or no trilogue) is the outcome variable in the previous set of models. In this chapter, “trilogue” is included as an independent variable to determine if trilogued files have an effect on the transparency of legislative file documentation.

Treaty period (SEA and before, TEU, Amsterdam, Nice, Lisbon) was created as a way to understand the changes in the transparency of legislative file documentation across time. The “Lisbon treaty” period is used as the reference category in the larger model and the two stratified models post-declaration and pre-declaration. It is expected that “Lisbon” is the least likely predictor of documentation redaction.

Legal nature (Repealing and Codification/Codification; Repealing; Recast and Repealing/Amending/Repealing and Amending; New/other; Amending) is created to understand the effect of the different intent of legislation on the likelihood of file documentation transparency. “Repealing and Codification/Codification” was chosen as

the reference category in this fuller model. This category was chosen since files falling under this description are normally joining up two or more pieces of legislation without making substantive change. There is no new potential for redaction and usually such files are non-controversial. Due to the typically joining up nature of these files, it is expected that codifying files are on the whole, less conflictual and that all other types are more likely to be redacted (thus less likely to be transparent).

EP committee is created to capture the policy realm for each of the legislative files and thus determine if some policy areas more than others are more likely to see file documentation subject to redaction. (There are 22 committees in total: AGRI; PECH; ECON; JURI; BUDG; EMPL; RETT; ENVI; LIBE; AFET; DEVE; CONT; ITRE; INTA; TRAN; REGI; IMCO; CODE; DELE; FEMM; CULT; AFCO). It is hypothesized that highly contested and conflictual policy areas are more likely to have document text subject to redaction. This might be due to sovereignty-sensitive concerns of Member States or because money is involved or because of anticipated implementation problems.

Budget category size (CAT A (€1bn+); CAT B (€100m-1bn); CAT C (€10-100m); CAT D (€1-10m); CAT E (€0-1m)) is created to capture the effect of the size of increasing monetary categories of Community budget impact on file document transparency. It is hypothesised that budget, and increasing budget in particular, means a corresponding decrease in the likelihood of file transparency. In other words, files are more likely to face some level of redaction. The reference category for all three models is “zero” budget since it is not thought that files without specified budget impact are likely to be redacted.

Time taken to complete a file (less than one year, between one and less than one and half years, more than one and a half years and less than two years; more than two years but less than three years; more than three years) is captured to examine the hypothesis

that files taking longest to be concluded are more likely to be subjected to text redaction. This is because of the likelihood that time guzzling legislation is an indication of controversy. The reference category for all three models is “1-12 months.” It is thought that files which are concluded this quickly are either simply procedural or absent of any real controversy.

EP term year (e.g. 2004-2009 of year one, year two, year three, year four, year five) is created to test the hypothesis that year four and year five in the EP term cycle are most likely to be transparent since MEPs might be eager for their constituents to see the fruits of their legislative work ahead of the re-election campaign in year five. Therefore files concluded in year two and year three might be more likely to be redacted i.e. file documentation is less likely to be transparent. It is thought that year two is the first genuine twelve months of EP policy-making activity, given the first year involves a settling-in phase combined with finishing off legislation left over from the previous 'administration'.

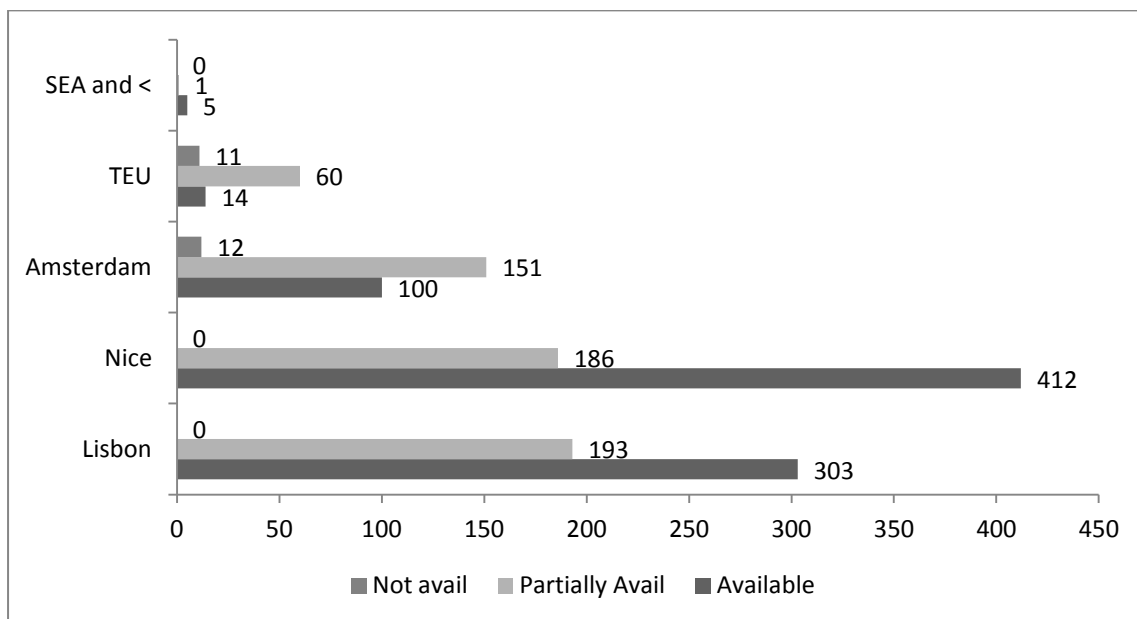
Months*Time taken (to complete a file) is an interaction between the number of months taken to conclude a file and the reading stage where the file was completed to account for the controversy of a file. Files which take many months to conclude and progress into a second reading stage are indicative of either intra-institutional or inter-institutional conflict

7.6 Transparency Overview

This next section provides a short descriptive statistics overview linking the above theoretical discussion on transparency with the stated hypothesis, before presenting the logistic regression models.

Document availability, partially availability and non-availability) observations by explanatory variables

Figure 7.1 document availability of each legislative file by treaty period in force (n= number of legislative files)



The above chart represents the dependent variable "availability of documentation" by treaty period. Excluding the "SEA and before" due to such few observations (n=6), the TEU has the most redaction of files at 83.5%. Amsterdam sees almost 62% of its files subject to some level of redaction. Nice has 31.1% redaction among files begun during

this treaty period. Lisbon, despite not having any files entirely redacted, has some 38.9% of files subjected to partial redaction.

Figure 7.2 document availability of each legislative file by responsible EP committee (policy area) (n= number of legislative files)

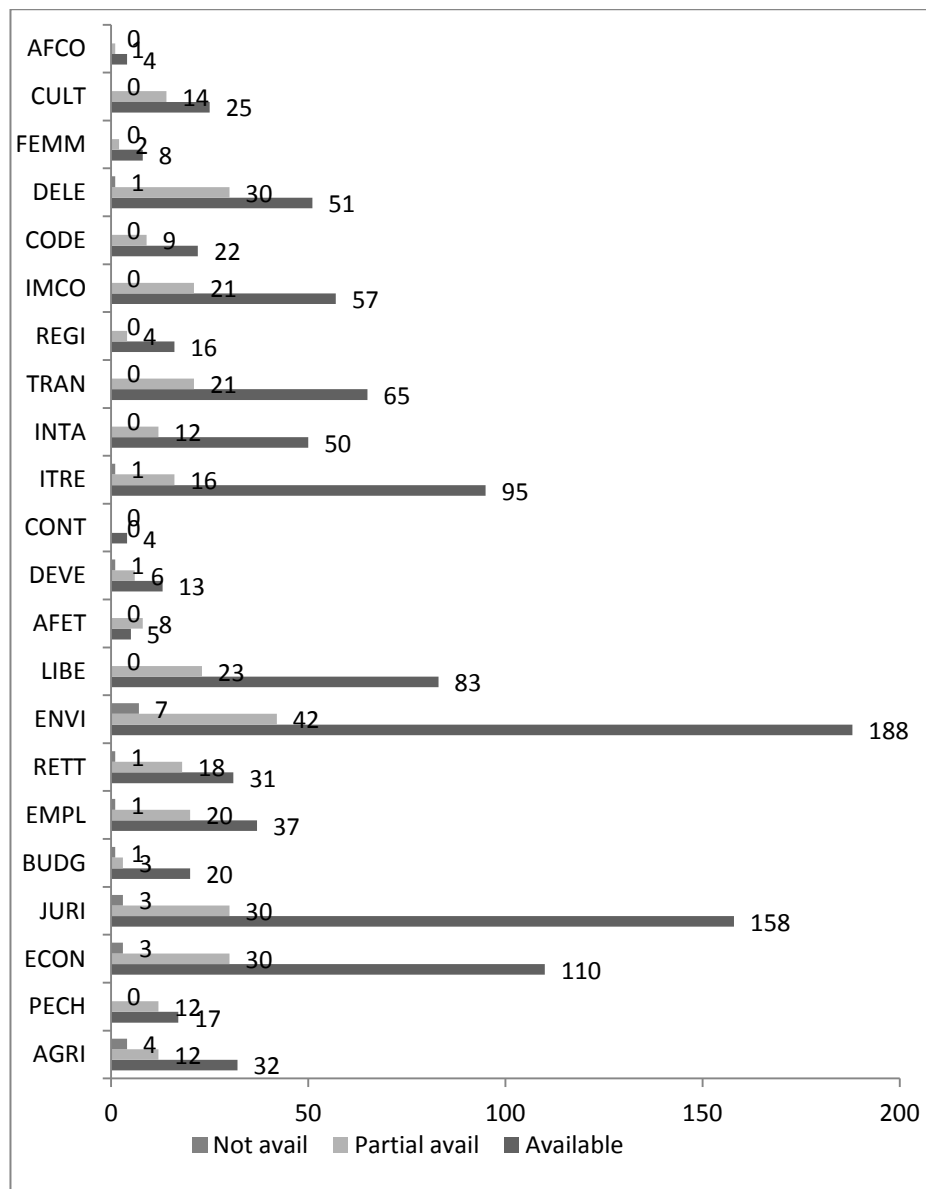


Figure 7.2 illustrates the availability of file documentation relative to the EP committee responsible (indicative of the policy realm). Focusing on categories with a number of observations above 25, it can be seen that files which come under the EP Fisheries committee (PECH) at 41.4% is one of the most redacted policy areas. Fishing is of great social and economic importance for some EU Member States over others. The regulations and quotas placed on fishing means a clash between MS, particularly between those with coastlines and dependency on fishing as an industry versus those that are less dependent on fishing., Regional Policy, Energy and Transport (RETT) at 38% is also significantly prone to its files' documentation being redacted. Employment (EMPL) at 36.2% features prominently here too. With respect to employment policy, there is potential for internal Council contestation on the extent to which the interests of business and workers are balanced. "Delegation to the Conciliation Committee" (DELE) at 37.8% also features highly. This is not surprising since as seen in other charts, the third reading Conciliation process sees documentation pertaining to some legislative files redacted. The more drawn out process of Conciliation-concluded files and the associated three reading stages does not necessarily mean file documentation is more transparent.

On the other side of the coin, there are policy areas which are relatively more transparent than the base category "JURI". "Budgetary Control" (CONT) is entirely transparent, albeit this just accounts for 4 files. "Industry, Trade and Energy" (ITRE) sees just 15.2% of its files' documentation redacted. Budget "BUDG" sees just 16.7% of its files redacted and "Legal Affairs" (JURI), a quite voluminous category at 191 files, sees just 17.3% of its files' documentation redacted. As seen later by the logistic regression models examining the likelihood of transparency, budget, and specifically different levels of community budget impact (high spend versus low spend) have a direct effect on legislative file documentation redaction.

Figure 7.3 document availability of each legislative file by the legal nature of files (n= number of legislative files)

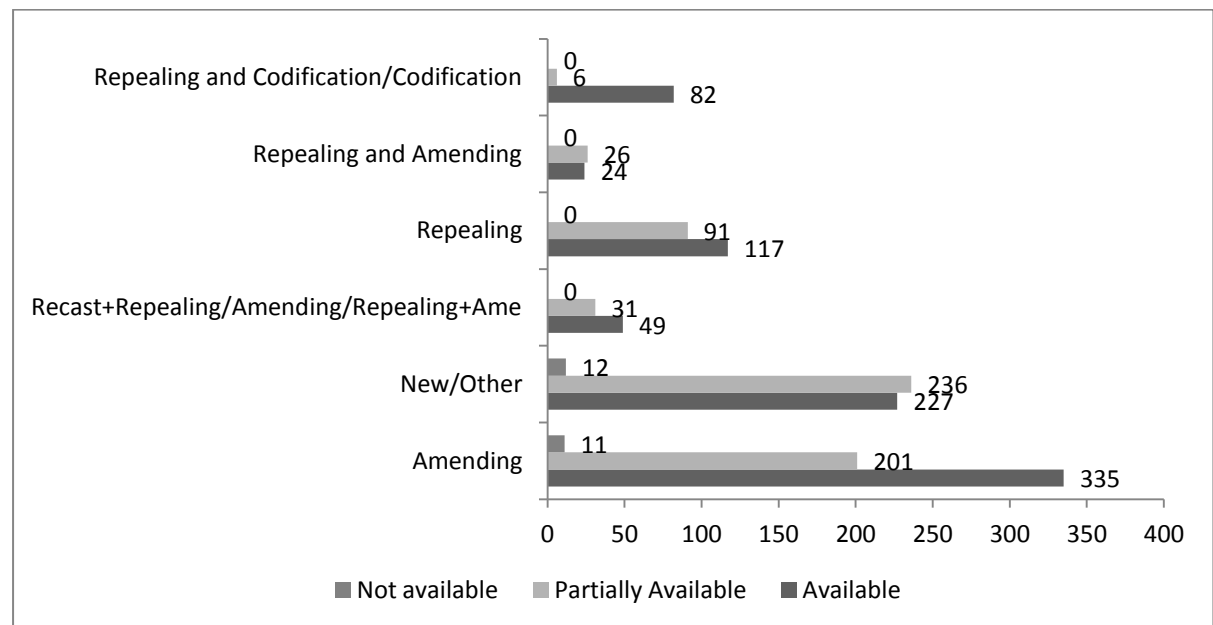
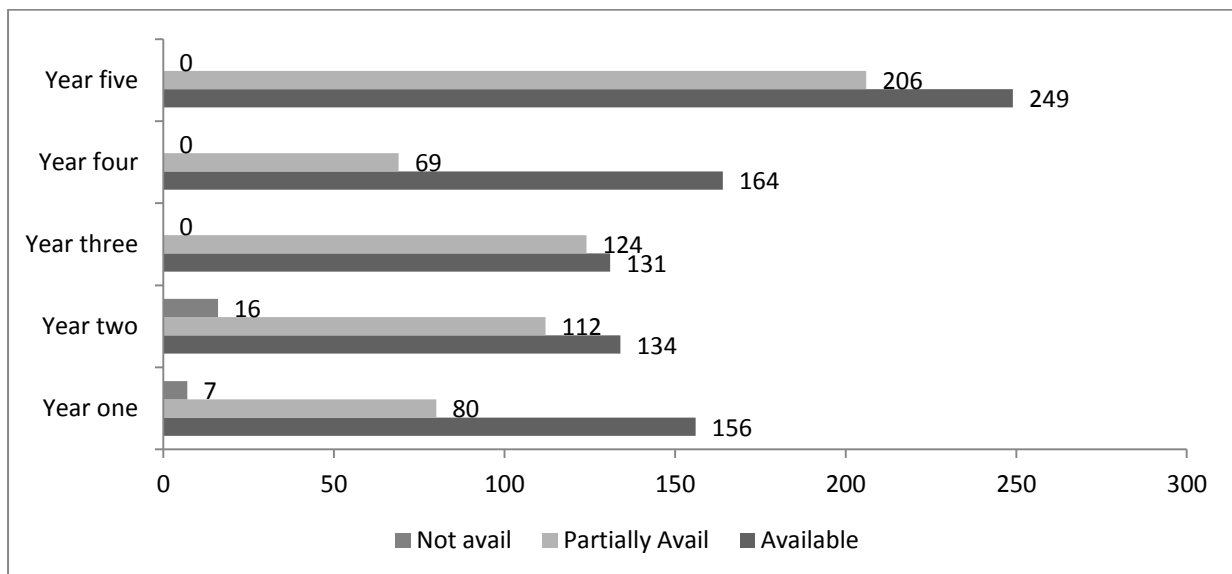


Figure 7.3 represents the availability of documentation pertaining to files with differing legal nature i.e. the intended legal purpose of the legislation.

Files which are “new and other” or "repealing and amending" are far less likely to be transparent with some 52% of files' documentation being either partially available or entirely unavailable. This is perhaps unsurprising since new legislation presents the potential for difference and a clash of preferences. The potential for controversy is higher than where files are simply joining i.e. files which are “Repealing and Codification/Codification" are less likely to undergo redaction. This can be explained by the joining nature of legislation that was already negotiated. There are usually not substantive changes to these files and they are unlikely to be politically controversial. Files in this category are entirely transparent in 82 of 88 cases.

Figure 7.4 document availability of each legislative file by EP term year (n= number of legislative files)

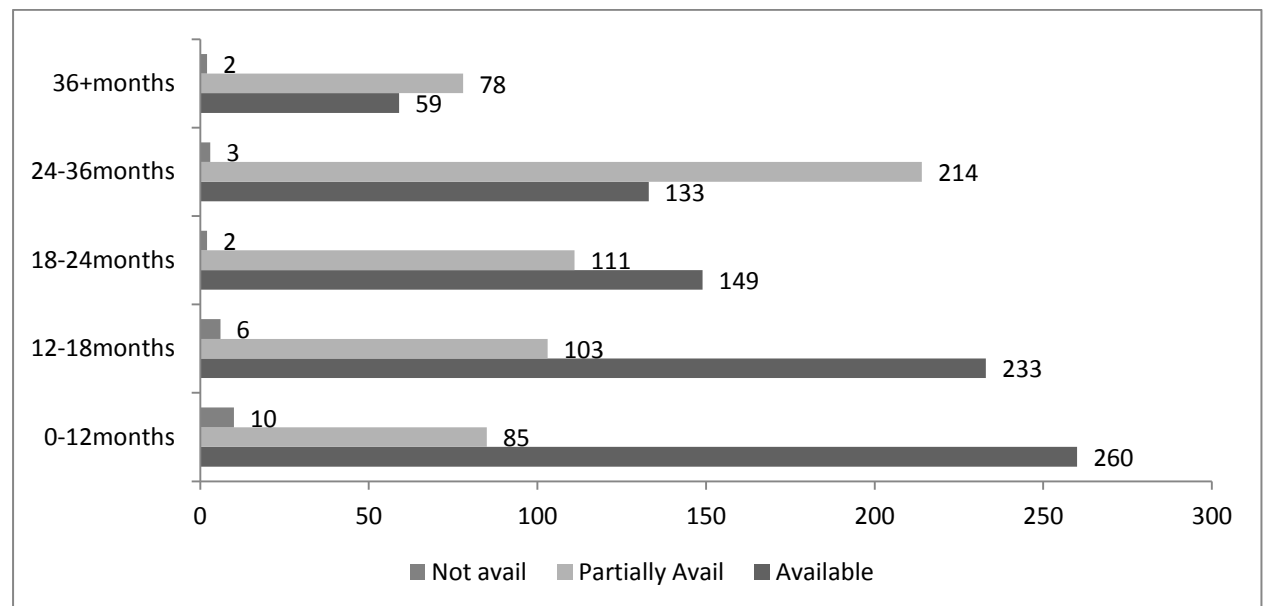


The above figure 7.4 shows the availability of documentation pertaining to files concluded at different stages throughout the EP's legislative term (5 years e.g. June 2009-May 2014).

Immediately, it can be seen that redaction levels are similar for years two, three and five (between 45% and 49%). Because year 5 is thought to be about MEPs readying themselves for the upcoming election campaign, it can be said that year 4 is the de facto final year of legislative decision-making. This is by far the least redacted at under 30%. This is to be expected. It is likely that MEPs wish to conclude, and to publically conclude their legislation, ahead of the EP facing into the elections. Similarly, year 1 might be considered as a "clearing" of the decks with regards to the previous EP's ongoing legislative work-load. This year is relatively transparent with redaction at under 36%. The current EP's own legislative priorities are yet to be properly pursued and thus, the potential for controversy and redaction. Year 2 might be thought of as the first real year of legislative decision-making for this incoming EP composition. As mentioned above, an

increase in transparency in year 4 might be explained by MEPs' willingness to inform and impress constituents about legislation they have managed to conclude and publicise important provisions therein.

Figure 7.5 document availability of each legislative file by time taken to complete a file (n= number of legislative files)



It appears that files which are concluded the most quickly are least likely to undergo redaction. In terms of the categories laid out above, just below 27% of files taking 1-12 months are redacted, with just below 32% redaction for the category 12-18 months. For the category 18-24 months, there is a large jump in redaction to 43% and a larger leap to 62% for the following category, 24-36 months. This reduces slightly with redaction of 58% for the category of time 36+ months. This is a somewhat counter-intuitive revelation since it might be expected that there is a trade-off between efficiency and transparency. Instead, it appears that speedy legislation is good for transparency. In discussions with an EP legal advisor, it was suggested to me that it might also be expected that the longer a

file continues, the more chance there is for actors to have their position leaked, and thus lead to fuller transparency in terms of file documentation.

Interestingly, among the 23 files in the dataset which are entirely inaccessible, 10 of these occur where files are concluded quickest (0-12 months). This is somewhat concerning for the legitimacy of the democratic process whereby ten files were concluded exceptionally quick and entirely hidden in terms of the details of what was discussed i.e. whether it was the EP or Council whose preferences won out and how divided the actors were internally. Overall, this category of time taken is the most voluminous (in terms of total files) and most transparent.

Figure 7.6 document availability of each legislative file by time taken by trilogue (n= number of legislative files)

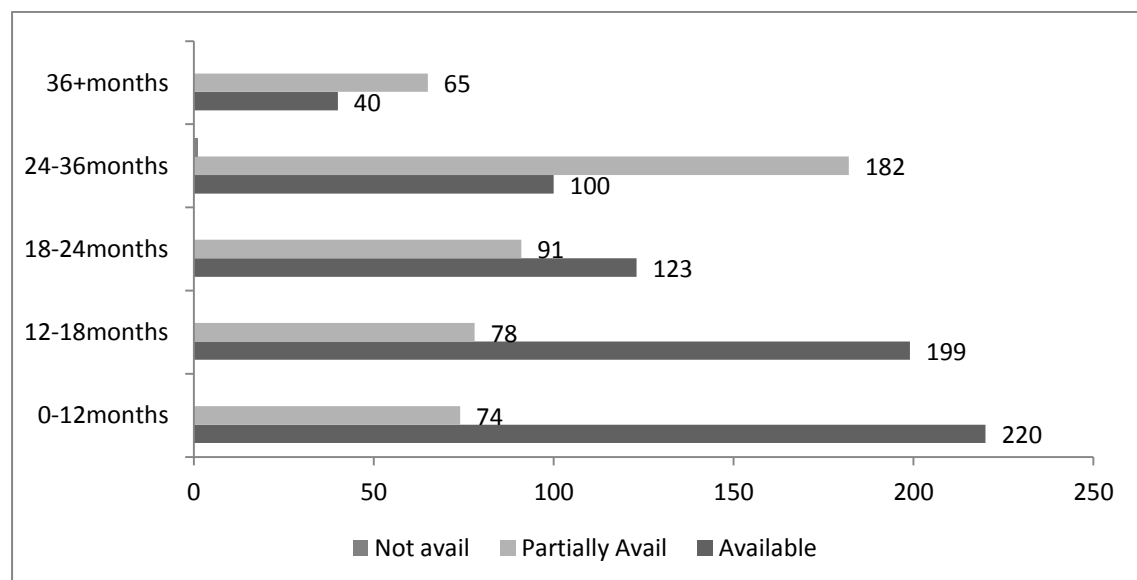
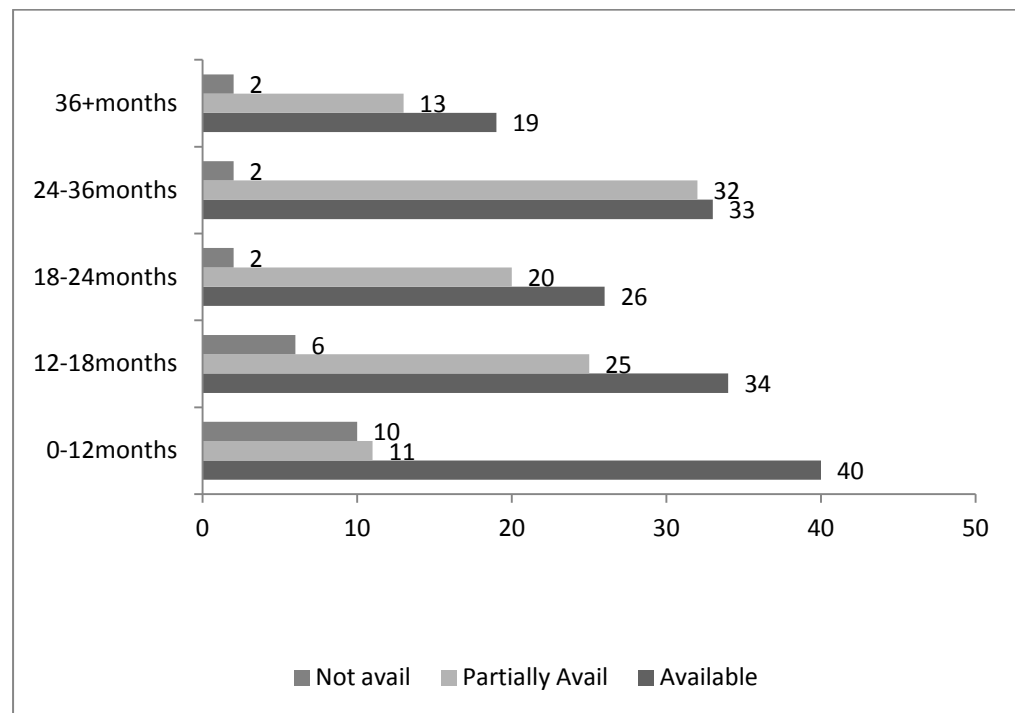


Figure 7.7 document availability of each legislative file by time taken by no trilogue (n= number of legislative files)



Figures 7.6 and 7.7 above represent the relationship between the availability of file documentation (transparency) and the time it takes for a file to be concluded. The information is broken down according to trilogued and non trilogued files. The first chart represents trilogued files while the second chart represents those files concluded without undergoing a trilogue to see if expeditious decision-making is good for transparency in the formal arena, like in the case of trilogues.

Focusing first on non-trilogued files, it can be seen that some 44% of non trilogued files which take more than 36 months are redacted to some degree. This increases to nearly 51% for files taking between 24 and 36 months to conclude. For the three shorter categories, the reduction in file redaction continues, although files taking between 12 and 18 months are more redacted than those taking between 18 and 24 months to conclude.

However, files taking the shortest period of time (0 to 12 months) are the least redacted, with 65.6% of files entirely transparent.

Focusing on trilogued files, the overall volume of files is sizeably larger and substantially more transparent. Also, with the exception of the categories "24-36 months" and "36+ months" (where both are 62% to 65% redacted), there is a continuous reduction in the redaction of trilogued files; the more quickly the file is concluded. It would appear to be the case that EAs are indeed the most transparent of all legislative files, in terms of their file documentation. Files taking between 0 and 12 months to be concluded are just over 25% redacted.

Figure 7.8 document availability of each legislative file budget category size (n= number of legislative files)

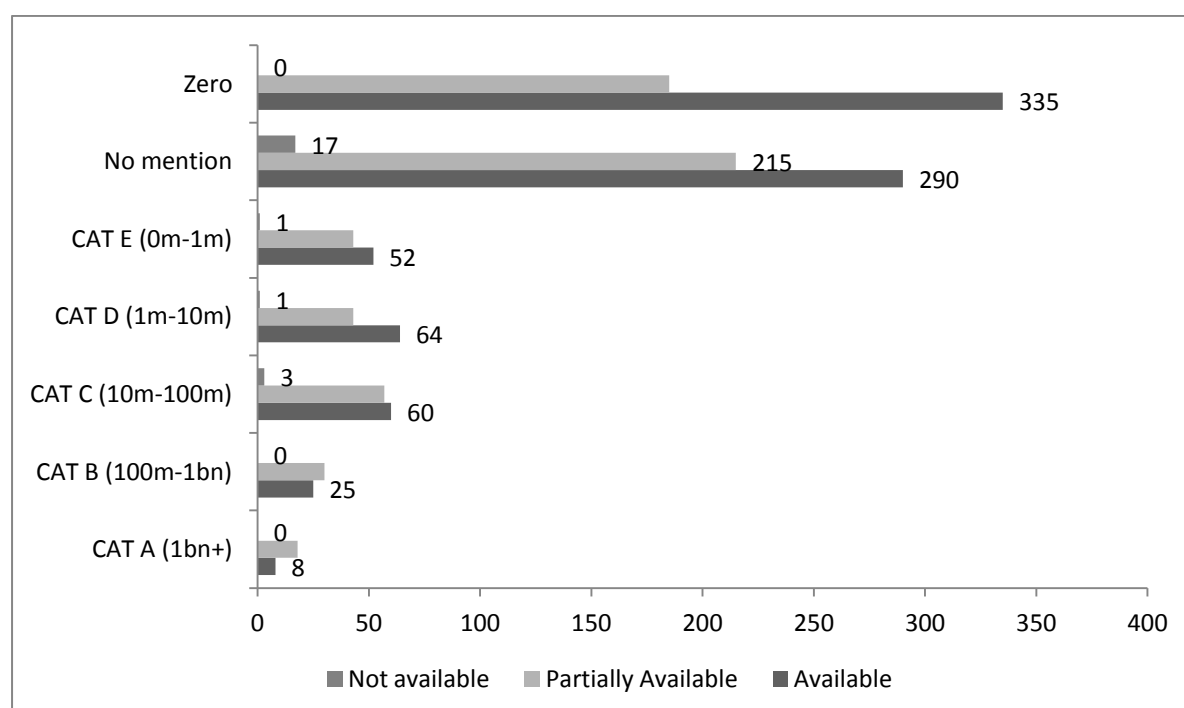


Figure 7.8 represents the availability of documentation pertaining to files depending on the levels of impact on the EU community budget.

In terms of files with an active budget implication, files in the budget category €1-10 million are the least redacted. Surprisingly, files in the category €0-1 million (41%) are more redacted (46%). Each category above this recording an increase in expenditure sees an increase in redaction. The most redacted category by far is the budget category (69%) of €1 billion plus.

17 files from a total of 22 files which are entirely redacted fall into the category of "no mention," in relation to budgetary impact. It is therefore interesting to consider "no mention" is in itself a form of redaction or some obstacle to transparency. It has a total redaction of over 44%.

7.7 Explicit hypotheses

- Hypothesis 9: Redaction is more likely to occur when a trilogue is used in the bargaining of a legislative file.
- Hypothesis 10: Redaction is less likely to occur the more recent the Treaty period.
- Hypothesis 11: Redaction is more likely to occur when files are “new”
- Hypothesis 12: Redaction is most likely to occur where legislative files are prone to concerns around sovereignty sensitivity and/or problems around domestic implementation
- Hypothesis 13: Redaction is most likely to occur when the budgetary impact of the file is largest.
- Hypothesis 14: Redaction is most likely to occur the longer a file takes to be concluded
- Hypothesis 15: Redaction is most likely to occur earlier in the EP legislative term cycle.

Table 3 Logistic regression (transparency)

VARIABLES		Full odds ratio	Pre Dec odds ratio	Post-dec odds ratio
transparency (dep var 1,0)				
Trilogue		0.75 (0.164)	0.62* (0.157)	0.41 (0.292)
Treaty (ref: Lisbon)	Amsterdam	0.42*** (0.111)	0.31*** (0.080)	
	Nice	1.68*** (0.280)	(ref.cat)	1.49* (0.358)
	SEA and <	10.58** (12.481)	9.25* (11.070)	
	TEU	0.19*** (0.084)	0.20*** (0.089)	
Legis' Purpose (ref:codif')	Amending	0.18*** (0.094)	0.41 (0.260)	2.00 (0.885)
	New/Other	0.12*** (0.065)	0.26** (0.166)	1.47 (0.682)
	Recast&Repealing/Amending/Repealing&Amending	0.15*** (0.085)	0.54 (0.489)	1.35 (0.690)
	Repealing	0.18*** (0.098)	0.37 (0.253)	2.04 (0.954)
	Repealing and Amending	0.13*** (0.078)	0.80 (0.673)	omitted
EP Committee (ref: JURI)	AFCO	0.59 (0.624)	dropped	0.08* (0.106)
	AFET	0.46 (0.341)	0.70 (0.795)	0.28 (0.308)
	AGRI	0.57 (0.237)	0.48 (0.364)	0.70 (0.406)
	BUDG	2.53 (1.562)	8.52** (7.996)	1.28 (1.174)
	CODE	0.85 (0.490)	7.77** (6.359)	0.19 (0.213)
	CONT	omitted	dropped	dropped
	CULT	0.31*** (0.140)	0.54 (0.333)	0.37 (0.315)
	DELE	1.58 (0.786)	9.38*** (6.340)	
	DEVE	0.47 (0.264)	1.00 (0.681)	0.50 (0.650)
	ECON	0.73 (0.226)	1.29 (0.628)	0.52 (0.231)
	EMPL	0.22*** (0.086)	0.44 (0.256)	0.11*** (0.064)
	ENVI	0.61* (0.173)	1.20 (0.509)	0.36** (0.157)
	FEMM	0.30 (0.223)	1.41 (1.233)	dropped
	IMCO	0.57 (0.199)	1.10 (0.679)	0.40* (0.194)
	INTA	1.64 (0.680)	dropped	1.04 (0.516)
	ITRE	0.93 (0.308)	2.08 (1.032)	0.57 (0.277)
	LIBE	0.65 (0.213)	1.60 (0.888)	0.39** (0.179)

	PECH	0.26*** (0.126)	dropped	0.14*** (0.080)
	REGI	0.72 (0.436)	0.19 (0.249)	0.93 (0.768)
	RETT	0.39*** (0.162)	0.77 (0.382)	
	TRAN	0.58 (0.198)	1.51 (0.837)	0.29*** (0.138)
Budget Cat (ref: zero)	100m<1bn	0.50** (0.165)	0.54 (0.303)	0.27*** (0.132)
	<100m	0.53*** (0.128)	0.58 (0.224)	0.37*** (0.134)
	1bn and more	0.20*** (0.114)	0.14 (0.201)	0.16*** (0.104)
	1m<10m	0.99 (0.252)	0.69 (0.263)	1.70 (0.750)
	>0<1m	0.94 (0.238)	0.54 (0.231)	1.29 (0.455)
	No Mention	0.81 (0.152)	0.70 (0.194)	0.70 (0.247)
timetaken (ref: 1-12m)	>12months<18months	0.85 (0.171)	1.83* (0.587)	0.56** (0.162)
	>18months<24months	0.69 (0.178)	2.56** (1.107)	0.30*** (0.110)
	>24months<36months	0.34*** (0.113)	3.17** (1.859)	0.10*** (0.045)
	36+ Months	0.59 (0.292)	10.82*** (8.809)	0.08*** (0.064)
EP Term (ref: four)	Five	0.50*** (0.100)	0.37*** (0.101)	0.99 (0.330)
	One	0.46*** (0.108)	0.21*** (0.084)	0.88 (0.318)
	Three	0.42*** (0.093)	0.54** (0.153)	0.33*** (0.122)
	Two	0.37*** (0.083)	0.22*** (0.071)	0.75 (0.271)
Tt*reading		0.92 (0.050)	0.69*** (0.059)	1.10 (0.093)
Observations		1,444	709	678
LRchi2(45;41;38)		388.39	225.81	172.29
Prob>chi2		0.0000	0.0000	0.0000
Log likelihood		-790.49373	-378.52982	-363.27914
Pseudo R2		0.1972	0.2297	0.1917

seEform in parentheses

*** p<0.01, ** p<0.05, * p<0.1

7.8 Discussion of model results and return to hypotheses

The Prob>chi2 statistics indicates that the three models are statistically significant. The p-value is less than 0.000. In terms of Pseudo R2, anything between 0.2 and 0.4 is thought to be a very good model (McFadden 1973). Each of the models range between 0.19 and 0.23 so this indicates a goodness of fit i.e. the model fits the data (summarising the difference between observed and expected values in the model).

Trilogue: since the entire population of the data set is made up of trilogue concluded files and non trilogue concluded files, the variable “trilogue” is included in this model to determine if trilogues in particular impact on the transparency of legislative file documentation. In the larger model, “trilfinal” (trilogued files) shows that overall, files that are trilogued are less likely to be transparent than those that are not trilogued. This effect is not statistically significant though. This relationship is most stark for the post-declaration period (0.41) but is still evident in the pre-declaration period. However, this is statistically significant only in the latter case and at the $p < 0.1$ range.

Hypothesis 9 expected that redaction is more likely to occur when a trilogue is used in the bargaining of a legislative file. Between trilogued files that are politically charged and highly contested, and those which are concluded as “Early agreements”, it was thought that there would be some trade off in terms of a reduction in transparency. This hypothesis was confirmed for all three models with the effect being strongest for the post-declaration model. However, statistical significance accompanied only the pre-declaration model.

Treaty period: (as representative) of a time period in the dataset is considered a theoretically relevant variable in explaining the transparency of legislative files. Treaty period demonstrates the changes under which codecision is extended across policy areas

and by which familiarity and the closeness in relationship between the co-legislators increases, the base category in the case of this variable is “Lisbon”. This is the theoretically most likely predictor of transparency. This is thought to be the most likely predictor of transparency due to the increased attention paid to the institutions’ responsiveness to being challenged on their democratic credentials.

When compared with “Lisbon”, “Nice” is some 1.68 times more likely to be transparent and this is highly statistically significant. “Amsterdam” is almost 2.5 times less likely to be transparent. This is highly significant too. The “TEU” period is nearly 5 times less likely to be transparent and is again highly significant. The “SEA and before” is some 10.6 times more likely to transparent. Since this category has just three cases, it is unwise to try to interpret this. Generally, the trend shows that “Nice” was the most transparent treaty period. “Lisbon” is still far more transparent than the period 1993-2003. This suggests some improvements in transparency across time but that more recently; files are becoming more redacted again. This is particularly worrying with the spate of first reading trilogued agreed files.

For the pre-declaration model, when compared to the base category “Nice”, “Amsterdam” is more than 3 times less likely to be trilogued. “TEU” is some 5 times less likely to be transparent. Both these categories are highly statistically significant. For the post-declaration model, when compared with the base category “Lisbon,” ”Nice” is more likely to be transparent but this is just marginally significant statistically.

Hypothesis 10 expected that document redaction is less to likely to occur the more recent the treaty period. In the full and the post-declaration models, the hypothesis is disconfirmed. A very mixed picture develops. In the full model, leaving aside the “TEU”, and “Amsterdam” the two other treaty categories “SEA and <” and “Nice” have positive

effects when compared with “Lisbon”. “Nice”, the next most recent treaty period is some 1.7 times more likely to be transparent (highly statistically significant). In terms of the pre-declaration model, compared with “Nice”, “Amsterdam” is over 3 times less likely to be transparent and the “TEU” period is some 5 times less likely. Here, the hypothesis is corroborated. When compared with the period’s most recent treaty, each of the two later treaty periods shows a corresponding decrease in transparency. The “SEA and <” period shows a positive effect but this is not significant.

For the post-declaration model, when compared with “Lisbon”, “Nice” is some 1.5 times more likely to be transparent. While this is just marginally statistically significant, it can be seen that “Lisbon” (files begun from December 2009) are less likely to be transparent. Theoretically, it had been expected that with “Lisbon” as the reference category, all other categories would have reported a negative effect but instead nearly all other categories report positive odds effects. It must be considered that some documentation pertaining to “Lisbon” files could be subject to a time-release delay. It is difficult to determine this delay and indeed to attribute some lag value.

Legal Nature: it is hypothesised that again, like in the case of trilogues, “repealing and codification/codification” files will be the least controversial and thus the most transparent files (least redacted). Files that fall under this category are normally uncontroversial since this consists of the joining up of two or more pieces of legislation without significant changes. For the full model, when compared with the base category, all other categories (“amending”, “new/other”, “recast and repealing/amending/repealing +amending”) show increased likelihoods of redaction. All categories are highly statistically significant. However, the odds ratios are all pretty similar at between 0.12 and 0.18. Legislation which is “New/other” (0.12) is the least likely to be transparent.

For the pre-declaration model, all categories are more likely to be redacted than the base category. The category most likely to be redacted is “new and other” at nearly four times. It is the only category which is statistically significant.

For the post-declaration model, all categories are surprisingly more likely to be transparent than the base category. It is surprising that files other than those that are simply joining up already-agreed legislation, without substantial changes, are indicating a greater likelihood of transparency. No category is statistically significant.

Hypothesis 11 expected that redaction is more likely when files are “new/other”. This hypothesis is corroborated for the full model and the pre-declaration model. This effect in each model is statistically significant too. Files which are “new and other” offer a brand new platform for the institutions to engage with one another in pursuit of their preferences with no pre-existing policy framework on which to obey. The hypothesis is not supported for the post-declaration model.

EP committee: represents policy area in the Transparency models. Again, as in the case of the trilogues model, (JURI) Legal Services is expected to be the theoretically most transparent policy area. Since this committee is procedural in nature, it is not expected to be engaged in controversial decision making, thus would not be expected to redact documentation text.

In the case of the full model, when compared with the base category, “EMPL”, “CULT”, and “PECH” are all substantially less likely to be transparent and are all statically significant at the $p > 0.01$ range.

For the pre-declaration model, “REGI”, “EMPL” and “AGRI” are all less likely to be transparent. None of these categories are statistically significant. “DELE”, “BUDG” and “CODE” are all between 7.8 and 9.4 times more likely to be transparent than “JURI.”

These three categories are statistically significant. This is surprising perhaps but the EP committees “DELE” and “CODE” are procedural committees and are not devoted to any particular policy areas but rather to aid the EP in the codecision procedure. The inclusion of “BUDG” is quite interesting. For the model post-declaration, the EP committees “EMPL” (9 times) and “PECH” (7 times) are all substantially less likely to be transparent when compared with the base category. Both are highly statistically significant. “AFCO” is the least likely to be transparent (12.5 times). This category is statistically significant only at the $p < 0.1$ range.

Hypothesis 12 expected that redaction is most likely to occur where legislative files are prone to concerns around sovereignty and/or problems around domestic implementation. This hypothesis is corroborated. Across the models, “EMPL,” “ENVI,” “TRAN” and “PECH”, all feature as policy areas least likely to be transparent. All categories are significant or highly significant.

Budget category size: is included. Cat A (€1 billion or more) represents the most money up for grabs (in terms of community budgetary implication and how it is spent/distributed) while Cat E (€0-1 million) represents the least money up for grabs. Other categories of variables included are “no mention” and “zero”. “No mention” relates to files where the Commission proposal does not explicitly refer to the community budgetary implication. The category “zero” refers to files where the Commission proposal states that there is no community budgetary implication. The base category is selected as “zero” since this is theoretically most likely to predict transparency. Files having no community expenditure are unlikely to see contestation around allocation of monies and other points related to budget in the file. In the full model when compared with the base category “zero”, it can be seen that legislative files with expenditure of between “€0 and €1 million” are similar to the category “zero” in terms of likelihood of being transparent

i.e. less likely to be redacted. It can be said that little or no money means that redaction is unlikely. For the category (€1m-€10m), the effect is similar. Neither of these is statistically significant. Categories “€10m-€100m” and “€100m-€1bn” are both approximately twice less likely to be transparent. The likelihood decreases for values above €100 million. Most notably, the category of files with expenditure of more than €1 billion is 5 times less likely to be transparent than those that have “zero” budgetary implications. These three higher spend categories are statistically significant.

For the pre-declaration model, the same trend exists, particularly among the top three expenditure categories. By some distance, the category with an expenditure of “above €1 billion” is the least likely to be transparent (7 times) compared with the base category but none of these categories are statistically significant.

For the post-declaration model, a very similar story unfolds. The three top spending categories are by far the least likely to be transparent and are statistically significant. There is a corresponding decrease in transparency (increased likelihood of redaction) for each increase in categories of expenditure. The category recording the largest expenditure is over 6 times less likely to be transparent. All three categories are highly statistically significant.

Hypothesis 13 expected that redaction is most likely to occur when the budgetary impact of the file is largest. This hypothesis is supported across the three models. All three models show a very similar trend. The three highest categories of spend see a significant and decreasing likelihood of transparency with the least transparent category in each model, the highest spend category. The hypothesis is corroborated. Big community budgetary impact matters when it comes to the redaction of documentation. This is

concerning that the process behind the decisions regarding the expenditure of large amounts of public money is secretive.

Time taken: is theoretically relevant in determining the effect of efficiency on transparency and if there is a trade-off between both.

The full model shows that when compared to the base category (1-12 months), there is a decreasing likelihood of transparency, the longer a file takes to be completed. This somewhat linear relationship is with the exception of the category “36+months” which is still 1.7 times less likely to be transparent. The only category which is statistically significant (and highly) is category “34-36 months”. Files that take this long to conclude are some 3 times less likely to be transparent. For the pre-declaration model, all categories are statistically significant/highly statistically significant. The first category of “12-18months” is only statistically significant at $p < 0.1$. For every increase in the “time taken,” there is a corresponding increase in the likelihood of transparency i.e. file documentation is less likely to be redacted. Files taking longer are most likely to be transparent. An EP legal advisor suggested to me that this occurs due to the potential for information leakage. If Council members leak their positions to the media or EP contacts over time, the Council is more inclined to release this documentation more generally. The first category of “12-18months” is some 1.8 times more likely to be transparent whereas the category “36+months” is some 10.8 times more likely to be transparent.

For the post-declaration model, all categories are statistically significant/highly statistically significant. For each increase in the “time taken”, there is a substantial decrease in the likelihood of transparency. For the first category of “12-18months,” files are 1.8 times less likely to be transparent. Files that take “36+months” to be completed are some 12.5 times less likely to be transparent.

Hypothesis 14 expected that redaction is most likely to occur the longer a file takes to be concluded. The full model shows a very mixed picture. There is no linear relationship on show. The hypothesis is disconfirmed for the pre-declaration model. For each increase in the “time taken”, there is an increase in the likelihood of transparency. This might be explained by information leakage, as explained by EP advisor 1. However, for the post-declaration model, the hypothesis is corroborated. For each additional category of the “time taken”, there is a subsequent decrease in the transparency of documentation. This perhaps goes some way towards assuring those that are concerned about a trade-off between efficiency and transparency. It seems that it is possible to have both legislative efficiency and relative transparency, at the same time.

EP Term Year: is theoretically relevant and thus included because it might be said that EP participants to legislative decision-making are more likely to reveal the fruits of their work in the lead up to EP elections. In each case, “year four” is considered to be theoretically the most likely to predict transparency since this is the last true year of legislative activity for the EP ahead of elections. This is the true final year of legislative productivity prior to the year of MEP electioneering. MEP1 notes that while the EP does things transparently, it is constrained when it comes to trilogues. “The Council would fight it tooth and nail” when it comes to the EP’s wish to operate more transparently.

In the full model when compared with the base category, “year 2” and “year 3” are less likely to be transparent. There is a reduction in transparency each year from year 2 (year 2: 3 times; year 3: 2.5 times) up to year 4. All categories are statistically significant too.

For the pre-declaration model, the trend is similar to the full model. “Year two” is over 4 times less likely to be transparent whereas this reduced to 1.85 times in the case of “Year three”. All categories are statistically significant.

For the post-declaration model, Years “Five”, “One” and “Two” are relatively similar to the base category “year four” in terms of likelihood to predict transparency. Interestingly here it is the “year 3” which is the only least transparent (3 times) category. This category is highly statistically significant.

Hypothesis 15 hypothesised that redaction is most likely to occur earlier in the EP legislative term cycle. This hypothesis is supported in the case of the full model and the pre-declaration models. In both of these models, “Year 2” and “Year 3” are more likely to be redacted than the reference category with “Year 2” being the most likely to be redacted. Each category is statistically significant. The post-declaration model does not support the hypothesis- at least not to the same degree. However, “Year 3” is still relatively less likely to be transparent than “year 4”. This relationship is highly significant. To best interpret the hypothesis as envisaged, it is worth ignoring “year 1” and “year 5” which are roll-over years between the previous and next EP terms. Overall, the hypothesis is supported.

Tt*reading (controversy): is an interaction of time taken multiplied by reading stage. Its inclusion was to help control for the controversy of a file. When a file takes longest to be concluded and progresses into the second or even third reading stage, this indicates that there was some controversy or disagreement between the institutions. For the full model, it had little if any effect. For the pre-declaration model, it showed that controversy had a negative effect (0.69) on transparency. In other words, the more controversial files were more likely to face redaction. This is highly statistically significant too. For the post-declaration model, controversy is seen to have a positive effect on transparency. This is not statistically significant.

7.9 Summary of hypotheses

In summary, the hypotheses are broadly corroborated. Hypothesis 9 is supported across the models in terms of the effect that trilogued files have on the likelihood of redaction. Hypothesis 10 is disconfirmed in the full and post-declaration models, with Lisbon, the most recent treaty, period performing worse in terms of transparency. In the pre-declaration period the hypothesis is corroborated where Nice is the most recent treaty period, and the most transparent. Hypothesis 11 is supported in the full and pre-declaration models but not supported for the post-declaration period. Files which are "new/other" are more likely to be redacted in the former. Hypothesis 12 is corroborated for all three models. Files prone to concerns over sovereignty and domestic implementation are more likely to be redacted. Hypothesis 13 is corroborated for each of the models. Community budgetary impact is likely to lead to redaction of documents. Hypothesis 14 is corroborated only for the post-declaration model. Files taking the longest to conclude are the most likely to be redacted. It is disconfirmed in the pre-declaration model and the full models. Hypothesis 15 is supported only in the full and pre-declaration models. Redaction is most likely to occur earlier in the EP legislative term cycle.

The next section consists of a range of case studies presented to illustrate some of the above dynamics arising from the set of quantitative trilogue models including (a) Budget; (b) Time taken to conclude a file; (c) Policy area; (1) Environment and (2) Transport, (3) Employment and (4) Fisheries.

Chapter 8: Illustrative case studies explaining transparency

This chapter will introduce case studies designed to illustrate the findings of the statistical models. This section will include case studies on 8.1 big spending files (community budgetary impact), 8.2 files which take the longest; and 8.3 files in the policy areas of 8.3.1 Environment; 8.3.2 Transport, 8.3.3 Employment and 8.3.4 Fisheries. These three sets of case studies were chosen since they are the key hypotheses which were tested empirically and following on from the model output related to these hypotheses, these case studies will serve to illustrate these dynamics.

8.1 Transparency and Budget

It is hypothesised that big spend results in a decrease in transparency because (1) a large amount of money connected to a file leads to disputes about the distribution of money, (2) having large amounts of money connected to a file further illuminates the already contestable issues between the institutions, the EP and Council in particular. It is possible that redaction of documentation can be concentrated on Working Party meetings or other Council specific policy-making space due to the inability of the Council to reach consensus with one or more Member States losing out. The contestation, perhaps on a left-right ideological basis can be the main place of the contestation within the file. As well as this, it is possible that redaction occurs in the documentation related to and recording the compromise/final decision on a file (informally or formally). The quantitative models on transparency/redaction show support for large categories of community budgetary impact causing a corresponding increase in redaction (reduction in transparency). This effect is seen in the three models (full, pre-declaration and post-declaration). In the post-declaration era, files that have a budgetary implication above €1

billion are some 6.25 times more likely to be redacted (odds ratios of 0.16) when compared with files that have zero budgetary implication

In the two case studies below (2011/0275(COD)⁴⁸ and 2011/0268(COD)⁴⁹, redaction of documentation is concentrated around the compromise (both trilogues) and in both cases; there is specific mention of money and/or allocation of expenditure leading up to and including the compromise. The following case studies will provide a summary of the legislation, a summary of the compromise and/or the issues leading to the compromise.

Regulation 2011/0275(COD)

This regulation was proposed so as to define the framework dictating cohesion policy for the years 2014-2020 with reference to the European Regional Development Fund (ERDF) in terms of investment for growth and jobs. The overall spend in relation to Cohesion policy for the years 2014-20 is €376 billion. A maximum of €183.3 billion across this period is available for this particular ERDF regulation. This particular proposal is part of a number related to Cohesion Policy during this time period. Specifically, the ERDF proposal seeks to support regional and local development through co-financing in the avenues of research and design; climate change and the environment, business support to SMEs, services of common economic interest; telecommunications, energy and transport and education and social infrastructures and sustainable urban development. This proposal lays out the scope of intervention of the ERDF, defines the priorities for investment according to each of the thematic objectives and a list of activities that do not qualify for support. In terms of investment priorities for the proposal's objectives, it permits the more developed regions to spend much of their allocation on energy

⁴⁸File 2011/0275(COD); [www.europarl.europa.eu/oel/popups/ficheprocedure.do?reference=2011/0275\(COD\)](http://www.europarl.europa.eu/oel/popups/ficheprocedure.do?reference=2011/0275(COD))

⁴⁹File 2011/0268(COD); [www.europarl.europa.eu/oel/popups/ficheprocedure.do?reference=2011/0268\(COD\)](http://www.europarl.europa.eu/oel/popups/ficheprocedure.do?reference=2011/0268(COD))

efficiency and renewable energies, improving the competitiveness of SMEs and innovation, whereas the lesser developed regions can have greater scope around their spend according to their needs. In terms of sustainable urban development, the proposal lays down that there must be at least 5% of ERDF resources spent here including an "urban development platform to promote capacity building and exchange of experience" and a list of cities identified for this purpose; regions that suffer via natural or demographic disadvantage, such as rural areas, places of industrial transition and some of the most northern regions at risk of natural handicap. Regarding the outermost regions, the proposal takes into account the structural social and economic situations of these areas with special measures around access to Structural Funds.

Redaction: the ERDF-while part of a wider package of files related to Cohesion policy-is alone worth €183.3 billion. Most of the official compromise and other documents recording compromise between the institutions are redacted. It is therefore worthwhile looking at the summaries of the EP and Council positions (seen in the Legislative Observatory summary of events) leading up to the compromise to determine where their positions might have diverged. References to money in the lead up to this compromise will help illustrate the dynamic that money matters when it comes to redaction.

The Committee on Regional Development adopted its report in July 2013. Members (EP committee members) opened the scope up more widely to include among other things, "productive investment, irrespective of the size of the enterprise"; investment in infrastructure related to research and innovations; small scale infrastructure and sustainable tourism infrastructure; and networking (exchange of experience between authorities, partners and other stakeholders). Other changes made included deleting the part of the Commission's proposal which did not permit ERDF support for infrastructure for citizens in the transport, ICT and environment sectors in more developed regions.

Members objected to investment in airport infrastructure unless there was an environmental protection element.

Under the European Territorial Cooperation goal, the ERDF would support sharing human resources, infrastructure and facilities across borders. In terms of thematic concentration, MEPs preferred increased flexibility, particularly for regions that were considered to be in "transition". The report included particular modifications which would take into account region sensitive needs.

The Council, at the end of September 2013, provided the Presidency with guidance in terms of concluding negotiations with the EP. Many delegations were opposed to diluting "macro-economic conditionality," and were determined that the ERDF, as well as the other funds, were not at risk due to unsound macroeconomics. Many Member State delegations were also opposed to changing the "performance reserve and pre-financing" which could affect the payments' profile; while some Council delegations were against making changes to co-financing arrangements. This was of paramount importance so that Member States had a sense of ownership over the different programmes. The Council is demonstrating its concern on the proper use and protection of its delegations' money.

Note from the Council Presidency to Coreper:⁵⁰ some issues arising in trilogues were article 3 on the scope of support for regional and local development. The Council and EP disagreed on the inclusion of "sport" and "sustainable tourism" but that "culture and tourism" could be mentioned in a recital. The Council Presidency was also open to an EP request to mention "all actors and partners involved" in terms of networking and experience exchange. Article 4 on thematic concentration needed further discussions. The two institutions agreed mainly around article 7 but wanted to return to find the

⁵⁰ Council document 17667/12; www.data.consilium.europa.eu/doc/document/ST-17667-2012-INIT/en/pdf

"appropriate formulation for the tasks of the Urban Authorities" in terms of interventions related to sustainable urban development. On article 9, the EP had challenged the "Urban Development Platform" but provided this is only applied to urban authorities and the delegation is optional. Regarding article 8 on "Innovative Actions in the field of Sustainable Urban Development", the EP raised issue regarding delegated versus implementing acts. On article 10 on areas of natural and demographic handicaps, the two sides committed to trying to find compromise. Regarding article 11 on additional monies for Outermost Regions, the EP's proposal to provide for "mobility services" was thought to be too much for the Council. Issues unresolved included those related to the CPR trilogue, MFF outcomes and aligning the proposal with other Fund-related regulations and other technical points. A central feature of contestation at trilogues was related to money

The above information provides an overview of the two institutions' positions in the lead up to compromise on the Regulation and some of the issues arising at trilogue. Some of the specific references to resource allocation can be seen by the EP's insistence on "5% of the ERDF resources given nationally under the title "investment for Growth and Jobs goal" will be left to the device of city and urban authorities to select operations". The Council also flagged hesitancy that the ERDF and other funds would be put at risk if "macroeconomic conditionality" was "diluted". Some Council delegations flagged their opposition to changing the "performance reserve and pre financing" which could affect the payments' profile; while other delegations were "against making changes to co-financing arrangements". Another reference to resources was in trilogue and in relation to article 11 on "additional monies for Outermost Regions". The Council could not agree to the EP's proposal to provide for "mobility services". At that stage, issues still to be solved included "aligning the proposal with other Fund-related regulations and other technical

points". The next case is another example of a file that has a large budgetary implication and which faces redaction during trilogues leading to the final compromise between the institutions. Again, there is evidence that references to money arise at these trilogues.

Regulation 2011/0268(COD)

This regulation is connected to the previous proposal in that it sets out the next framework for cohesion policy during the years 2014-2020. Whereas the previous Regulation dealt with the ERDF part, this deals with the ESF part (European Social Fund). The Commission proposes the Regulation in response to the high levels of unemployment and poverty across the community. With respect to employment levels, the Union is also at risk due to deficiencies in skill levels, poor performance in labour market policy and education, poor labour mobility and the marginalisation of some societal groups. The ESF aims to address the above problems, in line with the Europe 2020 Strategy so as to encourage "economic, social and territorial cohesion".

Principally, the four thematic objectives are (1) an "investment priority" including the promotion of employment and labour mobility; (2) social inclusion and the combatting of poverty; (3) investment in education, skills and lifelong learning and (4) improving institutional capacity/public administration. The proposal sees funding conditions set down including support for administrative services in Member States that are less developed or eligible to the fund; 20% of the allocation going towards ridding poverty and encouraging social inclusion; and that operational programmes should focus funding towards fewer "investment priorities".

Unlike other funds, the ESF should be accessible to smaller beneficiaries, reducing the burden of administration; and finally, in terms of financial instruments, provisions exist

for financial instruments to enable Member States to use the ESF as leverage to increase its ability to spend in the areas of employment, education and social inclusion.

The approach of this case study was to look at what types of documentation were redacted. Documentation related directly to the compromise and trilogues leading up to the compromise constituted the documentation subjected to redaction. Entirely redacted were documents on the approval of the final compromise; addendum to Compromise text and continuation of the informal trilogue. Documentation partially redacted were documents related to the compromise on Territorial development; the presidency compromise on thematic concentration; addendums and revisions to validation of preliminary results of the negotiations with the EP. Again, references to money/resource allocation in the lead up to the compromise will further help illustrate the dynamic that money impacts redaction.

Points of redaction: Council Document 17667/12,⁵¹ a note from the Council Presidency to Coreper regarding the second semester of 2012 trilogues, saw progress on thematic concentration and article 3; (article 3 in line with article 9 of the common provisions regulation laying out objectives for all funds). There was progress on article 3 around investment priorities but the Council was against the very prescriptive text put forward by the EP. There is evidence here of a clash between the institutions with respect to investment priorities (money up for grabs).

On article 3(1) (a), "voluntary mobility" was thought to be of importance by the EP due to the state of the economy and labour market (Council suggested compromise here by inserting into recital).

⁵¹ Council document 17668/12; www.data.consilium.europa.eu/doc/document/ST-17667-2012-INIT/en/pdf

On article 3.1.a.2, there was to be a compromise which would include the EP's preferences but also place particular attention on the young and youth unemployment; regarding the EP's addition of subparagraph 1.a. (ii a) (new), the Presidency suggested this should be dealt with in article 8 of the ESF (persons with disabilities);

Article 3.1.c.ii further examination was needed in relation to "comprehensive socio-economic integration" of marginalised communities since it goes beyond what the Council preferred. **Similarly article 3.1.b** and the reference to "training and vocational training" must be further examined. This is an example of a clash between the institutions on socio-economic grounds. The EP was seen to be over-reaching in terms of its prescriptive text seeking to protect marginalised communities.

Presidency note to Coreper⁵²: mentions giving ESF resources towards capacity building of social partners (EP wanted 2% ring fenced); giving ESF resources to NGOs and ESF support of transnational cooperation. One of the contested issues noted in this document related to the EP seeking to ring fence 2% of ESF resources towards capacity building. It demonstrates a clash in trilogues related to money.

A note from the Council Presidency to Coreper regarding the validation of trilogue results recorded agreement around financial issues; transitional and final provisions; EMFF-related articles and the performance framework. Solutions were also found for pending issues and technical adjustments around the thematic blocks. Delegations were relatively satisfied but there was still some discomfort around some parts: agreement on the ESF minimum share of 23.1% of Structural Funds. The EP committee for Employment has criticised this and wants 25% while the Council is against reopening discussions.

⁵² Council document 17666/12; www.data.consilium.europa.eu/doc/document/ST-17666-2012-INIT/en/pdf

Political agreement on the ESF as a whole was reached: Safeguards thematic concentration on Youth Employment Initiative (YEI) (eligibility threshold 25% for youth unemployment in 2012); the age of the target group was adjusted to include persons under 30 (but with safeguard for Member States since this is done on a voluntary decision by MS); also done was keeping the eligibility threshold for the YEI. The compromise includes ring fencing 20% of ESF resources for social inclusion and increasing the number of investment priorities from 4 to 5. Another part of this compromise with the EP saw a reduction from 5% to 3% in terms of eligible expenditure outside the EU from an ESF operation programme. The following were added to the list of common output and result indicators for ESF investments: the homeless, unemployed and rural participants. The Council was against adding asylum seekers or refugees with the compromise being to mention them in a recital. Other things addressed were thematic blocks including financial issues, transitional and final provisions; EMFF-related articles; performance framework; and pending issues and technical adjustments. This paragraph and the previous paragraph demonstrate a clear and measurable clash between the EP and Council on the specific allocation of monies towards various sub categories of ESF spending.

Conclusion: the above detail was obtained from the Council's internal documentation (Presidency to COREPER etc.) and information on the compromise. Again, there are some interesting and salient dynamics arising, e.g. the EP's position in article 3.1.c.ii in relation to "comprehensive socio-economic integration" of marginalised communities and how this exceeds the preferences of the Council. There are other examples of salient issues arising between the institutions. However, like the previous case study there is a consistent thread of money/resource allocation being mentioned throughout. For example in document 17667/12, there is recorded progress on article 3 on investment priorities but the Council objected to the "prescriptive text" put forward by the EP. In a separate

document, there was further disagreement with respect to allocation of resources (expenditure). In terms of resources given towards "capacity building of social partners", the EP wanted 2% of resources to be ring-fenced. In a separate document from October 2013 between the Council Presidency and Coreper, regarding the validation of trilogue results, the Council was satisfied with the ESF getting 23.1% of structural funds whereas the EP committee for Employment criticised this and wanted 25%. Another example of allocation being contested was where the compromise was to include 20% of ESF funds for social inclusion and investment priorities totalling 5% instead of 4%. Also, the compromise saw a reduction from 5% to 3% in terms of ESF-funded programmes operating outside of the Union.

The quantitative models demonstrated that files that had the largest amounts of money (community budgetary impact) involved were substantially more likely to face redaction than those that had zero community budgetary impact. This dynamic featured heavily in both this case and in the previous mentioned regulation 2011/0275(COD). Of the four MEPs and one EP legal advisor that responded to the question of budgetary impact influencing redaction, two were sure there was a connection, two doubted it and one was unsure. MEP 6 noted "few countries want to be seen to give money and especially increases in money." The above finding suggests that rather than money talks, money actually whispers. While it is possible for me to circumvent the redaction of Council documents to ascertain what the main components of the final compromise between the institutions was (using the EP Legislative Observatory), the more precise details about what specific Council delegations wanted and the entire content of these discussions between the EP and Council are redacted. It is certain to me that the ordinary EU citizen would not be able to acquire satisfactory information about how decisions are made regarding the expenditure of their money.

8.2 Transparency and Time taken

In the post-declaration period where trilogues are used more and more, it is hypothesised that when a file takes longer to be concluded, it is least likely to be transparent (odds ratios of 0.08 in the case of files taking more than 36 months). Length of time normally indicates a delay in reaching agreement. While this delay can vary in reason, it is normally because the institutions cannot agree on an acceptable outcome or there is intra-institutional difficulty. This information can be established by looking at the Legislative Observatory's timeline for a proposal. The timeline shows the dates for each legislative proposal from the Commission proposal's date of publication up until its publication date in the Official journal. Like as seen in the last section on budget, redaction typically occurs at Council intra-institutional meetings like Working Party meetings or at the point of final conclusion/compromise (formally or informally). It is sometimes hard to decipher if the cause for the redaction is due to some Council members wishing to hide parts of their internally-agreed position from their domestic audience or if instead at trilogues, there is a first redaction of the inter-institutional gains or losses. If redaction occurs in the former case, it is likely to occur again in the latter. In both of these cases (2010/0273(COD))⁵³ and 2011/0138(COD))⁵⁴, much of the documentation redaction is concentrated around the state of play (negotiations within/between institutions) and the final compromise. In both of these cases, a summary of the proposal is provided and a summary of the compromise. The salient points on which compromise was reached will help identify the reasons for this redaction. This will be done by working backwards to the Council's position formation where necessary.

⁵³File 2010/0273(COD); [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2010/0273\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2010/0273(COD))

⁵⁴File 2011/0138(COD); [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0138\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0138(COD))

Directive 2010/0273(COD)

This directive was proposed to help combat large scale cyber-attacks in response to a steady increase in attacks on IT systems in Europe in recent years. Military, banking and public sector systems have been affected within the Community and externally. Large scale spreading of malicious software has led to these cyber-attacks through a sophisticated compromising of computers by other computers (botnet networks of controlling computers and zombies (the computer being controlled)). Since these attacks are cross-border, there is a need to harmonise the criminal law approach to the problem. Previously in 2005, the EU Member States agreed a Council Framework Decision (2005/222/JHA) which addressed the threat of criminality with respect to IT systems but following a 2008 report on the implementation of this Decision, new threats had been identified.

This proposal seeks to deal with these more sophisticated threats by developing a programme which helps to counter attacks by way of non-legislative measures and a target update of the rules of the aforementioned Decision. This approach permits better, more coordinated cross border EU action in the areas of law enforcement and public-private cooperation involving law enforcement and cybercrime experts and a EU-wide service level agreement governing law enforcement's interaction with the private sector, and improving training for law enforcement in the area of cybercrime.

This Directive penalises the "production, sale, procurement for use, import, distribution or otherwise making available of devices/tools used for committing the offences"; includes aggravating circumstances including large scale attacks using botnets, and where attacks are done while concealing the criminal's identity; introduces "illegal interception" as a

criminal offence; strengthens the already existing 24/7 contact points which will see a quicker response to requests for help from one of these contact points; and finally, this proposal lays out that Member States must properly record, produce and provide accurate data on cyber offences as per the previous Decision and according to the new provision on "illegal interception". This proposal does limit criminalisation to offences that harm the protected legal interest and not youngsters acting out of mischief.

Delay: in the above case, the delay in the file occurred at the hands of the Council. The principal redaction occurred (February 2011) at the point between the EP's committee referral (October 2010) and the debate in Council (June 2011). The documentation partially redacted is a note from the Presidency to the Council's preparatory body, the "Coordinating Committee in the area of police and judicial cooperation in criminal matters" (CATS). It sought to lay out the "state of play and orientation debate on certain issues". It noted that the UK and Ireland would adopt the Directive but that Denmark does not see itself doing this. CATS were being asked to provide guidance on issues ahead of the Working Party on Substantive Criminal Law (DROIPEN) discussions.

Redaction: some of the issues concerning delegations were around: applying the directive to "minor cases", levels of penalties, article 7 scope on "Tools used for committing offences", article 10 on "Aggravating circumstances" and article 13 and rules of jurisdiction. The rest of this document is then redacted. This is the place where there is usually more substantive detail provided with respect to the above points. This document directed me to find the document no. 18057/10⁵⁵ but this was entirely inaccessible.

⁵⁵Council document 15057/10; www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-18057-2010-INIT

However, Council document 5528/11⁵⁶ helped me see Council delegations' views on the issues pertaining to the articles mentioned above.

In terms of the issue of "minor cases and scope of criminalization", there was widespread disagreement between delegations on the "ambiguity of the scope of this exception", the need for a "common definition" instead, and other delegations wanted it deleted. Other delegations did not want a definition and wanted it left entirely to Member States.

On the issue of level of penalties, many delegations felt the levels in the initial proposal were too high. Some delegations wanted a "higher risk of being prosecuted" to act as a deterrent instead. The Council Presidency noted Member States can provide a minimum level of penalties and raise the maximum levels according to the preferences of their national legal systems. In this point and in the paragraph immediately above, some Council delegations were concerned about ensuring sovereign control over the scope of legislation and it not being too restrictive.

With regard to article 7 on the Tool used for committing offences: delegations were unsure about extending the scope of this article to "tools with a possible dual use" i.e. tools used for legal and illegal purposes. Delegations were unwilling to enact "far reaching criminalisation". The Presidency stated that limiting the article's scope to "tools that are designed or adapted exclusively for the commission of criminal offence would be too restrictive". In contrast to the above point, delegations were unwilling to "over-reach," likely due to the administrative burden that this would entail for their domestic authorities.

In terms of aggravating circumstances: delegations were unhappy with the possibility of providing "penalties for aggravating circumstances" and the Presidency noted the

⁵⁶Council document 5528/11; www.data.consilium.europa.eu/doc/document/ST-5528-2011-INIT/en/pdf

importance of separating "aggravating circumstances and a special offence" where an "aggravating constituent element" leads to an increased penalty according to the severity of the offence. Delegations wished for "internal coherence" in relation to organised crime and matched levels of sanctions.

Again, many Member State delegations disagreed with the proposal that the Member States should establish "extraterritorial jurisdiction" where offences covered by the Directive "are committed by a person who has a habitual residence in the territory of the Member States concerned."

While the Presidency's note to CATS on the "state of play and orientation debate on certain issues" was redacted, it is still possible to determine the type of content that leads to redaction.

It appears that Member State positions on the criminalisation threshold for minor cases, being potentially soft on penalties, being far reaching in criminalisation, and the issue of "extraterritorial jurisdiction" were all considered topics so sensitive at that stage to reveal individual Member State positions. Having looked at a similarly-titled document, individual Member State positions might normally be revealed in footnotes i.e. "NL entered a scrutiny reservation" or "ES maintains a scrutiny reservation". There is redacted detail in this document. The extent to which this information becomes available later on in the legislative proposal is difficult to determine since the information redacted is not entirely known. It might be determined that having seen the articles of the proposal causing trouble for delegates, being too soft on security (or even too hard) is likely to result in the redaction of documentation. It is clear that sovereignty concerns with respect to varying preferences on domestic translation of this legislation cause a divide among Council delegations and this is likely to lead to the redaction of Member State positions.

Regulation 2011/0138(COD)

This regulation was proposed to amend parts of Regulation (EC) No 539/2001 which lists third countries whose nationals must possess visas when crossing external borders and whose nationals do not require this (negative and positive lists). Previous amendments to this have seen these lists changed, but the Commission has identified the need to make some technical modifications to the body of the Regulation, particularly in response to the Visa Code being adopted.

A decade into the Schengen acquis and the Common Visa policy points to the need to harmonise the EU's visa policy instead of unilateral decisions of MS. Following on from the Lisbon Treaty, there is a need to introduce a safeguard clause and make changes to the reciprocity mechanism (to allow the Commission efficiently address cases where a third country in breach of reciprocity imposes a visa requirement to one or more Member States).

Overall, this modification to the Regulation will see an introduction of a visa safeguard clause (a quick suspension of visa waivers for those on the positive list in cases of emergency for Member States, with genuineness to be determined by the Commission); modifying the reciprocity mechanism: support for current reciprocity mechanism as changed in 2005 with non-reciprocity situations, usually those where Member States are considered by third countries to not meet waiver criteria as set out in their own domestic legislation; ensuring compliance with the visa code: reference to short stay and visa definitions (visa authorities transit through or a stay for no more than three months in any six month time period from the first date of entry in an MS, with airport transit visas excluded); ensuring the Regulation lays out whether a third country national is subject to/exempt from visa requirement (legal clarity to those that are refugees or stateless, so as

to determine the visa position for those living in the UK or Ireland-non participants in the Regulation 539/2001); progress towards full harmonising of common visa policy with the following provisions: harmonised visa exemption/visa requirement dealing with civilian air crew members and a procedure to exempt diplomatic and service passport holders from visa requirements; clarifying the situation and setting out a legal basis of the visa requirement or exemption for entities that provide diplomatic passports to its members (according to international law by entities that are not intergovernmental and covered under the previous Regulation or where such cases are included in the Table of travel documents and Member States declare if they recognise these or not. It is important to have these covered by Regulation 539/2001 and Member States should notify the Commission on their decision); and finally, the need to adopt a new provision in terms of obligations bestowed upon Member States from prior EU/international (association agreements, around movement of persons and services) agreements that differ from the common visa rules. These agreements are above the provisions of Regulation 539/2001. To this end, the Commission proposes article 4 permitting Member States to allow exemptions for service providers from visa requirements so as to live up to their obligations, pre-entry of the Regulation 539/2001.

Redaction: in the above case, a lot of the time spent completing the file was once again at the stage of the Council's own position formation. There was a lot of redaction to documentation at this stage but also at the final compromise stage. This case study will focus on both of these stages of redaction to ascertain the issues which were time consuming (and thus controversial) leading to a reduction in transparency. Documents

14903/11⁵⁷; 6807/12⁵⁸; 7438/12⁵⁹; and 10204/12⁶⁰ related to the Council's own position-formation stage are all redacted.

The documentation mentioned above was peppered with deletions identifying which Member State delegations agreed/disagreed with the different provisions of the document containing the Working Party's "outcome of proceedings." Using the Legislative Observatory's summary of events, the following can be derived: with respect to the safeguard clause, the Council amended article 1a. The Commission proposal had framed emergency situations permissible in seeing the safeguard temporary reintroduction of visa requirements for third country nationals where there was a "sudden increase of at least 50% in relation to illegal stays and/or asylum applications and/or rejected readmission applications". The Council sought to make some changes. There was a text change of "sudden increase" to "a substantial and sudden increase" with 50% to be just a "guiding principle" and thus moved to a recital. The point on "asylum applications" was made clearer in that such applications refer to those "which are manifestly unfounded or do not fulfil the conditions for international protection". As well as the other things to be taken into account by the Commission when considering the Member State notification on extension, "public policy and internal security" as well as the "consequences of a possible suspension" were also added by the Council. At the next Council debate in October 2012, the Mixed Committee (EU and other partners) had a discussion on the "post visa liberalisation monitoring for the Western Balkan countries". Delegations raised concerns regarding an increase in "mostly unfounded asylum applications" arising from some of these countries and stressed the need to remedy the problem. The Commission agreed to raise this in an upcoming ministerial forum between the EU and Western Balkan

⁵⁷Council document 14903/11; www.data.consilium.europa.eu/doc/document/ST-14903-2011-INIT/en/pdf

⁵⁸Council document 6807/12; www.data.consilium.europa.eu/doc/document/ST-6807-2012-INIT/en/pdf

⁵⁹Council document 7438/12; www.data.consilium.europa.eu/doc/document/ST-7438-2012-INIT/en/pdf

⁶⁰Council document 10204/12; www.data.consilium.europa.eu/doc/document/ST-10204-2012-INIT/en/pdf

countries on Justice and Home Affairs. Many delegations asked that negotiations with the EP around the "safeguard clause allowing the temporary reintroduction of the visa requirement-in specific circumstances-for nationals of a third country who can normally travel to the EU without a visa", be sped up.

In summary, the changes sought by the Council are quite sensitive in terms of the proposal's scope and the increased level of discretion awarded to Member States concerning "emergency situations". This type of content alteration appears to see subsequent redaction of delegations' positions. With respect to the compromise, the concept of "full reciprocity" might be considered contentious. This entails all Member States following the reciprocity mechanism to increase the EU's cohesion on External Relations policy e.g. a uniform response to a visa requirement for one Member State's nationals. The conditions around suspending a visa waiver in the case of emergencies etc. and the accepted reasons for this is also considered a sensitive subject, potentially engendering redaction. The thorny issue of "public policy and internal security" is highly salient too, particularly with respect to the "consequences of suspending visa exemptions in terms of the effect on external relations". It is difficult to see the EP's own specific positions on this since it recommends the Council's position be adopted, following informal discussions. These discussions culminate in a compromise. Documentation on this is entirely redacted.

The quantitative models showed that files which take over 36 months to conclude are some 8.5 times more likely to face redaction. The above two cases 2010/0273(COD) and 2011/0138(COD) demonstrated that issues of sovereignty and control in the areas of IT security and immigration engendered controversy and contestation, leading to both delays in the files being concluded and the redaction of file related documentation.

As noted earlier in the illustrative case studies on trilogues that were polity building, immigration was only moved across from the third pillar to the first pillar (EP role switching from consultative to codecision) in 2005. This case would give weight to Bunyan's (2007:7) concerns about immigration files being concluded at first reading "through secret trilogue meetings" in that there appears to be wide-scale redaction of documentation detailing what occurs at those meetings. More generally, related to both the cases discussed immediately above, is the issue of sovereignty and Member State control. Earlier I wrote that five MEPs and one EP legal advisor positively responded to the question linking files that are sovereignty sensitive and trilogues. They all agreed files dealing with sovereignty sensitivity were most likely to be trilogued since discussions "get stuck" where the "Council is not budging". They also noted that these files were normally "highly controversial" and it was likely that there would be an attempt to "keep the content quiet from the media until it is too late". If such files are likely to be trilogued for reasons of controversial sovereignty implications, it is quite worrying for democracy that these files are also among the most likely to be redacted. To the average person who does not understand the EU's decision-making procedure very well, it might appear at first hand that the time taken to complete this file is a good thing. It could ordinarily deduce that due process is being applied and all actors consulted. However, first reading files can "go informal", yet still take a relatively long period of time to be concluded where a file contains controversy. In this case, the delay is indicative of controversy or sensitivity, which is the cause of redaction.

8.3 Transparency and Policy Area

This final section on redaction/transparency illustrative case studies seeks to illustrate the policy-related dynamics stemming from the statistical models. It is hypothesised that salient points of contestation within the Council and/or between the Council and the EP are likely to see redaction in the Council's position internally and/or the final compromise/position (informally agreed or formally agreed files). The following four policy areas (as represented by European Parliament Committee) are most likely to see documentation redacted for the post-declaration period: Environment (0.36), Transport (0.29), Employment (0.11) and Fisheries (0.14). When I asked MEPs and one EP legal advisor what policy areas they most expected redaction, MEP 2 noted Fisheries; MEP 4 identified Employment. When told what the quantitative models revealed, MEP 6 was not surprised Fisheries was among the most likely to be redacted because of the variation of national interests related to fishing. MEPs 4 and 7 answered Foreign Affairs, Economic and Monetary Affairs and the Internal Market as potentially being among the most redacted. The models support their hunch but not to the same degree as Environment, Transport, Employment and Fisheries.

8.3.1 Transparency and Environment

Regulation 2013/0239(COD)⁶¹

This regulation was proposed to amend Regulation (EC) No 1013/2006 on the shipments of waste within the Community and between Member States and other countries so as to protect the environment. This existing legislation is deficient with respect to enforcement and inspections. In 2011, a study determined that up to 2.8 million tonnes per year of

³⁹File 2013/0273(COD); [http://www.europarl.europa.eu/oel/popups/ficheprocedure.do?reference=2013/0273\(COD\)](http://www.europarl.europa.eu/oel/popups/ficheprocedure.do?reference=2013/0273(COD))

illegal shipments pass within and out of the EU, causing particular problems where such shipments carry hazardous waste and other waste that is illegally sent for dumping or a lesser form of treatment. There is clear evidence of non-compliance around illegal waste shipments (25% between October 2008 and November 2010). Bans on the export of hazardous waste/other waste for disposal are often avoided. This Regulation seeks to harmonise the implementation of the Shipments of Waste (WSR) by setting up minimum inspection obligations across the community in terms of waste streams. This will see "regular and consistent planning of inspections". This includes "risk assessments, strategies, objectives, priorities, numbers and types of planned inspections, assignment of tasks, means of cooperation between authorities and provisions on training of inspectors." The Regulation also permits Member State authorities to require waste exports to provide evidence supporting the legality of shipping. This evidence might detail whether the substance is "waste", whether the shipment is destined for disposal or recovery; the manner of waste treatment and the facility's standards at the country of destination.

Redaction: the one document that was redacted in this set of 31 documents (includes revisions and addendums) was document 5525/14⁶² from January 2014. This was addressed to Council Delegations from the General Secretariat of the Council. The content was provided so as to prepare for the Environment Working Party meeting later that month. The document contained a four columned table with the Commission's proposal, the EP amendments (on the back of the ENVI committee vote) and the Presidency's proposal for a possible Council position. This third column (Council common position) and the final column containing comments were entirely redacted. By reviewing the Council's debate summary from the Legislative Observatory (mid-October), it can be seen that ministers discussed the "appropriateness of the scope of the

⁶²Council document 5525/14; www.data.consilium.europa.eu/doc/document/ST-5525-2014-INIT/en/pdf

proposal"; if the proposal "strikes the right balance between ensuring a minimum level playing field and allowing the necessary flexibility". As seen in many of the case studies previous to this, the issue of sovereignty arises where the Council seeks to mitigate the inconvenience and administrative burden that legislation places on its MS. Generally, ministers "supported inspection planning" but wanted consideration given in plans towards the objective of the legislation while being cognisant of the "national situations and the costs of implementation". Similar to the earlier trilogue case studies, the financial costs on Member States towards applying the legislation is a cause of contestation. This contestation is likely to contribute towards the redaction of documentation. Member States were uneasy about the publication of inspection plans. The immediate trilogue-related document published after this date notes that some of the key issues remaining were: Inspections, Inspection plans and their publication, publication of the outcome of inspections, powers to be granted to authorities in terms of inspections, data exchange through electronic means and the provision of a review. In summary, some of the issues arising at trilogues resulting in redaction were connected with inspections and the transparency of these findings. The very question of transparency has caused a resultant decrease in documentation transparency.

Regulation 2013/0435(COD)⁶³

This regulation was proposed to join and update legislation provisions currently in force with respect to food safety, protecting public health, securing the functioning of the internal market for food and supporting innovation for the food sector. Existing provisions will be repealed, seeing a streamlining of the "authorisation procedure for

⁶³File 2013/0435(COD); [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0435\(COD](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0435(COD)

novel foods, to improve its efficiency and transparency". The Regulation is limited to the safety of novel food and is based on what was agreed at Conciliation in relation to Regulation (EC) 258/97. That particular proposal did not come to adoption since the Conciliation Committee could not find adequate compromise in March 2011. This new Regulation (2013/0435(COD) consists of the following main points: subject, scope and definitions: novel foods to face harmonised safety evaluation and authorisation; definition of novel foods clarified; marketing of traditional foods to be simplified; "engineered nanomaterials" must be assessed and authorised prior to going on the EU market. In terms of requirements for placing foods on the market: they must not present danger to the health of, or mislead, consumer; have proper specifications, labelling, conditions of use and post-market monitoring; individual authorisations will be replaced by generic authorisation; novel foods already authorised will be allowed to continue on the market. In terms of authorisation procedure for a novel food: all applications must go to the Commission which can request a scientific opinion around risk from the European Food Safety Authority. In terms of traditional foods from outside the Union: there will be a safety assessment and risk management applied; if EFSA does not object and the applicant demonstrates a history of safety for 25 years or more, the food can be included in the Union list; where there is objections on safety, the EFSA assessment will be followed by the ordinary EU authorisation procedure with shorter deadlines. In terms of additional procedural rules and requirements: applicant information (around competition) will be kept private. With regard to data protection: individual authorisations with data protection can be granted for a maximum of five years in justified cases. This is to ensure support for innovation within the EU food industry. With respect to penalties and committee procedures; rules will be laid down covering penalties for infringements. Implementation of Regulation measures will be adopted by the Commission. This

consists of conditions of use/labelling of novel food, specifications and post-market monitoring requirements. Finally with respect to Transitional provisions: on going applications and notifications, prior to this Regulation coming into being, will be set out. Also, foods already on the market prior to this Regulation will continue on the market until such time that risk assessment and authorisation procedures have been concluded.

Redaction: the one document that was redacted in this set of 26 documents (includes revisions, corrigendum and addendums) was document 5697/15⁶⁴ from February 2015. This was addressed to Council Delegations from the General Secretariat of the Council. The content was prepared for a new mandate to be sent to COREPER by mid-February ahead of a trilogue planned for February 26th. The document contained a four columned table with the Commission's proposal, the EP amendments (on the back of the ENVI committee report of November 2014) and the Council's position. This third column (Council position) and the final column containing comments on the compromise were entirely redacted. This suggests that it was primarily the Council's own individual position formation that was redacted and not so much related to the compromise. However, this position formation was with a view to engaging in a trilogue with the EP so this still has implications for the transparency of the trilogue itself. Unlike in the previous case study, there were other similar-looking versions of this document with transparent third and fourth columns but the particular text in this case noted "Delegation's attention is drawn to the correction introduced in the Council's position (third column) in article 11(1) in order to align it with the wording of article 17(1). Specific comments in relation to amendment 46 – 8th part and to amendment 55 – 9th part are indicated in footnotes."

The titles of article 17 relate to "authorisation of a traditional food from a third country and updates of the Union list" while article 11 was based on "authorisation of a novel

⁶⁴Council document 5697/15; www.data.consilium.europa.eu/doc/document/ST-5697-2015-INIT/en/pdf

food and updates of the Union list". Amendment 46 part 8 referred to foods produced through a new production process which could cause changes in "composition or structure of a food" which could have an effect on nutritional value, metabolism "or level of undesirable substances". The Council would not accept the EP's position on this, including where production gave rise to "ethical concerns". Amendment 55, part 9 covered Commission requests to the European Food Safety Authority "to render its opinion if the update is liable to have an effect on human health." The Council agreed with the EP that the Commission "shall" do this rather than "may" do this.

The general provision of articles 11.1 and 17.1 is that conditions to be taken into account in updating the list and authorising food from a third country/novel foods are as follows: article 6 (scientific evidence shows no risk to human health; not misleading of the consumer; and when replacing another food does not cause nutritional disadvantage) where they apply, relevant EU law provisions; the EFSA (authority's) opinion and any other legitimate factors considered relevant. This is quite a technical point related to the composition of the food and it has implication perhaps for manufacturers of food in terms of inconvenience and costs in compliance.

In May 2015, the Council and EP clashed on "cloning" and the legislative instrument which would cover this. The Council did not want this to be covered at all by the Novel Foods Regulation. The EP also wanted the following to be able to be adopted by delegated acts: the initial establishment of the Union list of novel foods, authorisation and update of the Union list of novel foods, and authorisation to place on the market traditional foods from third countries in the case of no safety objections following its notification. The EP especially pointed out that it needed agreement on the authorisation decision to be adopted by delegated acts (it would not get the majority support of plenary otherwise). A compromise in this respect was put on the table where the compromise

would consist of accepting "delegated acts for authorisation and update of novel foods" and accepting the cloning recital, once the addition of the text was included saying "food from animals obtained by non-traditional breeding practices and should be appropriately labelled for the final consumer in accordance with the Union legislation in force." This issue of control related to future changes to the legislation resulted in horse-trading and compromise between the institutions.

To summarise, the issues redacted in both case studies above relate to the transparency of process. This was seen in regulation 2013/0239(COD) with respect to ministers' uneasiness about "the publication of inspection plans", while in Regulation 2013/0435(COD), authorisation and updates on Union lists (in relation to Novel foods) saw text being redacted. In the first example, publication of inspection plans perhaps fits in with the Council's usual unwillingness to burden domestic administrations while in the case of Novel foods, it is perhaps more about Member States relationship with industry. Member States typically prefer not to over-burden or disgruntle industry whereas the EP is more inclined to demand more from industry with the rights of consumers and their health and safety in mind. An example of this might be where the EP wanted reference to "ethical concerns" with respect to new production processes. The Council flatly rejected this. Also, as seen in the first of the case studies, the Council is reluctant to over-burden Member States and instead prefers "flexibility" in respect of national situations and costs. The quantitative models showed that files related to the Environment and Food Safety were some 3 times less likely to be transparent when compared with the policy area of legal affairs. The environment is an issue of salience to the EU citizenry more widely (as seen in the results of Eurobarometer polls in Chapter 4) and can therefore be said to be of great importance that Community citizens can hold the institutions, particularly the EP to account, when it involves its participation in forming environment-related legislation. The

above two cases demonstrate that redaction inhibits citizens in this endeavour. MEP 7 noted that redaction in the case of environmental legislation means that the Council manages to avoid encountering problems with domestic actors. This is to the detriment of civil society and other actions groups.

8.3.2 Transparency and Transport

Directive 2010/0253(COD)⁶⁵

This directive was proposed in order to recast the regulatory framework which establishes a single European railway area. This proposal comes on the back of concern at the European railway sector's decline since the 1970s and corresponding series of Directives (2001/12/EC; 2001/12/EC; 2001/13/EC) with the aim of integrating the railway sector at the European level and ensuring its ability to compete with other forms of transport. A drop in the transport market has been experienced for both passenger and freight services. Inadequate financing/pricing of infrastructure, impediments to competition and lack of regulatory oversight are all thought to affect the railway sector's ability to compete with other forms of transport.

Weaknesses and gaps in the current regulatory framework must be closed down to meet the original objectives of the legislation. Three horizontal objectives of the recast are as follows: simplification, clarification and modernisation of the regulatory environment in Europe (reducing all 3 Directives into a single code); clarification of provision of rail access legislation to permit full transposition and implementation of EU law throughout the Union; and modernising the legislation by removing outdated provisions and

⁶⁵File 2010/0253(COD); [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2010/0253\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2010/0253(COD))

introducing new ones which help the market function better (for new entrants, state ownership of infrastructure).

The main amendments are: separation of accounts between activities that can have a legal monopoly/those ones which must be subject to competition; obligation of Member States to publish development strategies that take into account mobility needs in the future and that are sustainable in terms of financing; a clarification of general principles on cross agreements between Member States and between Member States and other countries; updating provisions on the responsibilities of regulatory bodies in the areas of competition and market entry; an enhancement of cross border cooperation and market entry. Here, regulatory bodies must cooperate in terms of adopting decisions on access/charging related to international services; and finally, the Commission's rail market monitoring will encompass investment in railway infrastructure, price developments and quality of rail transport, as well as public service obligations for same.

Redaction: the extent to which this file underwent redaction varied in relation to trilogue specific redaction and that of the Council's own position around its "general approach". For example in document 10888/11⁶⁶, all scrutiny reservations in terms of identifying member state positions are redacted. A similar document 10406/11⁶⁷ from the 20/05/2011 on the General approach is also redacted.

Documentation related to the preparation of the first trilogue (8354/12⁶⁸), second trilogue (9063/12⁶⁹), third trilogue (9914/2012⁷⁰), and fourth trilogue (10568⁷¹) are all redacted. In fact, the preparation for the first trilogue document looked to be accessible but all detail is

⁶⁶Council document 10888/11; www.data.consilium.europa.eu/doc/document/ST-10888-2011-INIT/en/pdf

⁶⁷Council document 10406/11; www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-10406-2011-INIT

⁶⁸Council document 8354/12; www.data.consilium.europa.eu/doc/document/ST-8354-2012-INIT/en/pdf

⁶⁹Council document 9063/12; www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-9063-2012-INIT

⁷⁰Council document 9914/12; www.data.consilium.europa.eu/doc/document/ST-9914-2012-INIT/en/pdf

⁷¹Council document 10568/12; www.data.consilium.europa.eu/doc/document/ST-10568-2012-INIT/en/pdf

entirely redacted. The size and detail of this file is enormous and it was decided to focus on this intra-institutional disagreement and the subsequent redaction of same. Of course, this has implications for trilogues if Council delegations' positions leading to these meetings are redacted.

Two documents helped understand the Council's "General Approach" (10888/11⁷²; 11373/11⁷³): conditions for access to services (the access to railway stations and freight terminals and services supplied there). The Commission proposed that operators (of a service facility belonging to a body holding a dominant position in at least one of the railway transport services markets for which the facility is used) should be independent in legal, organisational and decision-making terms. The Commission had previously proposed that if a service had not been in use for two years that its owner should make the facility available for lease or rent. Requests to access the service facility can only be rejected if there were other avenues for them to operate the rail service on the same route in an economically acceptable way. The burden of proof lies at the door of the service facility operator.

Council delegations were opposed to this and wanted to include the text allowing rejection of a request by a railway undertaking "if there is no available capacity". Many delegations were opposed to the above because it was considered too inflexible and bureaucratically burdensome for MS. Delegations were also opposed to the requirement of independence but the Commission finds that this is important. Similar to many of the case studies before, Council delegations are against burdening its domestic authorities.

The Presidency prepared a compromise text including the deletion of "legal independence" but that it must remain in the case of "organisational and decision

⁷²Council document 10888/11; www.data.consilium.europa.eu/doc/document/ST-10888-2011-INIT/en/pdf

⁷³Council document 11373/11; www.data.consilium.europa.eu/doc/document/ST-11373-2011-INIT/en/pdf

making". The Presidency compromise also increased the time which a facility is not being used for up to three years before it would need to be publicised for availability to rent or lease. The railway undertaking will need to demonstrate need and the operator can avoid leasing or renting the facility if it can show that reconversion is happening. The Council can be seen to mitigate the demands on business operators in allowing them an additional year before which they must publicise the availability of a facility for rent or lease and by providing it with another opportunity to opt out.

On the principles of charging: costs should be consistent with those incurred through operating the train service. Previously, the Commission proposed a list of elements to be excluded when deciding costs and proposed that it could amend these elements by delegated acts. Some delegations were against the Commission getting any power (delegated or implementing). Other delegations wanted to be able to derogate from this provision for vehicles/service running on a different rail system. Others wanted a right to derogate when the infrastructure managers carries out restructuring. The Presidency was willing to compromise by suggesting the use of implementing acts for the adoption by the Commission of measures involved in calculating costs incurred by train service operation. The financial implications of the legislation was contentious for the Council with members wanting to retain control of charging, the conditions for charging, and ensuring train operators are not adversely affected. It did not wish to give up sovereignty to the Commission.

Functions of the regulatory body: according to the Presidency suggested text, the regulatory body has the power to monitor the competitiveness of the rail services markets and decide on measures to correct these. This is not to prejudice national competition authorities and their role in this. The regulatory body can carry out audits or initiate external audits with all stakeholders to determine compliance with the separation of

accounts. The body can ask for as much accounting detail as it deems "necessary and proportionate". The Commission can adopt delegated acts concerning amendments to the accounting information the body can request. Two Council delegations were opposed to this power by the Commission. Other delegations were also opposed to the regulatory body becoming involved in "policy making" and creating a conflict of interest. Finally, some other delegations were against the body having the power to carry out audits/initiate external audits". The Council resisted attempts to impede on its sovereignty with respect to the role of its domestic competition authorities around regulation the competitiveness of rail markets. They wished to keep the proposed regulatory body out of policy-making. This is a clear example of a fight over control and sovereignty.

The use of delegated acts as a way of amending annexes and their sections: the areas in which the Commission should be allowed adopt delegated acts were reduced and are now limited to financial fitness, contents of the network statement, requirements for costs and charges related to railway infrastructure, schedule for the allocation process and accounting information to be supplied to the regulatory body upon request. Some delegations still have reservations for the above but there is said to be a relative degree of acceptance. The Presidency seeks to bring clarity in limiting the extent to which delegated acts can be used. Where the Commission had proposed delegated acts, the Presidency is seeking implementing measures "for the adoption of uniform conditions of application of certain elements in the annexes/sections." Again, the Council is seeking to regulate control over future amendments made to this legislation as it seeks to limit the extent to which the Commission can influence this.

There were some other reservations on financing and charges; definition of the applicant and how broad it is; the detailed nature of regulatory body and independence (conflict with national legislation); functions of the regulatory body (carrying out audits with

stakeholders in determining that there is accounting separation); transposition: delegations preferred three years rather than two years for transposition. One delegation (whose name was deleted) has a specific reservation on amendments around financing and charges while all delegations are concerned about the Presidency compromise proposals.

In summary, the Council's internal decision-making saw a number of delegations oppose the proposal's inflexibility (conditions for access to services) and its burdening bureaucratic demands. Delegations disagreed on the functions of the regulatory body with some concerned about national authorities' role being prejudiced in this way, and that it would become "involved in policy-making". The Presidency proposed extending the time period before which a facility not being used must be made publically available to rent or lease. The Council was also focal on costs being recouped for train services and did not want the Commission being too restrictive in terms of what could be included when deciding costs. Sovereignty concerns of Member States appears a common feature throughout this directive such as the role of domestic authorities in regulation, along with concerns of administrative burden along with financial costs implications and the ability to influence this. The next case study will illustrate the themes of administrative burden on Member States and the potential for increased costs on Member State industry and how these centre on the points more subject to redaction.

Directive 2012/0358(COD)⁷⁴

This directive was proposed to set down requirements for marine equipment with respect to safety standards according to existing international instruments, including the relevant

⁷⁴File 2012/0358(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0358\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0358(COD))

testing standards in order to be allowed to circulate without impediments within the Internal Market. International maritime safety conventions require that equipment carried on ships is compliance with safety requirements in terms of design, construction, performance, and that relevant certificates are issued. Extensive performance and testing standards for this equipment has been developed by the International Maritime Organisation and by other standardisation bodies. International instruments as they currently stand leave a lot of discretion to state administrations.

This particular proposal will provide a basis for the free movement of marine equipment in the EU; reflect the priority given to international regulation of maritime safety; govern the case around the transfer of a ship to a Member State register (according to principle of compliance with the Directive's requirements); lays down rules and conditions on the affixing of the wheel mark; includes provisions of Decision 768/2008 on specific obligations of the economic operators; list conformity-checking procedures available to manufacturers and align the Directive with Decision 768/2008 with regard to the EU's declaration of conformity; includes provisions of Decision 76//2008 on notifications (notifying authorities, notified bodies and their regimes). The Directive is also made consistent with the general EU market surveillance framework, including the safeguard procedure; contains the specific regime in exceptional circumstances (taken from existing Directive). This regime covers exemptions in the area of technical innovation and with respect to testing and evaluation. Finally, in terms of implementation, the Commission will implement harmonisation of marine equipment compliance with design, construction and performance requirements as provided for in international instruments, including testing standards. It is also empowered to adopt common criteria and procedures in applying these requirements and is charged with gathering and publishing information so

as to help codify and expand existing practice and permit the implementation of the Directive by all.

EP-Council differences: the proposal to use an electronic tag in place of/or with a wheel mark so as to allow market surveillance and to prevent counterfeiting. The Commission will determine if this should be a supplement or replacement to the wheel mark according to a cost-benefit analysis. The Commission may adopt delegated acts to identify which pieces of marine equipment could benefit from tagging and would have the powers to determine appropriate technical criteria around design, performance, affixing and use of tags. After this appropriate technical criterion is adopted, the wheel mark can be supplemented by an electronic tag within three years or replaced by it within five years.

Obligations of economic operators: to strengthen legal certainty, provisions were laid down obliging manufacturers to keep the technical documentation and the EU declaration of conformity for at least ten years after the wheel mark has been affixed. Where manufacturers place a wheel mark to a product that does not conform to the acceptable "design, construction and performance requirements and the testing standards" they should undertake measures to bring it to the acceptable conformance or else withdraw/recall it. If a manufacturer is located outside the EU, they should by a written mandate appoint a person authorised to represent it inside the Union (with name and address). For at least ten years after the wheel mark has been affixed, economic operators must identify to the market surveillance authorities 1) the economic operator who supplied them a product and 2) an economic operator they supplied.

Member State market surveillance infrastructures, and programmes should be recognisant of the marine equipment sector and conformity assessments, and its responsibilities bestowed on Flag State administration according to international conventions. Where

Member State market surveillance authorities have enough reason to believe marine equipment presents a risk to health, safety, or the environment, they must conduct an evaluation. If marine equipment does not comply with the adequate requirements, they will relay to the economic operator the need to act, including potential withdraw or recall of equipment.

Standards for marine equipment: in exceptional cases, following analysis and so as to remove a threat to health, environment or maritime safety due to insufficient standards around a piece of marine equipment, the Commission may (via delegated acts) adopt technical specification/test standards for that piece of marine equipment so as to remove that particular threat.

Exchange of experience: the Commission will help facilitate exchange of experience between Member State national authorities, particularly around market surveillance. In this respect, it will ensure proper coordination and cooperation between notified bodies (sectoral group of notified bodies).

The one document that was redacted was document 8513/13⁷⁵ of April 2013. It was a note from the General Secretariat to Delegations. All reservations in the foot notes were redacted (in terms of country name). When I compared these to the compromise, I found that some 13 or so reservations were relevant. These mainly related to (a) electronic tagging (in place of/supplementing the wheel mark); (b) the obligations of Economic Operators; (c) Market Surveillance; (d) adaption to technical specifications; and (e) exchange of experiences. I included more detail on these points above under the title “EP-Council differences.”

⁷⁵Council document 8513/13; www.data.consilium.europa.eu/doc/document/ST-8513-2013-INIT/en/pdf

The previous case study on transport had core sovereignty related dynamics but like this case, some of the most redacted points in this current case study related to imposing a burden on Member States administrative authorities, provisions that have burdening effects on businesses or on points related to additional costs on Member States. As noted by MEPs 6 and 7, cases with sovereignty sensitivity often "get stuck" with the "Council not budging." MEP 5 noted that the Council likes to "keep the information quiet until it's too late, they don't let the media know." MEP 5 notes that the Council is a protector of "corporatism." This draws a line between issues of sovereignty and corporatism with resultant contestation and thus redaction. Where important issues of sovereignty are at stake or indeed the interest of business, it is important for the EU public to be able to determine that it is being represented and that it can follow the legislative process so as to hold the institutions, particularly the EP, to account. The ability to do this is a crucial condition for democracy and redaction of these very issues threaten this.

8.3.3 Transparency and Employment

Decision 2009/0096(COD)⁷⁶

This Decision was proposed with the view to establishing a Progress Microfinance Facility (European Microfinance Facility for Employment and Social Inclusion). In an attempt to avoid continuing high unemployment, job creation should be targeted to ensure sustainable economic recovery. This particular facility will help disadvantaged EU citizens in particular, to engage in entrepreneurship. In particular, the proposal will permit access to microcredit for the following groups of people: those at risk of losing or have lost their job (including self-employed); disadvantaged (young people included here)

⁷⁶File 2009/0096(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2009/0096\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2009/0096(COD))

persons who wish to start up their own enterprise; and micro-enterprises in the social economy which employs any of the above descriptions of persons. The facility will enable guarantees and risk sharing, equity and debt instruments. It will also help with communications, monitoring, control, auditing and evaluation so as to ensure the successful implementation of the proposal and its objectives. All public and private bodies of Member States that provide finance to persons and enterprises are eligible to apply. The Commission is responsible for communicating to the Council and EP, an annual report of activities.

Compromise at trilogue: the EP wanted the facility named "The European Progress Microfinance Facility for Employment and Social Inclusion".

Objective: provision of Community resources to "increase access and availability to micro-credits" for person at risk of losing their job, those who find it difficult to enter into the labour market; disadvantaged persons or those at risk of social exclusion. It also covers those who are unable to gain credit through conventional means for the means of starting one's own enterprise (including self-employment); and also, for micro-enterprises in the social economy and that those which employ persons with the above difficulties (risk of social inclusion etc.). While it is not possible to see the Council's position in this case, it might be assumed that it favours a more restrictive approach whereas the EP is somewhat more idealistic in terms of the increase in scope of this legislation to include a wider category of disadvantaged persons.

Micro-financing of €25,000 maximum: recital notes that "micro-finance" includes guarantees, micro credit, equity and quasi-equity given to persons and enterprises as provided for by the Decision. Micro-credit relates to loans with a value of no more than €25,000 while micro-enterprises relate to enterprises with less than ten staff members and

with a turnover/annual balance sheet of no more than €2 million. "Micro-enterprise in the social economy" will be such entities which provides goods and services that have a clear social mission/provides services to the community on a not for profit basis. Unsurprisingly, as seen in the first section of this catalogue of case studies, budgetary implication and allocation is likely to lead to contestation and thus, redaction. This issue forms parts of the compromise and while it is difficult to determine the EP's and Council's positions on this and who won here, it can be reasonably assumed that budget had some bearing on the decision to redact documentation related to the compromise. This redaction of the trilogue compromise negotiations can be attributed to Member States delegations seeking to hide their own Member States positions leading up to trilogues or where concessions were made at the trilogue which they prefer to keep private. We can see the decision that was reached but we cannot adequately evaluate the EP nor Council's role in the lead up to this decision and thus democracy is compromised in the absence of full information.

Annual financing (independent of the Progress programme): the EP states annual appropriations will be decided via the procedure on budget (application of point 37 of the Interinstitutional Agreement on budgetary discipline and sound financial management), or by other means within this. The EP opposed the Commission's preference to take the required amounts from the Progress programme budget. The EP granted €100 million over a four year period (i.e. €25m for 2010 from budgetary margins) but the remaining three years sourcing of finance is not agreed between the institutions.

A new recital sets out that there should be increasing micro-finance for vulnerable people who find it difficult to access conventional means of credit provided by non-commercial bodies like credit unions and banks which are committed to Corporate Social Responsibility. The EP asks that the Facility can assist those bodies which exist alongside

the commercial banking market. The EP also notes that commercial banks must be made important partners in relation to the Facility as a way of re-building trust in terms of credit markets with the aim of focusing on customers with no credit standing; and also that public bodies that provide micro-finance should ensure to lend responsibly so as to avoid over-indebtedness of persons. This is an interesting development. The EP, similar to other case studies examined, can be seen to advocate more widely for vulnerable persons. Surprisingly, the Council does not look as though it got entirely its own way in relation to this broader scope of persons covered by this legislation but perhaps this concession and being seen to do something in the EU interest is what explains the redaction of the compromise. This was suggested by MEP 6 when they said that the Council might seek redaction where they are seen to “do something in the EU interest” and don’t wish to be seen to do this, especially where legislation runs contrary to their own country’s wider preference.

Implementation report and maintaining the instrument: within twelve months of entry into force and every year after this, the Commission will provide the EP and Council with both a quantitative and qualitative report on the Decision's activities. This report will be based on the implementation reports and will consist of information on all applications (regardless of decision); contracts concluded, actions receiving funding. It will also provide information on the number of, type of, and amounts given to beneficiaries, both in terms of geography and sector. This is likely to have been a highly salient provision among Council delegations and the EP. Differing positions on the appropriate expenditure of Community money and the allocations awarded is something which is likely to engender redaction of negotiation positions.

Having reviewed the documentation availability once again, it is difficult to determine information on the concrete positions of either institution vis-a-vis the other. Similarly,

the Legislative Observatory does not permit on this occasion, to see or ascertain the succinct positions of both actors. However, the compromise summary as provided above stems from the EP's Legislative Observatory. Documentation pertaining to the trilogue compromise is what is most redacted. This is of particular concern. While the lay EU citizen might not be able to normally navigate the institutions' documentations with ease, in this case, as a researcher who understands the complexities of EU policy-making, it is even difficult for me to ascertain any definitive information on the text that is redacted in this file's documentation.

This case study provides an opportunity to compare and contrast the issues arising in previous case studies on transparency (reluctance to burden MS, reluctance to burden business, instil costs on either, or be transparent with respect to publishing plans). Firstly, in terms of annual financing, the EP clashed with the institutions on where the budget should come from. It is worth noting that a new recital inserted recognises "vulnerable people" as a group that should receive access to micro-finance. The reference to "vulnerable people" might well be a divisive point between the actors. The EP appears to always reach out further in terms of the scope of legislation and who is covered whereas the Member States appear to oppose this broader approach which usually comes with increased financial implications for MS. In the compromise, the EP also insists on gender equality with respect to the fund's beneficiaries. A final point of the compromise which might be expected to have caused controversy and thus redaction as seen previously centres around the qualitative and quantitative reports on the legislation's activities. This reporting is to include extensive information on the expenditure of Community money.

Regulation 2010/0380(COD)⁷⁷

This regulation was proposed for the purpose of amending Regulation (EC) no 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004. Since May 2010, both of these Regulations are applied across the EU. Since Member States amend their national social security legislation, it is important that references made to this in the above mentioned Regulations do not cause confusion to stakeholders in terms of the application of the Regulations. Instead, references must be changed to reflect those changes made at Member State level. A Regulation is required to carry out this update. In terms of changes, for Regulation (EC) no 883/2004, article 13.1: provides clarity for where workers engage in employment in two or more Member States and a "substantial" part of the activity is not based in the Member States of residence, then the Member State legislation of the registered business office of the employer will be applied. If it isn't possible to determine one Member State where this office is situated, the Member State legislation of place of residence will apply; article 65.5 covers the right of self-employed persons to take unemployment benefits from one Member State to their Member State of residence even if the Member State of residence does not recognise this entitlement for self-employed persons. In terms of amendments to Regulation (EC) No 987/2009, article 14.5 clarifies and simplifies the provision by removing the difference between "simultaneous" and "alternating" activities so as to protect those that are engaged marginally in one Member State but more heavily in another; an insertion of paragraph 14(5a) recognising the position of highly mobile worked such as those in the air transport professions. In this case, the "registered office or place of business of... [The] employer" location is relevant only where there is close connection between them and the

⁷⁷File 2010/0380(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2010/0380\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2010/0380(COD))

office/place of business. "Home base" is considered more appropriate instead; and finally article 56(2), and recognition of employment services in the state of "last activity". Where there exist obligations for persons registered for unemployment support in more than one location, it is the State providing the benefits whose "obligations and jobs-seeking activities" is bestowed on the person.

Council and EP differences: unemployment benefits for self-employed frontier workers: there was a new article 65a inserted into Regulation (EC) No 883/2004 to cover self-employed frontier workers who became fully unemployed. This will see such persons receive benefits where they have completed spells of insurance as a self-employed person (or periods of self-employment) recognised as deserving of unemployment benefits in Member States and if no unemployment benefits exist for self-employed person in their Member State of residence. This should be reviewed after two years.

Provision of new measures for aircrew; Annex III to Council Regulation (EEC) No 3922/91 on "harmonisation of technical requirements and administrative procedures in the field of civil aviation defines the concept "home base" for aircrew member under Union law". To permit Title 11 of Regulation 883/2004 to be applied for this group, it is reasonable to use the concept "home base" as the basis to determine the applicable legislation. However, the applicable legislation for aircrew should remain stable and the "home base" principle should not mean regular change of legislation on account of the industry's work patterns/seasonal demands. "Home base" under Regulation (EEC) number 3922/91 is set down as the location that is nominated by the operator to the crew member based on where they normally start or end their duty, a series of periods of duty, and where normally, the operator is not responsible for arranging the crew member's accommodation.

Redaction: Document 6443/11⁷⁸ on the outcome of Social Questions Working Party helped identify some of the issues that were salient to the Council and were redacted. This document was partially redacted and while Member State countries responsible for the following "parliamentary scrutiny reservations, general scrutiny reservations, linguistic and drafting issues" were redacted along with other comments; it does permit an overview of the contested issues within the Council.

This stage of the Council's position formation is the primary place of redaction in this legislative file. Many delegations wanted the Council to provide a written opinion on the Legal basis (particular reference to whether article 48 of the TFEU is suitable). Also raised was the proposed amendment to Regulation 883/2004 and article 13.1 (persons working in two different MS) and how the amendment would change the substance of this article since these new provisions "would be introduced for a new category of persons which would be covered by another legislation (instrument)" with "transitional measures" being suggested. Also, article 65 was raised by a number of delegations with respect to "reservations on the proposed amendments in relation to unemployment benefits for self-employed persons". Issues around the "differences in treatment between frontier workers given that unemployment benefits were not available in all Member States for the self-employed". Immediately obvious is the issue of sovereignty. The provision of unemployment benefits is in itself a highly salient topic with varying attitudes throughout the EU towards the spending of public money on welfare. Trying to harmonise policies on the provision of this is likely to lead to big divides and thus concessions by some who are unwilling for their positions in the lead up to a decision to be revealed. This is likely to lead to the redaction of documentation

⁷⁸ Council document 6443/11; www.data.consilium.europa.eu/doc/document/ST-6443-2011-INIT/en/pdf

There was also concern among delegates about the role of coordination and that it "was obviously not to fill gaps in national legislations" with concern over potential differing amounts. Another delegate felt that these provisions could "establish the principle of the export of unemployment benefits and entered a scrutiny reservation on article 65(5)". Also mentioned by delegates, were proposed amendments to Regulation 987/2009: in particular the proposed amendment for article 14.5 and the need for clarity around "the situation where activities are being exercised successively for several employers". Other delegations were concerned about the difficulties arising from the concept of "home base" as laid out in article 14.5(a). Others felt that the provision for "home base" should apply to those involved in road transport and not just air transport. As seen in the above paragraph, sovereignty sensitivity is a theme which can be observed again when it is noted that Member States would have their national legislation gaps filled and that this was not supposed to be the intention of the legislation. Both potential administrative and financial costs for Member States were identified as a result of this amendment.

Document 9276/12 ADD1 REV1⁷⁹ of May 2012 from the General Secretariat to COREPER (adoption of legislative act) provides some Member States statements. Ireland noted its concerns in relation to article 14.5a due to the impact on "the social insurance position of citizens as well as institutions and employers". The Irish, French, Italian, Maltese, Dutch and Portuguese also stressed their disappointment at the wording of article 65a and how the "lack of correspondence between contributions and/or taxation and unemployment benefits could harm, not only from a financial point of view, the complex balance of national social security systems".

To summarise, in both of the above cases, familiar trends arise. In the case immediately above, Member States appear to resist increases in administrative or monetary burdens;

⁷⁹ Council document 9276/12; www.data.consilium.europa.eu/doc/document/ST-9276-2012-INIT/en/pdf

and concern around “balance” on national social security systems (ideological and sovereignty-sensitive) are issues which appear to cause contestation among legislators and thus secrecy. The first case illustrated the wider inclusion of persons covered by the scope of the legislation e.g. vulnerable persons. This often has a financial implication on Member States with increased resources needed to apply this legislation more widely. More specifically, the budgetary allocation awarded to this decision on the “European Microfinance Facility for Employment and Social Inclusion” and the appropriate expenditure of this was seen to be of specific concern to the Council and EP. The quantitative models demonstrated that policy areas dealt with by the EP committee on Employment were the most likely of all to be redacted (odds ratios of 0.11) at over 9 times when compared with the base category of legal affairs. Employment, as per the Eurobarometer surveys in Chapter 4, is a policy area to which the EU citizenry attach particular salience. It affects their job security, their income and their general quality of life. It is important that negotiations shaping Employment policy in the Union are not redacted and are instead open to input by the citizenry, civil society and other interest groups. Attitudes towards employment are likely to vary across the EU members and the harmonisation of related policy is likely to lead to distinct winners and losers. The Council might be considered a “protector of corporatism” and thus might be said to be pro-employer. However, where it agrees legislation which is more employee friendly, it might cause upset among its domestic businesses. MEP 6 mentioned that “if the Council agrees something in the EU interest,” it is likely to be redacted. While it is possible to evaluate the compromise agreement underpinning the legislation, it is of paramount importance for the purpose of democratic accountability that the decision-making process be evaluated and even before this, open to input by all actors, representing the interests of both employers and employees. MEP2 noted that “employment is likely to be redacted to

protect Member States against negative consequences of been seeing to do something progressive.” It could be the case that Member States are saying something different inside and outside of the public debate. MEP 1 believed that with regard to employment policy, Member States generally want to hide what they are trading away.

8.3.4 Transparency and Fisheries

Regulation 2011/0195(COD)⁸⁰

This regulation was proposed to enable reform of the Common Fisheries Policy (CFP). Progress since the 2002 reform has not been satisfactory and needs fundamental reform to ensure environmental, economic and social aspects are met. The current Council Regulation (EC) No 2371/2002 on the "conservation and sustainable exploitation of fisheries resources under the CFP" shall be repealed and replaced from the beginning of 2013 with this new proposal.

The main parts of this proposal deal with the CFP ensuring fishing and aquaculture activities result in "long term sustainable environmental conditions" which can be socially and economically sustainable while ensuring supply of food; on access to waters: the proposal treats third country vessels with access to Union waters equally. The Commission proposes to extend current restrictions on the right to fish within 12 nautical miles until 2022 with an addition of provision for restrictions (100 nautical miles) around the Azores, Madeira and the Canaries; Conservation of marine biological resources: multiannual plans and technical conservation and less micro-management by the co-legislators. The legislation will lay out scope, targets, time scales and evaluation while permitting regional discretion on flexibility of the approach; access to resources: there

⁸⁰File 2011/0195(COD; [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0195\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0195(COD)))

will be a system of transferable fishing concession from 2014 for all vessels except those smaller than 12 meters with passive gear; management of fishing capacity: it is for Member States to ensure fleet capacity matches fishing opportunities, or else reduction.

Registers will ensure monitoring; science base for fisheries management: greater coordination between Member States on fisheries data collection and science/innovation programs; external policy: CFP will work with other international fishery organisations to promote the aims of the CFP; on Aquaculture: the need to form a "focalized stakeholder consultation body" and thus, an Advisory Council for Aquaculture; Common Market Organisation: to enable the industry to apply CFP policy and to improve competitiveness of producers and others; control and enforcement; obligations to control and monitor "fully documented fishery" and "pilot projects on new fisheries control technologies that contribute to sustainable fishing"; financial instruments: financial assistance to help achieve aims of the CFP. Such aid will be dependent on complying with rules, for both Member States and operators. Failure to comply may see removal of or interference to financial aid; advisory councils: Commission proposes extending Regional Advisory Councils and "regionalisation of measures on a sea basin approach under the conservation pillar".

Trilogued compromise: On the back of seven rounds of trilogues, a compromise was agreed at the end of May 2013. The Council's first reading is in line with what was agreed in trilogues. The main parts of the compromise:

Overfishing must be eradicated by 2015 so that fish stocks can replenish. This deadline can only be pushed out until 2020 at the latest if there is a substantial risk to the economic/social sustainability of the fishing fleets.

The principle of maximum sustainable yield should be legally binding on future decisions and not just be a political declaration of intent. This was one of the most difficult compromises. The key parameter for measuring this was the exploitation rate of fishing stocks. Further to the flexibility of the previous paragraph permitting industry to respond to financial losses by continuing to over-fish for a longer period, this point ensured that this provision was not taken advantage of and this more binding decision was likely to have unsettled industry and thus the Council. The interests of industry and the EP's concerns for sustainability for the environment are likely to have caused a potential loss of face for the Council. The Council doing something for the EU's wider good might not go down well with domestic actors like those in the fishing community and thus redaction prevents this sensitive information being revealed.

These measures allow stocks to grow beyond just being sustainable and instead, the EP has ensured a margin of safety for the environment.

Agreement was achieved on a requirement that "catches should be landed" (the "discard ban").

Exemptions to the discard ban can be adopted (5% of all catches, 7% for a transitional period). The EP successfully argued exemptions should be only allowed where fishermen found it difficult to fish "more selectively" or where processing "by-catches" would lead to too high costs. The EP appears to have curtailed the Council's more natural inclination to allow wriggle room for the Member State industry and crucially restricts exemptions to where industry would be overly burdened with resource costs, be these workload or financial in nature. This type of detail might be expected to see individual Member State positions being redacted due to the trade-off between the institutions leading to less favourable outcomes for Member State fishermen.

On fleet overcapacity: Member States must ensure that their catch capacity are in line with resources with the EP ensuring the inclusion of a provision requesting Member States examine their fleets' catch capacities annually according to Commission criteria. Interestingly, the EP manages to inflict increased administrative duties onto the Council domestic authorities. In many of the case studies previous to this, increased administrative burden is normally resisted by the Council. This adds an increased curiosity with respect to the concessions the EP is making to balance this out. The redaction of documentation makes this very difficult to ascertain.

Council level differences: using the Legislative Observatory's summary of events, some of the most salient issues arising at Council meetings (particularly meeting 3174 on the Council's general approach) in terms of its position formation, are as follows:

On Maximum sustainable yields: agreement to reach this by 2015 (sufficient scientific advice on stocks) or by 2020 at the very latest. Relevant third countries will be consulted when stocks are shared so as come to an agreement around exploitation of the maximum sustainable yield. Also, the Council to some degree agreed with the EP's request for more transparency with respect to "data collection activities and reporting". The very detail around these measures affecting transparency is in fact redacted and not transparent.

Regionalisation: Most delegations accept that a uniform approach does not work and instead a model of regionalisation allowing Member States more scope over their own national levels while cooperating with other regional neighbours. This issue of sovereignty and control over one's own domestic circumstances is likely to have prompted redaction of individual Council positions.

On exemptions to fleet management rules: this is "possible where Transferable Fishing Concessions are established", and access to funds from the EMFF is strictly conditioned by a follow-up on a reinforced reporting regarding capacity management. It might be expected that Council delegations will differ in their attitudes on exemptions to the legislative provisions. This might be according to specific Member State reliance on fishing and the conditionality of reporting on capacity management, relative to funding, is likely to increase redaction of preferences due to a clear winner and loser developing.

Summary: the above case saw redaction of documentation at both the Council's own position formation stage but also with respect to trilogue documentation outlining the positions of two actors. The Legislative Observatory summary of events helped identify more easily the most salient issues in relation to both of these stages. It can be seen that the EP sought to act in the interest of the environment and fought hard to prevent exceptions being used too readily. The EP also sought Member State examination of their fleets. Surprisingly, the EP managed to impose increased administrative burden on MS. It is difficult to know if the EP made some other concession as part of institutional horse-trading. The EP also requested the Council be more transparent with respect to "data collection activities and reporting." Information related to this transparent is ironically lacking in documentation transparency. Many of these issues were at the basis of the Council's earlier own position formation stage ahead of trilogues. The next, final case study, **Regulation 2009/0129(COD)**⁸¹ will also relate to fisheries and rather than focusing solely on themes, will examine the procedural approach towards accessing redacted documentation.

⁸¹File 2009/0129(COD); [www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2009/0129\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2009/0129(COD))

Regulation 2009/0129(COD)

This regulation was proposed to lay out Community rules on the "conservation, management, exploitation, monitoring and enforcement measures for fishery and aquaculture products" as set down in the GFCM (General Fisheries Commission for the Mediterranean). Italy, France, Malta, Spain, Romania, Slovenia, Greece, Bulgaria and Cyprus are parties to the GFCM. This Regional Fisheries Management Organisation according to scientific advice may issue advice and direction around development, conservation, management and utilization of stocks in the Mediterranean and Black Sea. Recommendations from the GFCM are currently only transposed into Community law annually so there is a need to introduce a more permanent legal mechanism. This Regulation seeks to lay down applicable Community rules on conservation, management, and exploitation, monitoring, marketing enforcement measures for fishery and aquaculture products. This brings legal clarity and applies to commercial fishing and other aquaculture activities by fishing vessels or nationals of the Community, except those for scientific purposes.

Redaction: Document 12607/11⁸² (A) Much of the discussion within the Council concerned the "scope of application of delegated acts and on the duration of delegation. With respect to Delegated Powers, the EP position fell somewhere akin to a "half way house" between Council delegations and the original Commission proposal. Article 26 of the Common position laid out where the three institutions came to an agreement on the delegation of powers. The Commission would be empowered to adopt delegated acts in order to amend the Regulation in the following areas: providing the Executive Secretary of the GFCM with information under article 15(4); providing "a list of authorised vessels" to the GFCM's Executive Secretary under article 17; "port state measures" under articles

⁸²Council document 12607/11; www.data.consilium.europa.eu/doc/document/ST-12607-2011-INIT/en/pdf

18-22; "cooperation, information and reporting" as provided in article 23-24; "the table, the map and the geographical coordinates of GFCM Geographical Sub-Areas ("GSAs") as set out in Annex I; "port state inspection procedures for vessels set out in Annex II; and GFCM statistical matrices as set out in Annex III.

(B) Summary of the Council position: it was agreed at the third trilogue in June 2011 that the Commission shall be given the power to adopt delegated acts for three years after the Regulation comes into force and that such acts will come into force where the EP/Council did not object within two months of notification to the institutions of a delegated act(s). In terms of implementing powers: the Commission, during the third trilogue (Council documentation re the third trilogue was entirely redacted), stated that the following provisions "would be advisable". These included article 9 (information regarding fishing activities); article 12.3 and 12.6 (regarding closed seasons), article 14 (data collection), article 15.3 (regarding minimum size of mesh when fishing in Black Sea), article 23 (regarding cooperation and information) and article 24.4 (regarding statistical matrices). There was no objection raised to these at the third trilogue. It was required that the final text would be adjusted in order to satisfy the changes necessary following the Lisbon Treaty entering into force, and in particular, the "standards formulations based on the new Comitology Regulation and on the Common Understanding on Delegated Acts."⁸³

This proposal was prepared prior to the Lisbon Treaty coming into force. This needed provisions on comitology to be modified "by foreseeing implementing and delegated acts in accordance with Articles 291 and 290 of the TFEU". This caused a delay in discussions. The Commission felt that it should have delegated powers to enable transposition "into EU law at least amendments to all existing measures". The Commission felt that its "limited powers" handed down by the EP and Council could

⁸³ <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1172273&t=e&l=en>

mean the EU struggles to transpose on time, measures taken by the GFCM going forward that "revise or update the international conservation and management measures of this organisation". The Commission wished to put forward amendments to increase the measures that could be adopted by delegation acts so as to avoid the delays which may arise to transposition via the ordinary legislative procedure which could affect the EU in its compliance with its obligations on the international stage.⁸⁴

Redaction: while the above information helped me determine the scope of application of delegated acts and the duration of delegation was what was contentious for the institutions, the majority of the entirely redacted documents centred on Council to Council notes. Also, as mentioned above, information on the third trilogue was entirely redacted. While it is possible to try and apply the findings from previous case studies to determine what types of issues caused redaction, I made a request to the Council's Secretariat General to release the non-redacted version of seven documents that are currently entirely redacted.

I made this request electronically to the Council's General Secretariat and in particular, the Directorate-General for Communication and Information, Knowledge Management, Transparency, Head of Unit. This request was made on the date 07.08.2017 and the deadline was extended on 29.08.2017 by 15 working days to allow the Council to continue "conducting consultations necessary to the examination of your request," before being released to me entirely on 12.09.2017. These documents are now available more generally to the public.

⁸⁴ Council document 16087/11; www.data.consilium.europa.eu/doc/document/ST-16087-2011-INIT/en/pdf

Released documentation: having reviewed (A) and (B) above, the released information did not provide me with any substantial new information. Part (B) from the EP's Legislative Observatory summary of events adequately summed up the main points of contestation during the redacted third trilogue. Documents 12345/11⁸⁵, 10330/11⁸⁶ and 5804/11⁸⁷ demonstrated that the scope of application of delegated acts and the duration of delegation were the two primary points of contestation between the Council and the Commission in particular. The EP was positioned somewhere between the two of these.

Document 12345/11: The General Secretariat of the Council to Coreper note on the "political agreement in view of the adoption of the Council's position in first reading," recorded that while there was an overall agreement after two trilogues, some issues remained outstanding with respect "to the scope of application of delegated acts and on the duration of delegation".

The Commission and Member States were at loggerheads with the Council wanting to give the Commission very limited powers to adopt delegated acts. When no solution was found after two trilogues, the EP adopted its first reading position (March 2011) which was essentially a "half way house" between the Commission and the Council. The Hungarian Presidency (May 2011) put forward a compromise on the scope of application of delegated acts and of the duration of delegation with a view to seeking a mandate for an agreement with the EP at the third trilogue in June 2011 where an agreement was reached.

Document 10330/11 contains the Presidency compromise. It was previously entirely redacted. This document is in the form of a note from the General Secretariat of the Council to Delegations. It centres on article 28.

⁸⁵Council document 12345/11; www.data.consilium.europa.eu/doc/document/ST-12345-2011-INIT/en/pdf

⁸⁶Council document 10330/11; www.data.consilium.europa.eu/doc/document/ST-10330-2011-INIT/en/pdf

⁸⁷Council document 5804/11; www.data.consilium.europa.eu/doc/document/ST-5804-2011-INIT/en/pdf

As far as necessary, in order to transpose into EU law amendments to the already existing provisions for fishing in the GFCM Agreement Area which become obligatory for the Union, the Commission may amend the provisions of this Regulation, by means of delegated acts in accordance with article 28a and subject to the conditions set out in articles 28b and 28c concerning: the provision of information to the Executive Secretary of GFCM set out in article 16.4; the transmission of the register of authorised vessels set out in article 18; Port State Measures set out in articles 19, 20, 21, 22 and 23; Cooperation, information and reporting set out in articles 24, 25; Table, map and geographical coordinates of GFCM Geographical Sub-Areas (GSAs) as set out in Annex I; Port State inspection procedures for vessels set out in Annex II; GFCM statistical matrixes set out in Annex III; and Exercise of the delegation.

"1.The powers to adopt delegated acts referred to in article 28 shall be conferred on the Commission for a period of 3 years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest 6 months before the end of the 3-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with article 28b".

Article 28 was of central importance to the Council. When previously redacted document 5804/11 was examined-a note from the General Secretariat to Delegations on "Examination of amendments approved by EP Committee", article 28 was the main point on which the Council could not agree with the Commission. In other sections, the Council more semantically, amended the Commission's references to "Community" law in favour of "EU" law.

Interestingly, as mentioned above, these documents following on from their public release did not really provide me with new information other than which could already be derived, using my ability to trace institutional preferences via the Legislative Observatory and Consilium. This leads to the question of whether there are “RESTRICTED” documents associated with this file which provide much more pertinent detail. The release of “LIMITE” documents in this case does not add increased knowledge (see beginning of Chapter 7 for a discussion of the differences).

In conclusion, the two Fisheries case studies above are quite technical and legalistic. While the first case study’s redaction is caused by Member State resistance/intolerance to being burdened by the EP’s environmental protection ideals and requests for transparency; sovereignty and budget implications, the second case study’s document redaction appears to be caused primarily by varying positions within Council and between the three institutions more widely on the parts of the Regulation that might be amended by implementing and delegated acts. This is driven by the commitment to retaining power and control over the content of this Regulation going forward. The Council’s particular preferences on this and reasons for this were highly redacted and following a release of the required and requested documentation, it did not become much clearer why this redaction occurred in the first place. I had gained this general detail already from the EP’s Legislative Observatory summary of events and from the Council documentation that was not redacted. This raises questions about the existence of some documents and not simply the accessibility of documentation alone. The quantitative models point to fishery policy as being among the most likely (over 7 times) files to be redacted. As MEP 6 noted, this policy area is highly salient at national level and is likely to see redaction due to contestation and division between Council members. At the EP level, there is often a lot of cohesion across national lines, irrespective of EP political parties, in terms of votes

related to fishery policy. MEP1 contributed the view that there is typically lots of horse-trading in the case of fisheries.

Chapter 9: Conclusion

This thesis has addressed the question of when and why trilogues occur in the EU legislative process and separately, but connected, which factors determine the transparency of legislative file documentation.

9.1 Summary and findings

This thesis began with chapter one's introduction to the topic of trilogues and the importance of researching this. It demonstrated how the trilogue has changed since its inception from a mechanism that was preparatory at Conciliation to one that nowadays, aids the conclusion of Early Agreements as early as the first reading stage. This chapter introduces the implications of this latterly widespread usage of trilogues for democracy. This chapter goes on to give an overview of relevant studies already conducted and the political significance of the research question. This leads into the aim of the thesis and the hypotheses which will be examined using logistic regression models. The structure of the thesis is laid out next, before discussing this project relative to other studies so far, and the main findings of the thesis.

Chapter 2 “Understanding Codecision and Trilogues” is a relatively technical chapter. It explains the codecision procedure, the trilogue more specifically, and the need to make the legislative language and EU jargon digestible for the non EU expert. It sets the scene, discusses the institutionalisation of the trilogue, and explores some of the implications of this new method of decision-making for the public. Part 2 of Chapter 2 provides a closer examination of trilogues, their nature at each legislative reading stage, focusing on Conciliation in particular (much more emphasis is placed on the earlier stage trilogues for the remainder of the project) and modes of representation.

Chapter 3 “Literature Review” provides a comprehensive overview of the literature relative to trilogues and discusses existing studies across a number of themes and sub themes. The themes include 1). The introduction of informality to EU decision-making and how it differs to formal decision-making; 2). the extension of trilogues from Conciliation through to first reading stage and their change in purpose, a) including the policy areas typically subject to trilogues; b) the influence of treaties on trilogues and c) the influence of voting rules and reading stages on the use of trilogues; 3) the reasons legislators decide to “go informal”; 4) the effects of "going informal" and 5) finally, the comparison of trilogues to other external informal legislative processes. This final section a) compares the trilogue process to the USA's informal legislative mechanisms known as conference committees and "ping pong" procedures. This section b) draws comparisons between the EU and USA here and with respect to the process, membership and mechanics of informal decision-making; c) the statistics on the use of procedures; d) why legislators "go informal"; e) the effects of "going informal" and finally, e) who wins between the actors involved in informal decision-making.

Chapter 4 “Data and Methodology” is by a distance the largest chapter of the thesis. This section introduces the data and discusses the methodology by which this research will be conducted. This section consists of discussing the myriad of ways employed to investigate the salience of legislative files as a way of identifying trilogues. Some of these were adopted and others were discarded; the collection of the database's units of analysis (legislation trilogued and not trilogued, legislative file documentation redacted, or not) using the institutions' online registers of documents; a comparison of this dataset to the types of data collected by other scholars to date; the collection of the dependent variable (through a key word search in Consilium); the challenges and concerns surrounding the collection of the dependent variable; and the collection and construction of the

transparency dependent variable. This section then goes on to discuss the collection of the independent variables with particular attention paid to the collection of and difficulty in recording community budgetary implication. The next part of this chapter includes the coding of this data into the statistical software programme STATA. This chapter concludes by discussing the method of selecting the best cases to illustrate the dynamics of the quantitative models (qualitative case study chapters 6 and 8) and a brief overview of the process by which interviews were arranged with EP practitioners.

Chapter 5 “When and Why Trilogues” introduces the theoretical underpinnings of the hypotheses for the trilogue logistic regression models, discussing the applicable variables included in the models and the rationale for their inclusion. This chapter also consists of a trilogues overview with a graphical representation of how trilogued and non-trilogued files are distributed across the most important independent variables. The hypotheses 1-8 are laid out, the model output presented and then a discussion of the model results and whether they support the hypotheses.

Chapter 6 “Illustrative case studies explaining “When and Why Trilogues” is the first of the qualitative chapters, focusing on a deeper and more detailed illustration of the primary dynamics in the quantitative models. There are eighteen illustrative case studies presented. Four concise case studies present the dynamics related to files that are polity building, three for those that are market building; two for files that are concluded the most quickly (time taken); two for trilogued regulations; two for trilogued directives; two for trilogued files with budgetary implications. Finally, to account for third reading files that are excluded from the statistical models in Chapter 5, three Conciliation case studies are included. In each case, a brief summary of the legislation is provided before discussing the trilogue compromise and the dynamics that arise during this. I compare and contrast

the cases and provide some thoughts on the implications of each for decision-making in the EU.

Chapter 7 “Transparency, Democratic Legitimacy and the Ombudsman” introduces the definitions of and politics around the issue of transparency and provides the theoretical rationale for creating the transparency logistic regression models. It introduces the EU provisions for access to documentation; the EU Ombudsman's own initiative into the transparency of trilogues, before discussing the theoretical rationale for the variables included in the models. This chapter also provides a graphical overview of how redacted and non-redacted files are distributed across the most important independent variables. The hypotheses 9-15 are laid out, the model output presented and then a discussion of the model results and whether they support the hypotheses or not.

Chapter 8 “Illustrative case studies explaining Transparency” is the second of the qualitative chapters, focusing on the main dynamics from the transparency logistic regression models. There are twelve illustrative case studies presented. Two concise case studies present the dynamics related to files that have a community budgetary implication, two for files that take the longest duration to be concluded; two for files that are related to the Environment; two on the policy area of Transport; two for the policy area of Employment and finally, two for the policy area of Fisheries. This final section on fisheries discusses my application to the Council for access to documents related to a legislative file that was entirely redacted. Similar to chapter six, for each case, I provide a brief summary of the legislation before discussing the redaction of the file, the stage of the file which is redacted (compromise or Council's internal position formation) and the political, corporatist and sovereignty-sensitive dynamics that gave rise to this redaction. I compare and contrast the cases and comment on the implications for democratic decision-making in the EU.

The thesis sought to tell the story of trilogues. While there could of course be some more alternative explanations explaining the use of the informal legislative mechanism over the formal mechanism, the quantitative analyses has shown that files which are most trilogued between 1999 and 2007 (pre-declaration) tend to be those which are “building” types and those files which take between 12-24 months to conclude. Files concluded at first reading, files which are new or recasting are more likely to be trilogued too. Overall, when a file has a budgetary implication, it tends to be subject to trilogues. Between 1999 and 2007, directives are most likely to be trilogued while between 2007 and 2016 (post-declaration), regulations are the most likely to be subjected to trilogues. During this period, files which are new, and with sovereignty-sensitive considerations, are also among those files most likely to be trilogued

The story of transparency is, notwithstanding the potential for other competing explanations, that in the full model, when compared with Lisbon, only Nice is more transparent. Lisbon files are more transparent than the Amsterdam and the TEU legislative files. For the pre-declaration period specifically (1999-2007) transparency is seen to be worsening across time. Generally, files which are “new/other” are among those that are least transparent along with files that fall under the remit of the EP committees on Employment, Fisheries, the Environment and Transport. Another finding is that the stage in the EP five year term matters. Files which are concluded earlier in the term are less transparent than those concluded ahead of the next EP election.

However, the main story to tell about transparency is that money matters, and the more money at stake, the less transparent the file documentation. However the study found no real evidence to support claims that there is a trade-off between speed of concluding a file and democracy. In the pre-declaration period, when files took longer to be concluded, transparency was enhanced. Surprisingly, in the post-declaration period, an increase in

time taken meant a decrease in transparency. The results present two contrasting patterns. This is contrary to expectations about the relationship between the time taken to conclude a file and transparency.

The case studies sought to illustrate some of the main findings outlined above. To examine the types of inter-play at trilogues and separately, although connected, to determine the type of file characteristics which lead to less transparent legislation.

The study has demonstrated quantitatively and qualitatively that the purpose and nature of trilogues has changed across time. While it is generally known that trilogues were originally created for the purpose of preparing for Conciliation Committee meetings and thereafter, used in the earlier reading stages of the legislative process to expedite technical or urgent legislation, this study illustrated these dynamics but also demonstrated now, some 10 years into the post-declaration period, practically all legislation, irrespective of salience and time pressures, or any other characteristics, is subject to informal trilogues. The full model and the model for the time period 1999-2007 (pre-declaration) showed the files with “building” characteristics were most likely to be trilogued. In the post-declaration period, despite lacking statistical significance, files which are “polity building” are most likely to be trilogued. Also, files which are new, concluded at first reading, and regulations are far more likely to be trilogued.

9.2 Contribution to the literature

From a methodological perspective, this project is the first large N quantitative-qualitative nested analysis examining trilogues and the question related to the transparency of file documentation in the legislative process. The use of six logistic regression models and some thirty qualitative case studies, supported with MEP observations, is a novel approach towards understanding the determinants of EU informal decision-making.

This thesis introduces a novel database of 1448 trilogued and non-trilogued codecision files concluded between mid-1999 and the end of 2016. It supports and extends the work of existing studies on trilogues, most notably the Early Agreement studies of Reh et al. (2013), Rasmussen (2011) and other prominent works on trilogues include Kardasheva's (2012) and Brandsma's (2015).

This project extends the work of these experts across a longer time period capturing the 5th, 6th, 7th and half of the 8th EP term while focusing on trilogues at all reading stages. This project, in terms of its scope, has allowed me to contribute to the literature, a story of two tales, both pre-declaration and post-declaration, tracking the change in the types of file which “go informal.”

My study has also convincingly demonstrated that sovereignty sensitivity is a key determinant in the decision to “go informal” during both the pre-declaration and post-declaration periods. This indicates that trilogues are used to help conclude files which are salient and likely to be politically charged. Bringing the co-legislative institutions together in a more intimate trilogue forum means key issues are worked on without the ordinary close observation of the media, civil society and EU citizens.

This project has demonstrated that a community budgetary impact matters when it comes to the decision to “go informal” in the post-declaration era. This has added to the

literature on explaining the determinants of trilogues. None of the literature on the European Union, bar Rasmussen (2011), focuses on budgetary implications as a variable of interest; solely a handful of articles mention or focus on the power of the European Parliament given the institution's right to reject the EU budget every year. In relation to trilogues specifically, Rasmussen (2007) used budget to act as a *measure of salience* of a file in her analysis of factors leading to the early agreement of a file before first reading using a dataset of first reading concluded files in the five years after the ratification of the Amsterdam Treaty. She does not include the budget variable as a measure of financial power in and of itself; it is a proxy for something different. Rasmussen's (2011: 50) study on "early conclusion" measured budgetary implication in a similar way i.e. "does the text involve the allocation of EU funding/a direct reference to the EU financial framework?" She included this as a control variable. This showed no significant relationship between files that had a budgetary implication and when they were concluded. Unlike Rasmussen (2011), and considering my study is across more than sixteen years, this project shows budget to be influential factor in decision-making processes in the EU. My theorising, capturing and analysis of Budget in the Trilogue and Transparency models reflects the new path carved out in the theoretical and empirical literature on the European Union given the importance of budgetary implications of a file for transparency of the legislative decision-making process.

My study has demonstrated that reducing legislative duration is a determinant in the decision to trilogue legislative files. This indicates that trilogues increase the efficiency of the legislative process. Therefore one can infer that the decision to "go informal" is at least in large part attributed to legislators' attempts to conclude legislation more efficiently, particularly so in the post-declaration period. This study is different but builds

on and extends Toshkov's and Rasmussen's (2012) study on the role of Early Agreements and their effect on legislative duration in the 5th and 6th EP terms. They find that time is left for substantive debate even when salient files are agreed at first reading. The unit of analysis is different in my study but demonstrates there is a preference for Early Agreement trilogues but not at the expense of time spent on deliberation. In the pre-declaration model, files that take between 12 and 24 months are some 2.3 times more likely to be trilogued. In the post-declaration model some files that are between 1 and 12 months and between 24 and 36 months are most likely to be trilogued. This demonstrates that efficiency can be a consideration in subjecting legislation to informal decision-making but that legislation is not rushed where files are most salient.

My study is the first of its kind it accessing the transparency of a high volume of files' legislative documentation across this time period while also controlling for the use of trilogues. Trilogues are seen to negatively affect the transparency of documentation detailing the legislative process. This effect is not so large and lacks statistical significance. The main value added here is the implications of efficiency for transparency and the effect of budget on the level of document redaction.

Focusing on the 2007-2016 (post-declaration) period, it can be seen that transparency is not necessarily traded off with increases in efficiency. While theoretically, it might be thought that files which are concluded in less than a year are without controversy and thus redaction, there is a stepwise decrease in transparency the longer a file takes to be concluded. This is different to Hagemann's and Franchino's (2016) study linking transparency and efficiency. The authors focus on provision of information as a way of avoiding negotiation failure and thus improving efficiency. My study adds understanding on the effect of legislative duration on the transparency of documentation detailing the legislative process and accounts for trilogues. However, while transparency is not traded

off for efficiency, it is for budget. In the same time period, budget categories €10-100 million, €100 million to €1 billion and €1 billion plus see stepwise reductions in transparency.

The effect of time on transparency is very different in the 1999-2007 period. All durations longer than 1-12 months sees increases in transparency. The longer the timetaken, the more transparent. The post-declaration finding would suggest that concluding legislation quickly is best for transparent decision-making. This finding brings added value to understanding the effect of legislative duration on the transparency of the EU legislative process.

Again, in terms of methodology, chapters six and eight demonstrated a comprehensive approach towards accessing legislative information that might otherwise be redacted. Using the legislative observatory summaries and navigating effectively around the redacted Consilium documents which included looking at before and after positions (either side of the redacted) material lead to a general predictability of the themes most likely to lead to redaction. I was able to successfully identify the redacted content of the second fisheries case in Chapter 8, section 3.4, ahead of successfully requesting the redacted file documentation. Nobody has offered this approach to date and my approach can permit others to replicate this process in future studies of the EU, and perhaps, for other international organizations.

9.3 Implications for policy-makers

This project has delivered a comprehensive overview of the determinants of trilogues. The decision of the EP to join the Council in “going informal” might be at first considered puzzling due to the hard earned codecision powers it has gained across successive EU treaties. By going behind closed doors it can be said that it concedes some of the very legitimacy-enhancing credentials it earned over time. The Council never claimed to gain its legitimacy through open decision-making. The EP on the other hand is the only directly elected institution and being seen to be an effective legislator is an important part of its democratic credentials in the eyes of its constituents.

While trilogues are used more and more in these latter years, there is clear evidence overall that trilogues are used on some of the most sovereignty sensitive legislative files e.g. issues like immigration. Where these files are agreed early in the legislative process, the EP plenary effectively rubberstamps a trilogue agreed arrangement ahead of the EP’s first reading. Debate or deliberation involving civil society and other interests groups is severely limited and this has an effect on the very basic rights and freedoms of citizens.

While trilogues are being used more and more regularly in the post-declaration period, this does not minimise the significance of the models’ findings. The fact remains that highly salient files are still conducted behind closed doors with agreements being formed in the absence of robust and wider involvement of MEPs. The transparency of the legislative process is affected by the decision to “go informal”. As well as the known documentation provided in the Consilium register of documents, there are those documents that are not recorded, even in redacted form. This causes huge concern and does little to calm the fears of those that allege there is a democratic deficit alive and well in the EU. There is little potential to follow the paper trail of decision-making where files

are concluded at first reading. Trilogues result in winners and losers and it is important that the public can adequately hold their public representatives to account. While it is difficult to sometimes observe the EP's influence where legislation is redacted, more importantly, it is imperative to know the very issues upon which the EP is legislating. Increasing the public information related to trilogue meetings and outcomes is necessary to address the democratic deficit and ensure the legitimacy of the EP, gained by its increasing codecision powers and its ability to engage with the Council in the first place, is not permanently damaged.

The EP noted that "while the need for transparency remains a challenge given the generalization of trilogue negotiations; it has to be reconciled with the need for efficiency in order to reach agreements" (TI 2015: 38). The speed of legislative decision-making does not adversely affect levels of transparency. This is positive news. There is evidence that trilogues are used when legislative files need to be expedited. This does enable the swift conclusion of legislation where emergencies require speedy legislation e.g. a financial crisis.

However, as noted by Marissen (2015), trilogues are occurring in the form of "three way discussions" more "upstream" earlier in the legislative process. Here, EP committees and Council Working groups are bypassed more and more. The exclusion of these institutional sub groups raises increased concerns for the opaqueness and exclusivity of the legislative process. This view is corroborated by MEP 6 who says that it is difficult to see "the range of opinions anymore due to an internal EP first reading. Using the LIBE EP committee as an example, the practitioner notes that there are attempts to get a committee compromise before a vote....at technical meetings. There is a push from Council advisors to come to a decision rather than an offering..... there is an emphasis on getting much done before the formal meetings".

Notwithstanding the need for efficiency, more needs to be done to publish the positions of the institutions during tripartite meetings, the decision made and the rationale behind the decision. The concern is that the EP does least well the earlier a trilogued file is concluded because of the absence of wider plenary support. Only where the Council requires a really quick decision, perhaps the EP can gain increased concessions from the Council (Neuhold and de Ruiter 2010).

The quantitative models demonstrate that first reading files are not necessarily expeditious. While this allows increased time for debate and deliberation, the openness of the informal decision-making process raises questions. The EP's ability to influence legislation at this stage is also up for question but this is something to be explored another time. Since this project finds that large budget files are among the most redacted, and these files appear to be also trilogued, it might be best to remove files with big budgetary implications from the trilogue process. The blame for redaction associated with big budget files might otherwise be unfairly attributed to trilogues.

9.4 Further academic research

The Council's preference for efficiency in terms of its resources and personnel means a streamlining of legislation with the aid of informal negotiations is the best solution for it. This preference is not necessarily exclusive of the EP's preferences. The change of EP majority voting rules between first reading and second reading is an incentive for the EP to conclude earlier in the legislative process. To do this means engaging in informal negotiations. While the Council does not derive its legitimacy from open deliberation, the EP is expected to be open in its deliberation so that its electors, the public, can see legislation being produced.

It is clear to observe if legislation is produced in a larger quantity or if there are time savings. It is on the other hand more difficult to know if the EP maintains its true equal co-legislative powers in these informal spaces i.e. contrasting the EP performance in trilogued file negotiations versus non trilogued file negotiations.

The EP's influence under the formal process has been well researched by (Burns 2009; Kasack, 2004; Kreppel, 1999, 2002; Tsebelis, Jensen, Kalandrakis & Kreppel, 2001; Tsebelis & Kalandrakis, 1999) while Hage and Kaeding 2007 examine the impact of the EP on legislation in one piece of Early Agreement legislation compared with one piece of legislation completed under the traditional formal codecision procedure. Kardasheva (2012) investigates the use of trilogues in the 1999-2007 time period in terms of their effect on the EP's ability to legislate. Rasmussen and Reh (2013) have studied Early Agreements and how they have led to the redistribution of influence between actors in both the EP and Council.

Research examining the EP's impact on legislation in informal negotiations, not comparative to other EU institutions, but rather compared with its influence under formal institutional rules would be an appropriate step to determine the effect of informal decision-making on the EP's overall ability as a co-legislator. This could be done by replicating Hage and Kaeding's 2007 two-case study in the now post-declaration period, using a larger sample of cases. Tracing the adoption rate of EP amendments similar to (Kasack, 2004; Kreppel, 1999, 2002- the proportion of amendments adopted divided by the number proposed) would help measure this influence. Also, as suggested by Kardasheva (2012), this influence could alternatively be gauged by the breaking down of legislative proposals into contested issues and tracing them from the Commission proposal to the final legislative document.

It would be worth conducting further research to determine the extent to which the EP's preferences are taken on board in the final compromise between the three institutions. For trilogues that occur at second reading and third reading there is usually some paper trail where the EP's preferences can be gauged across time. However, for informally agreed first reading (Early Agreement) files, the EP's first and second reading reports are non-existent. The pre-agreed compromise is essentially presented in the form of a Council/EP first reading report. In this case, scholars would sometimes rely on the sometimes less than generous documentation relaying the informal negotiations.

If the EP is seen to perform well in negotiations and defend its preferences, this might help address some of the concern around the EP's loss of visibility. Further research should be pursued along these lines. It is vital that the EP's influence is maintained in its engagement in the informal decision-making mechanisms. For this reason, it is necessary to establish the true influence and impact of the sole directly-elected EU.

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Appendix 1

Table 4 Four Policy Types and their Characteristics (taken from Bomberg and Stubb, 2012:131)

Type	Level of EU Competence	Key Characteristics	Primary Actors	Examples
Market-building	Nearly exclusive, most comprehensive	Emphasis on liberalisation and increasing economic efficiency	<i>Strong role of EU institutions,</i> also business groups, national finance officers, Central Bankers	Competition policy, EMU [Trade Policy – no EP role]
Market-correcting	Often exclusive but in limited areas	Have re-distributive implications; controversial	The Commission, Council of Ministers Farm lobbies, national officials. EP effectively excluded.	Regional/Cohesion Policy; Fisheries; Common Agricultural Policy
Market-cushioning	Shared with member-states	Significant implementation problems	EU institutions; sectoral ministers, public interest groups	Environmental policy; Social Policy e.g. health and safety; gender, etc.
Non-market policies (polity-building)	Subordinate to member states	Sensitive sovereignty concerns	Council of Ministers has exceptionally strong role, supranational institutions marginalised	CFSP/JHA: aspects of immigration, police cooperation, asylum, foreign policy [enlargement Commission role]

Table 5 Policy type attributed to EP committees

Policy type attached to EP committee	
AFCO	Polity Building
AFET	Polity Building
AGRI	Market Correcting
BUDG	Market Building
CODE	Non policy/technical
CONT	Market Building
CULT	Polity Building
DELE	Non policy/technical
DEVE	Market Cushioning
ECON	Market Building
EMPL	Market Cushioning
ENVI	Market Cushioning
FEMM	Market Cushioning
IMCO	Market Building
INTA	Market Building
ITRE	Market Building
JURI	Market Cushioning
LIBE	Polity Building
PECH	Market Correcting

REGI	Market Correcting
RETT	Market Cushioning
TRAN	Market Cushioning

Table 6 typical EP legislative cycle

EP term year (based on EP term (09-14))	
Year five	June 2013-May 2014
Year four	June 2012-May 2013
Year three	June 2011-May 2012
Year two	June 2010- May 2011
Year one	June 2009-May 2010

Appendix 2

Interview questions

Hi, I'm Karl, thanks so much for meeting with me. Just to say that I'm in the final stages of my PhD dissertation at DCU in Ireland look at the question of under what conditions do trilogues occur, and I've examined using statistical models 1448 legislative files from 1999-2016 and I've some interesting findings that I'd love to put into context and ask people like you about the actual practice and political dynamics around trilogue meetings. If you are interested I can forward a copy of the study to you after my viva is completed.

This interview is confidential, meaning that your identity will never be revealed or associated with what you say here. Anything used in the dissertation in terms of paraphrasing or quotations will be anonymous.

If it's ok with you, so that I don't miss anything important in my notes, can I record this meeting? The recording will be deleted after six months.

Yes/No

DATE:

TIME START: _____

Trilogues*

***Trilogues being any three way informal meeting between the Parliament, Council and Commission.**

- a. Which policy areas (EP committees) are most likely to be subject to trilogues? Why?
- b. Do you think sovereignty sensitive files are more or less likely to be subject to trilogues? Why?
- c. Do you think files which are “market building” (e.g. Competition policy, EMU, Trade Policy, and in terms of Committee - ECON, BUDG, CONT, IMCO, INTA, ITRE) with respect to the EU are more likely to be trilogued? Why?

- d. How might you define efficiency in terms of EU decision-making?
- e. Is efficiency a consideration when deciding to use trilogues?
- f. The EP term stretches across five years. Do you think trilogues are likely to be used most towards the end of this term? Why?/Why not? If not, is there any part of the EP term most likely to see increased trilogue usage? Why?
- g. Which of the following do you think are more likely to be subject to trilogues - Regulations, Directives or Decisions? Why is this?
- h. Because I assume that the longer a file takes to go through the decision-making process (e.g. more than the average of 18 months) and the more reading stages it goes through (i.e. second or third), the more controversial the subject matter the file is likely to be, so, my study considers the number of months multiplied by the reading stage as being an indicator of controversy. Do you agree with this as a measure? Can you think of another measure? (E.g. combinations of Budget; Time Taken; Reading Stage, or anything like number of Recitals; or Amount of Media Attention a file gets).
- i. Can you give me any examples of files that were particularly controversial and what went on in the trilogues? (Probe for vignettes)
- j. Is a known EU Community budget implication more likely to predict trilogues? If so, why?
- k. Many people refer the EU's so-called "democratic deficit" - what is your understanding of the democratic deficit?

1. What are the implications for the EU's so-called Democratic Deficit, in the event that trilogues are increasingly used for efficiency purposes?

2. Transparency*

***the extent to which documentation from the Council's register of documents (Consilium) are redacted partially or fully.**

- a. What is your understanding of why documents or parts of documents are redacted? Is there a 'typical' section of file negotiations, in your view, that normally undergoes redaction? Why? Who pushes for the redaction?
- b. Which policy areas (EP committees) are most likely to undergo redaction? Why?
- c. Does it surprise you that ENVI, EMPL, TRAN and PECH are among the most likely to be redacted? Why?
- d. Do you think there is a relationship between the time taken to conclude a file and the likelihood of documents being redacted? If so, why? If not, why not?
- e. Do you think there is a relationship between a larger EU Community budget associated with a file and the likelihood of documents relating to the decision-making overall or in the trilogues *per se* being redacted? If so, why? If not, why not?
- f. What are the implications for the EU's so-called Democratic Deficit, in the event that files are redacted, in your opinion? Why?