

## He who controls the process controls the outcome? A reappraisal of the relais actor thesis

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### ABSTRACT

In the early years of co-decision, scholars posited that informal trilogues would empower individual negotiators vis-à-vis their respective institutions because of their privileged position in the process of EU legislative decision-making. Now that the procedural framework governing trilogues has been tightened significantly in recent years particularly with the aim of controlling the negotiators, this article investigates if individual negotiators can still exercise control over the process of decision-making, biasing end results towards their own preferences. Based on a case study of the EU's fourth Railway Package, we conclude that this is indeed the case. Applying a new conceptual frame for analysing informal negotiations, we present first conclusion as to how chief negotiators can manipulate negotiations processes to achieve preferred results in this specific but influential forum of negotiations.

### KEYWORDS

Trilogues; relais actor; negotiation process; EU legislative politics; co-decision

### Introduction

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After many years of limited political influence, the European Parliament (EP) became a legislative power on a par with the Council of the European Union (Council) with the entry into force of the Maastricht Treaty, at least in some policy areas. Whilst in the three decades that followed, the co-legislative procedure has become the norm, so has a parallel institutional trend: relocating political negotiations to secluded setting known as informal trilogues. These are meetings in which representatives of the Council, the EP and the Commission sit together and negotiate a compromise text which is then to be approved by the Council and the EP. While they were originally foreseen as a last resort for finding political compromise, trilogues started to appear informally early in the legislative process. After the turn of the century only around 50% of legislative files were concluded early, but since the 2014 EP elections hardly any file has gone into third reading (European Parliament 2019).

The discretion enjoyed by trilogue participants has been of key concern in the literature on EU decision-making and increasingly in a public debate on the democratic quality of the EU law-making process. In the early days of co-decision very few procedures for conducting inter-institutional negotiations existed, so that the EP's and the Council's chief negotiators (i.e. the rapporteur and the rotating presidency) essentially had a free hand

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(Shackleton and Raunio 2003). This is when Farrell and Heritier (2003, 2004) proposed their well-known 'relais actor thesis', which holds that the institutions' representatives in the informal trilogues can take advantage of their position as 'linking pins' between inter-institutional and intra-institutional processes, biasing the eventual outcome towards the preferences that they seek to attain. Despite manifold investigations, the empirical relevance of the thesis remains disputed (Laloux 2019).

Moreover, the scene as described by the authors in the early 2000 s has changed. Trilogues have become the rule rather than the exception, and particularly the EP has tightened its procedures for conducting trilogue negotiations. As much of the evidence on the validity of the relais actor thesis was collected before these changes took effect, a re-appraisal is warranted. Therefore, this article explores whether rapporteurs can influence outcomes under the new procedures, and if so, how they manage to do so. We investigate this question by breaking down the relais actor thesis into two dimensions based on negotiation theory: a content and a process dimension, which we will examine by means of three case studies of files in the EU's fourth Railway Package, which was agreed upon in 2016.

This article contributes to the literature on EU legislative politics in two ways. First, it adds to the literature on the legitimacy of EU decision-making. Earlier students of co-decision have voiced concerns that trilogues may well empower selective oligarchies of individual legislators (Reh 2014; Stie 2013). Second, our methodology allows us to really open the 'black box' of crafting political compromises. Large-N studies in this field often leave the processes that lead to the outcome implicit (Burns, Rasmussen, and Reh 2013; Costello and Thomson 2013; Laloux and Delreux 2018; Rasmussen and Reh 2013). But procedural aspects are essential in the relais actor thesis: it is decisions on the distribution of information and choices as to who are tasked with negotiating policies from which relais actors are said to derive their influence (Farrell and Heritier 2003, 2004). In this exploration of potential present-day relais actor influence, we explicitly pay attention to rapporteur's preferences, as well as to the leeway that they still enjoy to shape the process that leads up to the eventual decision in order to attain a favourable outcome. In doing so, we are able to add insights into the craft of making political compromise.

### **Parliamentary relais actors in a new trilogue environment: fenced in or still breaking out?**

Trilogues were envisaged as a mechanism to facilitate negotiations within what is now the ordinary legislative procedure. Before officially adopting a first-reading position, the institutions first adopt a negotiation mandate on the basis of which delegates from the institutions negotiate a deal which then, ideally, is formally adopted by both institutions as their first-reading position, thereby concluding the legislative file. Each institution has a small negotiation team that consists of a few select members of the institutions, the so-called relais actors (for more information on and analysis of the composition of negotiations teams, see e.g. Reh 2014; Héritier and Reh 2012; Ripoll Servent 2011; Roederer-Rynning and Greenwood 2015, 2017).

The participants in trilogue meetings are the linking pins between inter- and intra-institutional processes. Because they can control the flow of information from one institution to the other they are able to steer political negotiations into their preferred

directions. This is the essence of the *relais actor* thesis as launched by Farrell and Héritier (Farrell and Héritier 2004, 1200–1205). On the basis of qualitative evidence gathered in the early 2000s, they argue that the shift towards informal decision-making favors the Council presidency and the EP rapporteur, and leaves behind members of small parties, EP committee chairmen, ministers in the Council and national parliaments because they primarily rely on the formal procedure which trilogues cut short.

To counteract the *relais actors'* possibilities of presenting the full bodies of the Council and the EP with a *fait accompli* after trilogue negotiations, over the past few decades mainly the EP has adopted procedural safeguards to fence them in (Héritier and Reh 2012). The main changes of the last decades are noted in Rule 69f of the current Rules of Procedures of the EP (European Parliament 2014a). These rules concern (1) the provision of a mandate, (2) the composition of the negotiation team and (3) responsibilities of reporting back and general flows of information. First, the decision to enter negotiations no longer is in the hands of the EP committee exclusively, as the plenary may decide to take a vote on opening negotiations itself, thereby aiming to secure a greater involvement of MEPs from the beginning of the legislative procedure. Second, representation of the EP in trilogue negotiations has been pluralized (Judge and Earnshaw 2011; Roederer-Rynning and Greenwood 2017). The EP committee chair frequently chairs trilogues and shadow rapporteurs are now considered members of the negotiation team, guaranteeing the access to highest-level trilogues. Third, rules governing the circulation of documents prior to and after trilogue meetings aim at securing that as many actors as possible (at EP committee level) are kept informed during ongoing negotiation processes.

The institutionalization of the rules governing trilogues over the last 15 years has had a potential two-fold effect. First, codification of rules may have limited opportunities for *relais actors* to act according to narrow interests, be it their own or those of their party group. Second, the standardized use of trilogues in a great majority of legislative files has established normative regimes which also determine actors' conduct in trilogues (Roederer-Rynning and Greenwood 2015, 2017).

### ***The influence of relais actors***

The influence of *relais actors* has been analyzed with varying results in the last decade. Thomson (2008) finds no *relais actor* effect in the Council. He argues that the political agreements are biased towards the position of the country holding the Council presidency, but that his bias occurs irrespective of whether a file was concluded in first reading or not (Thomson 2008). Judge and Earnshaw (2011) already find an effect of the institutional adaptations in the EP, in that they argue to broaden the definition of *relais actors* to also take into account the shadow rapporteurs (Judge and Earnshaw 2011). Rasmussen and Reh show that for a selection of salient files, there is no *relais actor* effect on the relevant conflict dimensions underlying political negotiations. They argue this may be indicative of an absence of the *relais actor* effect, but also of a selection of moderate rapporteurs for salient files, or of the necessity for *relais actors* to forge consensus in their parent bodies (Rasmussen and Reh 2013). Laloux and Delreux (2018) investigate the full population of files that were concluded between 2012 and 2016 by means of informal trilogues and find that the degree of deviation from the mandate varies between EP

committees. Interestingly, the size of the majority by which the EP committee or the Council support their respective institutional mandate has no effect on deviation.

Many studies testing the *relais actor* thesis have therefore concluded that ‘negotiators from the institutions do not act as “runaway agents” but as representatives of their principals’ constituencies’ (Burns, Rasmussen, and Reh 2013, 945). Yet, other recent studies have found that the rules officially put in place by the EP might not have the expected formalizing and levelling effect for all trilogue negotiations. Rules on reporting, for example, are not implemented equally across all trilogue negotiations, in fact in a majority of cases rather poorly (Brandsma 2019). Moreover, the conduct of trilogue negotiations is still far from uniform across different policy fields and many negotiation processes depend on committee traditions as much as they depend on formal rules (Roederer-Rynning and Greenwood 2017). It is, therefore, more than warranted to explore if and how rapporteurs can still influence outcomes under the new procedures.

### **Conceptualizing *relais actor* behavior – two dimensions of political negotiations**

The *relais actor* thesis posits that ‘certain individuals controlling information flows between organizations will see an increase in their power over legislative outcomes’ (Farrell and Héritier 2004, 1184). This influence derives from institutional rules that place these individuals in a position that centralizes their control over information flows, as well as from their resulting ability to tweak, where possible, the process of interinstitutional negotiations to their favor. This process gives ‘incentives to individual members or party groups that have a private interest in specific issues to renege and engage in these negotiations’ (Häge and Kaeding 2007, 358).

From the above it becomes clear that a useful starting point for further investigating how *relais actors* might be able to shift policy outcomes towards their preferred preferences is the negotiation process. This analysis aims at both, explaining whether rapporteurs are able to shape outcomes, i.e. the content of legislative files, and if so, how they (try to) achieve this. Starting from these questions and based on the above accounts on trilogue negotiations, we can derive two conceptual dimensions that help us understand how political negotiations impact the final legislative outcome. The *content dimension* of political decision-making mirrors what other scholars of negotiations have called the structure or context dimension of negotiations (Greenhalgh and Chapman 1998; Imer and Druckman 2009; Odell 2002; Thompson, Wang, and Gunia 2010). It entails the issues on which negotiations take place and the positions of the negotiators on these issues, within the context of macro-institutional decision-rules (in this case, the ordinary legislative procedure). It is this content dimension of decision-making that previous studies of trilogues have often focused on: The eventual bargaining outcome is seen as a function of initial positions and institutional resources and structures (Burns, Rasmussen, and Reh 2013; Costello and Thomson 2013; Laloux and Delreux 2018; Rasmussen and Reh 2013).

As EU legislative negotiations are normally structured on an issue-by-issue basis (Ripoll Servent 2011), negotiators cannot be expected to hold a consistent position on a legislative file as a whole. They have different positions on multiple single issues constituting the legislative proposal, and prioritize them according to the salience they attach to them (Thomson 2008). For the argument of this paper, it is not of imminent

importance whether rapporteurs take their cues from their party group or national or personal background; important is only which issues within their institutions' negotiation mandate they choose to emphasize or de-emphasize. Also, chief negotiators do not only have the responsibility to defend their institutions' interests, but at the same time they are also working towards a compromise to bring the negotiations to a good end. Accordingly, file conclusion comes with prestige for the rapporteur in charge of negotiating the file, which makes file conclusion an end in its own right (Bressanelli, Koop, and Reh 2016).

The *process dimension* in contrast refers to the way in which negotiators prepare and conduct inter-institutional negotiations. Only a few studies have so far paid attention to the actual process of trilogue negotiations specifically (Brandsma 2019; Judge and Earnshaw 2011; Ripoll Servent 2011; Roederer-Rynning and Greenwood 2015, 2017). These show that relais actors might well have an impact on the final compromise by deciding which actors (and accordingly preferences) are involved in shaping it, and how. From this literature, we have derived two specific process aspects that merit attention: the *local* and *social* elements of negotiations.

In negotiation analysis in general, 'the level of negotiations – whether at the highest political level, at the level of middle-level technocrats, etc.' is of highest importance (Ocran 1984, 428). Similarly, EU-scholars have identified shifts of loci as decisive elements shaping negotiation processes in the Union (Christiansen and Neuhold 2013). The local element refers to the hierarchical and formal level at which decisions are *de facto* taken. Trilogues offer three possible loci of decision-making: Political trilogues, technical trilogues and informal, 'behind-the-scenes' negotiations, involving different configurations of actors. Political trilogues are the main arena of inter-institutional conflict. It is in political trilogues that the institutions defend their positions and try to get as many concessions as possible from the respective counterpart (Roederer-Rynning and Greenwood 2017). Technical trilogues are used to negotiate technical details and less political issues, while informal bilateral negotiations are used for inter-institutional coordination and finding solutions for difficult political issues. (Roederer-Rynning and Greenwood 2015). That said, it is up to the chief negotiators to decide which issues are more technical and less political, and which issues need informal bilateral coordination.

Second, the social element relates to the intensity of interaction between interlocutors. Social interaction is a central feature in many accounts of negotiation processes, as it is a driver of trust (Druckman 1997; Irmer and Druckman 2009; Ocran 1984; Thompson, Wang, and Gunia 2010). The theoretical, yet empirically rare endpoint of low interaction is no interaction at all, which via superficial and possibly non-personal agreement of agendas and other organizational issues, to exchange of positions and eventual cooperation in light of a common goal reaches the other end, high-intensity interaction. Social interaction in trilogues is not limited to the chief negotiators: It occurs between all actors both within and between institutions.

To some degree, interaction intensity between a selected subset of negotiators is a matter of design. It is up to the chief negotiators to decide on the frequency of meetings at different levels, and on the invitation policy for informal meetings. As a first step, this entails identifying partners with whom it is most likely to attain as many salient preferences as possible (Hall and Taylor 1996). Of course, they are not completely free to choose interlocutors of their liking, but from within the pool of rapporteurs, shadow rapporteurs, political assistants, administrators, Council presidency staff and others, they are able to

prioritize some connections over others, effectively building a coalition. Laloux and Delreux have shown that relais actors in their central role have several possibilities to act and interact with both the own institution as well as the opposite institution to pursue their interest (Laloux and Delreux 2018). Negotiators can thus build coalitions with the actors they calculate give them the highest chances of pursuing as many of their salient preferences as possible, and interact with them more intensively: It may go beyond exchange of agendas and other forms of administrative coordination, but rather towards jointly pre-agreeing positions and strategies for the negotiations. The more negotiators interact, the more they will develop mutual understanding of the respective positions and underlying preferences, leading to a trustful negotiation relationship (Deutsch 1983). Deepened mutual trust engenders more co-operative styles of negotiations to take hold and become routinized (Lewis 2010, 658). As the chief negotiators are at the apex of trilogue negotiations, their choice of preferred interlocutors and variance of their interaction intensity might thus impact on which voices (and hence, preferences) are central to the decision-making process and which are not.

By distinguishing between the process and content dimensions of political negotiations, we should be able to discover to what degree rapporteurs can exercise influence under the current trilogue rules. Do they actively use any local and social elements of processes to influence the content of political compromises in trilogues?

## Data and methods

To explore in how far relais actors under the current rules can make process choices that privilege their preferences in the legislative outcome of negotiations, we apply a process-tracing analysis. Process tracing has evolved as one of the leading analytical tools for case study research. Its evolution has been accompanied and shaped by a broad conceptual debate, a detailed engagement with which is beyond the scope of this paper (Beach and Pedersen 2013; Bennett and Checkel 2012; Collier 2011). Beach and Petersen identify three variants of process tracing: outcome-explaining, theory-building and theory-testing process tracing (Beach and Pedersen 2013), with our study fitting into the second category.

To analyse how relais actors strategically construct negotiation processes, we need to identify empirical evidence, or fingerprints, that we expect in the data in case the mechanisms hold. Beach (2016) identifies three distinct forms of fingerprints, pattern evidence, trace evidence and account evidence (Beach 2016, 469). It is trace evidence, which refers to 'material where it's main existence provides proof' and account evidence, which 'can be in the form of what participants tell us in interviews, or the content of relevant documents like legislative proposals' (ibid), which is utilized in this study. In interviews with key participants in three cases (cf. below), as well as in documents published by the legislative institutions or made available to us by our interviewees, we looked for three types of evidence. First, we looked for evidence on the content dimension of the negotiations that informed us about the issues that the rapporteur sought to emphasize over other issues and gave priority in the political compromise. In other words, we sought to find out what was at stake for the rapporteur. Second, we looked for evidence on the process dimension of the negotiations. In line with our theoretical discussion, we sought information on choices made as regards the creation of intra- or

inter-institutional coalitions, and the loci of negotiations (i.e. political trilogues, technical trilogues or informal meetings). Third, and most importantly, we looked for evidence linking the two dimensions: did *relais* actors deliberately make process choices in order to be successful on the content dimension?

We answer our research question by employing a least likely case design. Since our aim is to explore influence of rapporteurs under the new EP rules, a least likely case design is optimal: if we can trace influence in this case, we can expect it to occur more generally across manifold cases (cf. Flyvbjerg 2006, 231). But what are the least favourable conditions for rapporteurs to exert influence in a trilogue environment? On the basis of existing research, we argue that a second reading, combined with a file being carried over the EP elections and having its rapporteur changed, and salience, create such unfavourable circumstances. It is well-known from the literature on codecision that second readings have disadvantages for the EP: decision-making is subject to strict time limits once the Council has passed its first reading, and the EP votes by absolute rather than simple majority (Hagemann and Høyland 2010). This limits the room for maneuver for rapporteurs. The same is true when after elections rapporteurs change. Normally, rapporteurs are involved in negotiating their own negotiation mandate since they write a draft report in first reading, which gives them the opportunity to shape the EP mandate. But when after the EP elections rapporteurs change, the new rapporteurs may easily find themselves locked in: they have a first-reading position adopted in plenary to pay tribute to which they did not prepare themselves, and they do not know the legacy of the file – especially if the rapporteur also changes committee over the elections. Finally, salience is known to make control mechanisms over the *relais* actors working at full speed with correspondingly little room for maneuver for the individual rapporteurs (Laloux and Delreux 2018; Rasmussen and Reh 2013). A combination of these factors should equip the rapporteur with the least possible room for maneuver.

Still, even though all cases that match these criteria are crucial, a research design with more than one case provides a stronger basis for generalizations (cf. Seawright and Gerring 2008, 296–298). As policy fields also in trilogues create normative regimes (cf. Roederer-Rynning and Greenwood 2017), we were looking for multiple cases carried over the election in the same salient policy field: transport. We found that only one package was carried over the elections to begin with: the fourth Railway Package, which was split into two sub-packages of three files each (the ‘technical pillar’ and the ‘market pillar’) of which only the latter was deemed politically salient (but deeply so). Therefore, this is the set of cases that we selected.

In sum, we thus have a set of three nested, least-likely cases that we investigate in this study. Of course, besides reducing policy-specific variance, our nesting of cases also possibly creates some bias due to interdependence between cases. We therefore explicitly asked our respondents about issue linkage between the files in the package, and wherever we found evidence of this we reported this in our findings. However, interdependence between files arguably restricts the individual rapporteurs’ room for maneuver even further compared to stand-alone cases.

For our analysis, we rely on multiple types of sources. We use documentary evidence in the form of Commission’s proposals and other institutional reports, General Approaches and other statements as issued during the negotiation process. In order to probe deeper into the actual workings of trilogues in these files, we carried out in-depth expert

interviews with seven respondents from all three institutions, who were directly involved in the negotiation process. For reasons of anonymity, they are marked R1 through R7.

In the next section, we first briefly summarize the content dimension of each of our three files, describing both the files themselves as well as what was at stake for the rapporteur. We then continue by elaborating the process dimension for each case, and to what degree rapporteurs crafted the social and local elements of the negotiation process. Finally, we assess to what degree the rapporteurs exercised influence through the setup of the negotiation process.

## **The market pillar of the fourth railway package: the content dimension**

### ***The governance file (file I)***

The Commission presented its legislative proposal on 30 January 2013 and sought to add a few provisions to the recently recast directive 2012/34/EU on the governance of the railway sector and the principles of market opening. Primarily, the Commission sought to make rail infrastructure managers more independent from incumbent rail operators. In order to avoid cross-financing between infrastructure managers and rail operators, and also to prevent preferential treatment of the incumbent operator by the infrastructure manager, the Commission presented a set of detailed rules in its proposal. Further, the Commission sought to further open access to the rail passenger transport market. Access of new operators to the railway network can only be denied if the proposed services would directly compete with services provided under a public service contract, and also distort the viability of those services on the basis of an economic equilibrium test (European Commission 2013b).

Under the rapporteurship of Saïd El Khadraoui (S&D), and despite considerable controversy, the European Parliament came to a first-reading position in less than a year (European Parliament 2013b, 2014b). Its main priorities were to establish a Europe-wide through-ticketing system and to include social safeguards. The member states in the Council had a hard time getting their act together as they were split on two dimensions: pro or against the Commission's proposals on making infrastructure managers independent from state-owned operators, and pro or against further market opening (with the latter camp being largest). As a result, many member states were hesitant to start negotiating on the market pillar as they feared they had something to lose (R3, R5, R6). Italy, as one of the few countries favoring market opening, held the Council Presidency in the second half of 2014 and was not able to make any progress on this file (R1, R3, R4) because it insisted on policies that did not fit the majority view in the Council (R4, R6). The succeeding Latvian Presidency preferred to conclude the less controversial technical pillar of the package first and paid little attention to the market pillar (R4). This left the governance file to the Luxembourg and Dutch presidencies of late 2015/early 2016.

Our analysis, however, begins after the European Parliament's first reading. After the 2014 elections, the EP appointed David-Maria Sassoli as rapporteur (S&D) for this file. While in first reading, the Europe-wide through-ticketing system and social provisions were the most salient issues for the EP, the new rapporteur completely shifted focus towards market opening of high-speed routes (i.e. routes that allow trains to run over 250 km/h during most of the journey) – an amendment that did not receive any particular

attention during the EP's first reading (R1, R6, R7). Consequently, during trilogues this was the only issue listed in an internal document as being 'a prerequisite for an agreement' (European Parliament and Council 2016, R1, R6, R7), despite the EP's priorities in the negotiation mandate being different. This is clear evidence for the issue preference of the rapporteur – a preference not shared by the Council (R6, R7, R8).

### ***The PSO file (file II)***

The PSO file stands in close relation to the governance file, since it concerns passenger train services offered under a public service contract. In most member states, at least part of the passenger train services is carried out by an incumbent railway company without competitive tendering. By its proposal of January 2013 to change the existing EP and Council Regulation 1370/2007, the Commission sought to change this and subject all public service contracts to mandatory compulsory tendering, aiming to open public rail service markets to international competition (European Commission 2013a).

The EP passed its first reading position in the plenary session of February 2014 under the rapporteurship of Mathieu Grosch (EPP). As one of the most controversial issues, our interviewees have identified specific social provisions that the S&D had introduced as an amendment, and that were adopted by the EP in its first reading position (R1, R5, R6, R7). Within the Council, the dynamics of this file reflect those of the Governance file.

Also in this file one can clearly trace the evolution of a salient issue, even if in this case it is the refusal of an amendment that was important to the new rapporteur. An amendment tabled by S&D and accepted by the EP in first reading demanded to oblige new operators to take over the employees of previous operators at similar or better conditions (European Parliament 2014a, 52). Many member states, the Commission as well as other party groups strongly opposed including it in the final legislation (R5). Also, it left the new rapporteur Wim van de Camp (EPP) with the task of defending an EP position which neither he nor his party group agreed with (R1, R3, R7).

### ***The normalization of accounts file (file III)***

The Normalization of Accounts file was the least controversial file in the market pillar of the fourth Railway Package, and concerned the repeal of an old regulation dating back to the year 1969 that allowed the member states to give financial aid to railway companies for expenses that other modes of transportation do not make (e.g. the financing of level crossings, or early retirement of railway staff). Since the eligible beneficiaries of such state aid were listed and hence limited to 36 mainly state-owned railway companies, and because only very few companies still used it, the Commission simply proposed a repeal.

The European Parliament appointed Jaromir Kohlicek (GUE/NGL) as rapporteur in first reading. The only substantial amendment the EP passed in first reading was to make it applicable only 2 years after adoption rather than immediately, even though the rapporteur initially proposed 2019 as the implementation deadline in his draft report (European Parliament, 2013a, 2014c). Shortly after the 2014 EP elections, the Council discussed this matter in its working party on Land Transport. In line with the EP's view, Germany, Denmark and Hungary pleaded for an extended implementation deadline. This was opposed by the

Commission and the other member states, and the general approach adopted by the Council did not foresee an extended implementation deadline (Council, 2014).

When negotiations on this file began, negotiators were under the impression that this would be an easy file (R2, R3, R4), and the main interest of the new rapporteur Merja Kyllönen (GUE/NGL) was simply to get it done (R6). Quickly, however, discussions centred around the specific issue of the implementation deadline. This issue was not of imminent importance to the negotiators (R3, R7), but rather mainly to Germany, which after having lost the discussion in the Council sought to re-politicize the issue both in the Council as well as in the EP (R2, R4, R6).

## **The process dimension**

### ***The social element***

In File I, the negotiation process was strongly controlled by the Council presidency, the rapporteur and the political advisor of the S&D group (R6, R7). As the Council Presidency and the rapporteur diverged on the rapporteur's most salient issue, the Council presidency tried to work around the rapporteur and trigger the EPP shadow, but as the EPP needed S&D's support in file II this attempt failed (R6). One cannot speak of a coalition between the rapporteur and the presidency in which interests converge; the cooperation between them apparently was informed by the wish to come to an agreement in general.

In the negotiations on file II, we do clearly witness coalition formation based on common interest. According to several interview accounts, the Council presidency as well as the rapporteur and the Commission wanted to avoid that binding social provisions would enter the final legislation; provisions that were highly salient to S&D and were approved by the EP in first reading. Accordingly, there was a clear coalition dynamic and hence increased social interaction between these three actors, effectively excluding other EP party groups. Behind the scenes, all tried to find a compromise without social provisions that would satisfy S&D parliamentarians or at least break their opposition, and discussed tactics to accomplish this (R1, R3, R6).

Lastly, file III only sought to repeal an old regulation, which did not contain imminently salient issues to the chief negotiators: they simply wished to close the file. The main thing standing in the way of a speedy adoption were German lobby efforts to further postpone the repeal. It had lost that debate in the Council but continued to lobby both the European Parliament and the Council more intensively after the opening trilogue on the file (R2, R6). This sparked a clear coalition dynamic between the rapporteur and the Council presidency: they agreed not to speak to German interest representatives any longer (R6). If anything, therefore, the existence of a 'common enemy' and possible disruption to the common goal of clean and fast file conclusion were the reason for the negotiators to team up. Negotiation dynamics between them were characterised by close cooperation and an apparently very good and friendly atmosphere between the rapporteur and the presidency.

### ***The local element***

In file I it was mainly the political advisor of S&D and his rapporteur that closely cooperated with the Council presidency (R1, R6). Apart from closing the file, on the main issue

under discussion, they held opposing views. Still they interacted a lot and negotiated on the file, mainly outside of the political trilogues (R6). 'For the political trilogues, the political advisor of S&D played a key role in preparing a text, word-by-word, that the rapporteur would read out aloud during, and he shared this information, before trilogues, with the presidency' (R6). In consequence, the trilogues in this file have been described as 'orchestrated' and 'in essence a theatre performance' (R1, R6). Other than the pivotal role played by the S&D political advisor, there is little evidence that staff members of lower hierarchical levels were prominently involved in the negotiations (R6). This stands in contrast to most cases in which MEPs rather stay aloof and have their assistants deal with most of the issues (R2).

File II presents a different picture. We identified a strong coalition of converging interest having formed between the Council presidency, the rapporteur and the Commission: they jointly tried to prevent social provisions entering the legislative outcome, as demanded in the EP's negotiation mandate. This strong interest-based coalition led to close cooperation, marked by the involvement of lower-level staff members and a high degree of informality (R1, R3, R6, R7). Negotiators stressed the existence, and high importance of, mutual trust between the negotiators and the significance of a confiding atmosphere which must be created, and that this often happens 'in a bar with a beer' (R1). All actors involved point at the high frequency of exchange and negotiations in different settings and with different people, stressing the importance of not always involving highest-level negotiators in technical meetings, if their delegates are trusted.

The negotiations on file III are special because the file was a lot less complex than the preceding two: it only concerned the repeal of an old regulation, and the main issue under discussion was the implementation deadline. The sequence of negotiations was described as follows: one opening trilogue to exchange positions, then several coffee meetings mostly including no more than the rapporteur and a presidency representative, and a closing trilogue (R2, R5, R6). It can be ascribed both to the dedication of especially the rapporteur as well as to the missing complexity of the file that little delegation to lower hierarchical levels occurred in these negotiations (R2).

### **Exercising influence through the setup of the process**

As we have seen, different loci of decision-making have been used with different sets of actors 'at the table', thus creating insiders and outsiders. Technical and informal bilateral meetings are more secluded than political trilogues and have no rules on attendance, which makes them excellent loci for negotiations with a more restricted set of preferences represented. All three cases show evidence of restricted participation to such informal meetings, and this leading to either a narrower set of issues under discussion or the development of strategies to shut out unwanted interests.

In file I, we see that the non-convergence of interests between the rapporteur and the Council led to close cooperation in informally pre-cooking deals and preparing the trilogue meetings. The setup of the negotiation process allowed the rapporteur to focus on one issue without too much interference of other political groups, while the Council presidency simply took advantage of his preoccupation with high-speed routes to push through the Council position on almost everything else. The Council anticipated that the rapporteur's single-issue focus could help achieving many salient issues for the Council which the rapporteur

effectively did not take an interest in (R1, R6, R7). The single issue-focus of the rapporteur indeed increasingly shut out other EP-interest: multiple respondents note that MEPs got increasingly tired with the lack of EP accomplishments in this file, and many shadow rapporteurs decided to give in to the Council for the sake of an agreement. In the words of one respondent: 'Then came the old kind of arrogance of politicians. It is too embarrassing to say that we cannot do it. [...] Most want to be in the hall of fame, not in the hall of shame' (R2). Also, the EPP shadow in file I was restricted by the need for S&D support on file II, where the EPP held the rapporteurship (R6). File I thus ended with what is generally considered as a win for the Council, with a special 'Sassoli-article' that addresses some aspects of market opening for high-speed rail as a concession to the rapporteur (R1, R2, R5, R6).

The negotiation dynamics in file II were marked by intensive, informal coordination across institutions and involving hierarchically low-level staff with de facto decision-making power. In contrast to file I, speeches of the rapporteur were not scripted and shared, but arguments of the Presidency as well as those of the rapporteur had been informally exchanged before each trilogue, including how they would be replied to (R6). This coincided with seemingly open negotiations in political trilogues, since the rapporteur allowed all political groups to take the floor – which they happily did (R3, R6, R7). In doing so, he deviated from conventional trilogue proceedings and ran against a decision by the joint shadows in the market pillar of the fourth Railway Package confirming that the EP speaks with one voice through the rapporteur and shadows may raise their issues only in dedicated shadows' meetings (European Parliament 2015).

While at first sight, it hints at a very democratic setup of trilogues for this file (R7), this approach was in fact a tactical move to lock in S&D (R1, R3, R6), coordinated beforehand between the rapporteur, the presidency and the Commission. By allowing all shadow rapporteurs to take the floor, and even offering the S&D shadow rapporteur to negotiate on the issue of social safeguards, the S&D shadow in practice assumed co-responsibility for the outcome (R1, R6, R7). This made it harder for S&D to collectively vote against the final compromise, and in second reading their vote was split. Also, EPP, ECR and ALDE could show during trilogues that they did not agree with the S&D position on social safeguards. Throughout the process, there was constant cooperation between the negotiators, including the Commission, spanning all levels of hierarchy but especially relying on preparatory negotiations at low hierarchical levels and with a high degree of informality, effectively keeping other interests off the negotiation table. This coalition got what it wanted: it successfully prevented the adoption of social provisions.

In file III, we see the same mechanism at work, albeit unsuccessfully. The only factor disrupting a peaceful closing of the file was the heavy German lobby effort, which made the rapporteur and the Council presidency informally decide not to speak to German interest representatives any longer. Their attempt to effectively shut out this interest failed. German interest, despite having been effectively denied access to the negotiators, was in the end included in the legislative file 'because we needed Germany on other issues' (R6).

## Comparison

By applying a conceptual framework that distinguishes between a content dimension and a process dimensions of negotiations, we can show that rapporteurs still have

**Table 1.** Content and process dimensions in the market pillar of the fourth Railway package.

	File I	File II	File III
Content dimension	Strong emphasis on market opening for high-speed rail routes	Leave binding social provisions outside the agreement	Speedy adoption
Process dimension <i>Social element</i>	Sharing of trilogue speech texts, frequent informal negotiations	Rehearsing political trilogues, discussion on tactics, frequent informal interactions, open floor in pol. trilogues	Occasional informal meetings, agreement to shut out German interest representatives
<i>Local element</i>	Alternating between mainly political trilogues and informal meetings	Alternating between political trilogues, technical trilogues and informal meetings, strong involvement of lower-level staff	No delegation to lower levels (very small file).
Outcome	Special article for high-speed rail	Binding social provisions left outside the agreement	No speedy adoption

considerable leeway because they can make decisions on the negotiation process to be followed. In all three cases, we see that the chief negotiators have deliberately used the process aspects of negotiations to their advantage, albeit with varying success. [Table 1](#) presents the main characteristics of the negotiation processes of each case.

In file I, we witnessed disagreement between the institutions on the content of the file, with negotiators bargaining in informal settings for their respective-preferred solutions. While this contributed to shutting out the shadow rapporteurs, it must be stressed that some of these actively decided to not try and intervene. Although the shadow rapporteurs could have decided to step in, they did not do so for a variety of reasons, the fact that it was part of a larger package being the most important one. In files II and III, we have seen evidence of converging interests, and informal negotiations also explicitly discussed tactics to shut out unwanted interests. Although the exact manifestations and also the effect differ, in all cases we see evidence of the process being deliberately used by the rapporteur as a resource to influence the outcome of the negotiations. Alternating between larger and smaller settings intends to keep some specific interests out of the negotiations, while the larger meetings provide enough legitimacy for the negotiation process to move forward, including the informal meetings in which much of the actual decisions are being pre-cooked. Yet, it also must be stressed that this strategy does not always work. File III shows that the exclusion of German interests was not successful as Germany's support was needed on another file.

## Conclusion

This study set out to revisit the *relais-actor* thesis, with a new conceptual approach exploring whether rapporteurs continue to have disproportionate influence on legislative files in the OLP. Our three cases provide clear indications that rapporteurs use the negotiation process as a resource to secure wins that do not necessarily correspond to the priorities in their mandates. We found that the negotiation process is structured by

single issues and the respective positions negotiators hold on these as well as the importance they attach to them. We have also seen that, based on these preferences, negotiators can form strong alliances with other negotiators having overlapping interests, which helps to shut out unwanted interests. By alternating between negotiating in more formal and less formal settings, and also by co-ordinating negotiation tactics informally, rapporteurs can partly determine who has a seat at which table, seeking to pre-cook decisions in ways that correspond to their most salient preferences.

Not only were the salient issues under discussion mostly determined by relais actor interest, except for one case their preferences also made their way into the final legislative output – even when their mandates suggested different priorities. Although the trilogue world of today does not correspond any longer to the relatively rule-free environment observed in the early days of codecision (Farrell and Heritier 2003, 2004; Shackleton and Raunio 2003), rapporteurs thus still enjoy considerable autonomy in terms of structuring the process of negotiations and thereby influencing final outcomes – even in cases like these where they work under the constraints of second reading voting rules and a first-reading position which they did not actively shape themselves.

Regarding the practices of co-decision, our findings suggest that the EP's attempts to fence in its negotiators in part seem to have had the opposite effect. We see that rapporteurs at times bend or ignore procedural rules if they stand in the way of finding a compromise efficiently, and that they steer the actual negotiations away from trilogue meetings towards even more informal bi- and multilateral consultations. With trilogues at political level being increasingly proceduralized and formalized (Héritier and Reh 2012), relais actors reap the advantages of alternative and more informal arenas. Whilst in the early days of codecision all inter-institutional contacts were highly informal in nature (cf. Shackleton and Raunio 2003), rapporteurs can now alternate between more formal and more informal venues for interaction and use the distinction as a resource.

This has important repercussions for the overall democratic legitimacy of EU law-making. It was envisaged by the EP that the extension of participation rights in informal trilogues would restrict the autonomy of the rapporteur (cf. Héritier and Reh 2012). We see however that, despite the resulting considerable empowerment of shadow rapporteurs, the lead negotiators still enjoy quite some room for manoeuvre. At times they delegate significant parts of the decision-making process to assistants or administrators in technical meetings, or they relocate negotiations to informal bilateral talks, which leaves the decision-making process opaque. Efforts to legitimize trilogues by making them more transparent will thus not necessarily shed light on the more informal means by which decisions are being made beneath the surface.

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