TRILOGUES IN EU LEGISLATION

BY

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DISSERTATION

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Abstract

This dissertation investigates the legislative process within the European Union (EU), with a particular focus on the emergence and impact of trilogues—an informal negotiation mechanism involving the three main EU institutions: the Council of the European Union, the European Parliament, and the European Commission. Unlike other dispute-resolution mechanisms, trilogues occur early in the EU's Ordinary Legislative Procedure (OLP) and shape the content of legislative files, despite lacking explicit provisions in governing treaties.

The use of trilogues has become the norm in EU legislation, with the institutions meeting for over 75% of legislative files. The ascendancy of trilogues as the standard practice holds significance for the EU, given that trilogues represent a departure from the OLP as established by the EU treaties. However, the use of trilogues relates to deficiencies of the OLP. Due to structural problems in the procedure, the OLP is vulnerable to gridlock. Trilogues serve as a legislative workaround to ensure legislation passes in the early stages of the OLP.

In Chapter 2, I identify legislative characteristics correlating with an increased likelihood a trilogue is convened for a given file. Specifically, this chapter demonstrates that trilogues are used to pass complex legislation. Trilogues are needed because complex legislation increases the likelihood of gridlock in the legislative system.

Chapters 3 and 4 both explore the consequences of trilogues on EU legislation, specifically focusing on changes made to trilogue and non-trilogue files. Chapter 3 utilizes a minimum edit distance algorithm called DocuToads to analyze legislative amendments, finding that trilogue files do not result in more or fewer changes than non-trilogue legislation. The complexity of a legislation's text was associated with more legislative changes made, while disagreements between key actors were associated with fewer changes.

In contrast, Chapter 4 investigates ideological changes using the WORDFISH scaling algorithm, demonstrating that trilogues limit ideological alterations in legislation, emphasizing their role as a system that restricts ideological changes rather than promoting or inhibiting

changes in general. In addition, both complexity and ideological differences between key actors were associated with more ideological changes made.

Beyond the EU context, this research contributes to the comparative legislatures literature by highlighting trilogues as a unique form of dispute-resolution mechanism within a bicameral system. The study explores when and why trilogues are used, demonstrating their necessity for handling complex legislation and averting gridlock in the Ordinary Legislative Procedure. The findings underscore the importance of understanding the complexity of legislation in legislative systems, with implications for knowledge acquisition and preference divergence.

Additionally, this dissertation contributes to the literature on the EU's institutional and political context, enhancing theories of the EU by demonstrating the interdependence of institutions and characteristics of the broader political environment. Trilogues alter the behavior of the European Parliament and the Council, prompting the development of a theory explaining the conditions under which trilogues are employed. By shedding light on the *how*, *when*, and *why* of trilogues, this research advances our understanding of their impact on the EU legislative system and its laws.

Dedicate to my parents, John and Lorraine Pierce for their endless love and support.

Acknowledgments

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Chapter 1

Introduction

The process through which legislation is proposed, amended and passed has profound consequences for the resulting laws. For example, different procedures empower certain actors at the expense of others, allowing the former to shape legislation to their preferences. Some institutions allow for quicker, more efficient decision-making, while others slow down decision-making to allow for institutional checks and greater policy stability. The wide, cross-national variation in practices and their influence on outcomes has naturally created a deep literature in political science that studies these institutions and their effects. In this dissertation, I contribute to this literature by exploring a new dispute-resolution mechanism, known as trilogues, in the European Union (EU) which has important implications for legislation.

Trilogues are informal negotiation between the European Union's (EU) three main institutions; the Council of the European Union (the Council), the European Parliament (the EP), and the European Commission (the Commission). Trilogues occur early in the the EU's Ordinary Legislative Procedure (OLP) and influence the content of the legislative file. They are extra-constitutional in that there is no explicit provision for them in any of the EU's governing treaties. Instead they are a system that seems to have emerged from previous iterations of the EU legislative processes (Earnshaw and Judge, 1997). Their ascendancy has occurred as the EU's legislative process has become more complex, both because of the OLP and because of the EU's expansion.

Trilogues are important for the EU as they have changed the balance of power among actors in the legislative process. This in turn will influence the content of EU legislation and how actors approach the legislative system and the preferences they develop about how to best maximize their influence. However, the study of trilogues is important for the comparative

politics study of legislation making in bicameral systems. The EU is a bicameral legislative system and as such debates between its "houses," the EP and Council, follow similar patterns as other bicameral legislative systems.

Why trilogues have become the norm and what their consequences are for EU legislation contributes to our understanding of the OLP and of EU legislation. In addition, while the EU's legislative process is unique, the innovation of trilogues can advance our knowledge on legislative decision-making more broadly. This provides us an opportunity to understand why such processes occur and what the consequences are for legislation making. Trilogues are unique among bicameral dispute-resolution mechanisms because they occur *before* official debate on legislation has occurred. To better envision why trilogues are unique imagine that the US House and Senate held a conference committee *before* beginning any other step in the legislative process. It is unlikely legislation would be identical to the legislative produced in the current system.

While the study of trilogues has important implications for the EU, a comprehensive view of trilogues can facilitate a broader understanding of legislation making. Particularly, it can help us understand *how* and *why* these innovations occur, and what the consequences are of these informal decision making processes. Exactly *how* European legislation is different because of trilogues does expand our knowledge on the EU legislative system, but it also expands our knowledge on legislative decision making more broadly. For example, that trilogues limit ideological changes made to legislation does tell us about the relative power of the Commission, who has exclusive proposal right, in the trilogue system. However, it also tells us about the limits gridlock places on legislative actors and what steps these actors will take to avoid gridlock's effects.

Understanding trilogues begins with how they fit in the EU's legislative system. The EU has had numerous legislative systems of which the OLP is the most recent. Trilogues have become the standard practice in the European legislation because of structural problems within the OLP. Due to the increased role of the EP, the OLP has a high potential for inter-institutional conflict (Farrell and Héritier, 2003; Mühlböck and Rittberger, 2015). This is due, in part, to the OLP's complexity, which we will now explore.

1.1 Trilogues and the European Legislative System

The European legislative process has experienced numerous changes over the lifespan of the EU. The frequency of these changes complicates the study of EU legislative politics as

each new iteration changes the balance of power between the institutions and establishes new norms and procedures. The adoption of codecision II, now referred to as the Ordinary Legislative Procedure (OLP), is no exception.

The OLP was developed over the course of a number of the EU's treaties, particularly the Maastricht, Amsterdam and Lisbon treaties of the 1990's and 2000's. The OLP was designed to maintain the influence of the Member States in legislation through the role of the Council, while improving the democratic performance of the EU through the increased role of the directly elected EP. Trilogues circumvent this balance by encouraging a system of agreement that bypasses the OLP, where decisions are made by only a select number of actors, excluding many others, especially in the EP. Scholars and observers alike are concerned that those who are empowered by trilogues have an increased influence on legislation, changing the functioning of the OLP.

The impact of trilogues on the EP, as well as the institution's role in the OLP more broadly, are particularly important. Each subsequent legislative process has increased the role of the EP. Since the EP is the EU's only directly elected institution, the increased role of the EP has improved the Union's democratic legitimacy. Trilogues changing the power or role of the EP, or changing the balance of power among actors within the EP, has important implications both for the EU's treaty changes and the EU's democratic legitimacy. For example, if the Rapporteur, as the EU's representative in trilogues, were to gain significant influence over legislation, the democratic legitimacy of the EP would be in jeopardy, as all MEPs would no longer have equal influence on legislation.

The OLP is a very complex system for a number of reasons. First, it is the fifth largest democratic legislative body in the world with 705 Members of the European Parliament (MEPs) and twenty-seven member states represented in the Council. In addition, which government officials represent their member state in the Council changes legislation by legislation. In coalition governments, this can mean different party representation in each Council. For instance, Germany could be represented by their Social Democratic minister of Labor and Social Affairs in the Employment, Social Policy, Health, and Consumer Affairs Council, their Liberal Democratic Finance minister in the Finance Council, and their Greens party Foreign Minister in the Foreign Affairs Council. Second, the EU has a complex navette, or shuttle, system where legislation is shuttled back and forth between the EP and Council across three readings with occasional voting rule changes between each reading. Finally, the EU has a conference committee, the Conciliation Committee, which consists of Council representatives from all member states, a large number of MEPs, and has strict rules on

voting.

Despite these dispute-resolution mechanisms, or perhaps because of their complexity, the EU has increasingly resorted to trilogues. Trilogues are a form of dispute-resolution mechanism that occur before either house formally reads the legislation. Why the EU has resorted to an informal, extra-constitutional dispute-resolution mechanism rather than rely on its formal ones, has important implications for the study of bicameral legislatures. Specifically, it informs the conditions under which legislatures change their voting rules, as well as how dispute-resolution mechanisms change legislation and the balance of power between legislative actors.

Trilogues are unique because of *when* they occur. The most common dispute-resolution mechanisms occur during formal readings, in the case of the navette system, or after formal readings, as with conference committees. Trilogues occurring *before* formal readings will have different effects on legislative systems than these other dispute-resolution mechanisms. For example, the impact of non-trilogue actors will be limited as they have not yet had formal readings to influence legislation. And since trilogues limit changes that weren't agreed on in the meetings the non-trilogue actors may never have that chance. The impact of trilogue actors might be elevated relative to actors in other dispute-resolution mechanisms.

To understand whether trilogues are a feature or a bug of the OLP we first need to understand how the OLP works. Figure 1.1 displays the procedure. The Ordinary Legislative Process has three stages. In each stage, both the Council and the EP have an opportunity to vote on the bill, or the legislative "file" in European parlance. The first stage begins when the Commission sends its proposal to both the EP and the Council for their first readings. If both the Council and the EP agree with the contents of the proposal it can be adopted at this first stage. If there is no agreement, the Council must adopt its own opinion and the OLP moves to its second stage. This stage begins with the EP's response to the Council's position. The EP can approve, amend, reject or take no action on the file. If the EP approves it, or takes no action, the Council can vote to pass the legislation within three months. To reject or amend legislation in the second stage requires a majority of total MEPs, whereas accepting only requires a majority of present members. If the EP rejects the file, the legislation fails and the process ends. If the EP amends the legislation the process continues with the Council's second stage reading. The Council can either accept or not accept the EP's changes. If the Council does not accept the EP's amendments, the file moves to the third stage.

The third stage begins with the creation of a Conciliation Committee. Conciliation Committees are the OLP's conference committee system and serve a similar function to conference

committees in the US. The Conciliation Committee is composed of representatives from both institutions. If an agreement comes out of a Conciliation Committee, the proposal is sent back to both the EP and the Council for final adoption. Institutions can no longer amend legislation at this stage. The Council adopts through Qualified Majority Voting (QMV), rather than through unanimity, and the EP through a majority of the votes cast. Although it rarely happens, occasionally the proposal is rejected by one of the institutions at this stage. When this occurs, the Commission must resubmit the legislation in a form that is agreeable to the both the EP and the Council (Nugent, 2017).

As use of the OLP has developed, the EU institutions have increasingly relied on the use of trilogues. Trilogues are negotiations between representatives from the EP, the Council and, the Commission, and take place after the Commission proposes legislation, but prior to the first stage of the OLP. The proposed legislation is seen by the institutions prior to the inter-institution meetings. In the EP this comes in the form of the rapporteur's draft report; MEPs not only see this report, but can propose amendments to it. If these negotiations are successful, the EP rubber stamps the amendments for the Council to vote on (Reh et al., 2013; Héritier and Reh, 2012).

A meeting between the institutions prior to the official readings allows for a consensus on amendments that both the Council and the EP's representatives can agree on. One might think of this as a US conference committee that happens *before* the bill goes through the legislative process in the House and Senate. This agreement needs to be able to pass in the Council, given QMV voting, and needs to be acceptable to enough of the EP's Party Groups, who then must be able to maintain loyalty from their members. The institutions use trilogues to exploit a provision in the Amsterdam treaty which allows for legislation to pass at the end of the first stage, with the Council adopting the EP's position. The current version of this provision, in the Lisbon Treaty, states, *if the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament* ("Article 294 TFEU", 2007). Trilogues are used to reach an agreement that can be passed by the EP and agreed on by the Council at this stage.

There is no one uniform system of trilogues. More, specifically there are at least two different types. First, are the "full" or "political" trilogues. These are the meetings that involve the main delegations of three institutions. Political trilogues are where the bulk of the negotiation take place, and where the major compromises are struck. Second, there are "technical" trilogues, which are meetings of mostly civil servants and political advisers in the three institutions. They meet with the goal of brainstorming solutions and for the informal

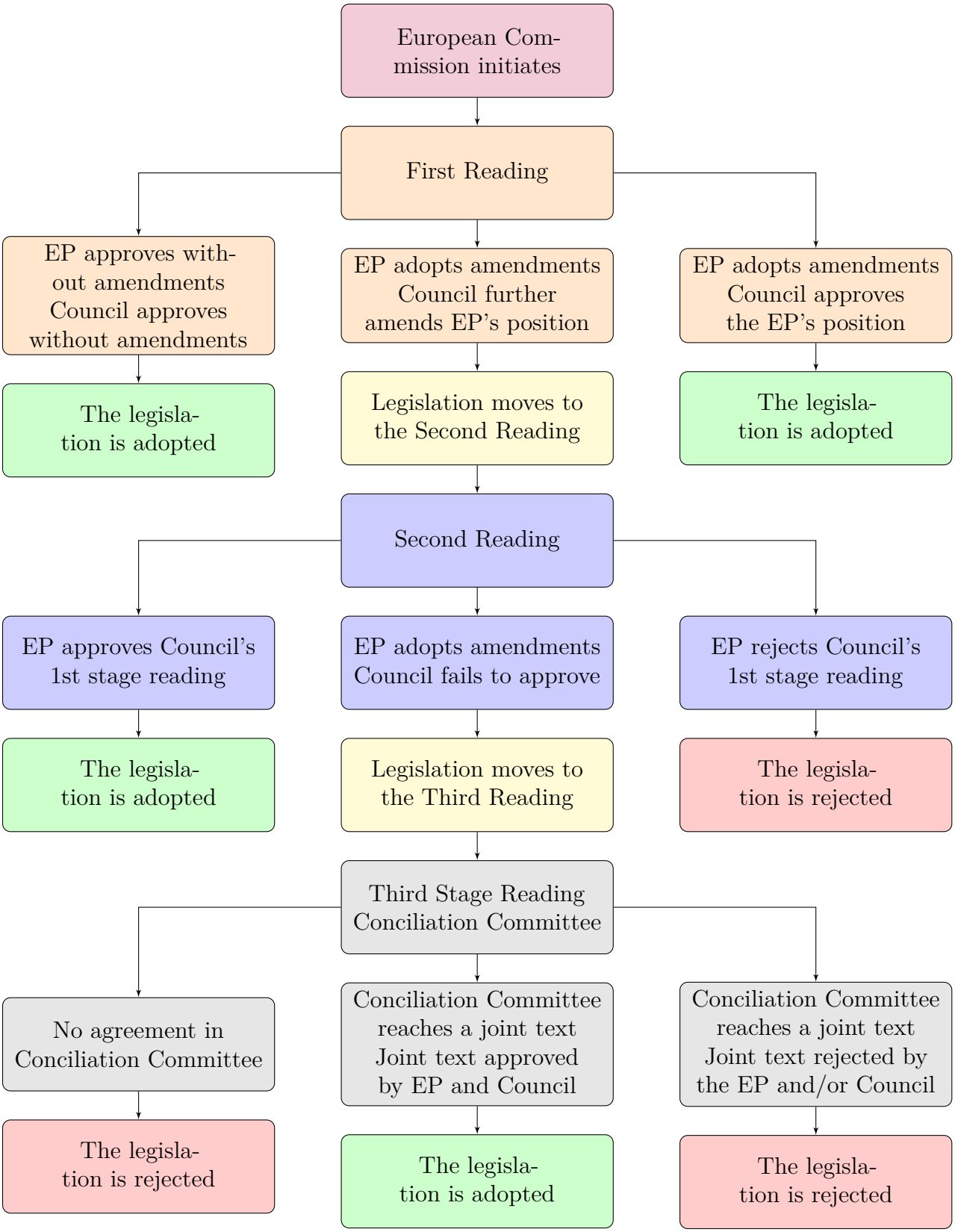


Figure 1.1: The Ordinary Legislative Procedure

exchange of ideas. These trilogues seek to resolve the technical elements of the legislation and to prepare for the political discussions (Curtin and Leino, 2017; Dionigi and Koop, 2017). Because the EU includes countries using both the common law and continental law systems, technical legal questions pose challenges in the EU not found in purely domestic systems.

Generally, the names of participants are not made public. The position of actors attending is determined by intra-institutional rules, and varies between political and technical trilogues. In political trilogues, the EP's delegation is by far the largest, with as much as twenty-five members. It always includes the rapporteur, while all shadow rapporteurs are also invited. The relevant Committee Chair's attendance varies by Committee. For some Committees, the Chair always attends and chairs the trilogue; for other Committees, the Chair almost never attends. These political actors will often bring their assistants and Party Group policy advisers. Lastly, the EP team is supported by the relevant Committee's Secretariat, the legal service, and the Conciliation and Codecision Unit.

The delegation for both the Council and the Commission is smaller. The representatives for the Council include officials from the Council Presidency at the level of the working party. Officials from the Committee of Permanent Representatives (COREPER) who are the civil servants who support the Council, and officials from the Council's General Secretariat, including the legal service. Lastly, the Commission's delegation includes the relevant head of unit of the directorate general in charge of the file, and by the desk office responsible for the proposal. Neither Ministers nor Commissioners generally represent their institution in political trilogues.

The EP's technical trilogue team includes representatives from the responsible Committee Secretariat, the legal services, the Conciliation and Codecision Unit, officials from the Party Groups, and assistants of the rapporteur and the shadows. The MEPs themselves only rarely attend. For the Council, the delegation includes the chair of the relevant working party, officials from the Council Secretariat, and members of the Council's legal service. Lastly, the Commission's representatives include its legal services, the relevant desk officer, and sometimes the head of unit of the responsible directorate general. In all, political and technical trilogues both can have up to 50 attendees (Dionigi and Koop, 2017).

Roederer-Rynning and Greenwood argue there is a third type of trilogues: bilateral meetings between the political and technical staff of the EP and Council. These occur before the Commission submits a proposal, and thus doesn't discuss specific proposals, but instead to discuss the upcoming agenda (Roederer-Rynning and Greenwood, 2015). All of these types of trilogues are also buttressed by intra-institutional meetings where negotiators ensure that

their inter-institutional agreements will be accepted by their institution.

The role of, and impacts on, the EP is of particular importance. EP decision-making is more transparent than the Council, making the study of the former institution is easier. The increase in the EP's power with the OLP is a catalyst for trilogues use as well making the study of the EP particularly interesting. The growth in the EP's power in the legislative system has been one of the central stories of the EU's legislative development. Particularly important has been how the EP's increased role has improved the democratic legitimacy of the EU. Significant changes to the EP's role also changes this legitimacy. Lastly, the small percentage of MEPs who represent the institution in trilogues may have large consequences for legislation, with the preferences of these MEPs being more represented in the resulting law.

The EU has relied on trilogues to prevent disagreements that would not allow the legislation to pass before the OLP's second stage. Both the Council and the EP have limited resources which become strained the longer legislation takes to pass. In addition, the rules in the EP for amending legislation changes during the second stage, adding a super-majority equivalent. With the Council always having a super-majority requirement, agreeing on legislation becomes difficult after the first stage. Trilogues encourage agreements at this stage.

In this dissertation, I find that trilogues are convened for legislation which is complex. These files are more difficult for both legislators and citizens to comprehend and are thus difficult to pass the OLP on time. When looking at how trilogue legislation differs from non-trilogue legislation. I find that trilogues do not relate to either more or less amendments to a file. However, I do find that trilogues do relate to an increase in ideological changes to a legislative file. I thus contribute to this literature through identifying which legislative files receive trilogues and how legislation is changed as a result of trilogues. These contributions build on an already robust trilogue literature.

Why complexity is important to trilogues requires a view through the lenses of the literature on trilogues, the EU legislative system, and comparative legislatures. Because of this, I'll start by defining trilogues and briefly summarize both the literature on trilogues and the literature on EU legislation more broadly. The EU has had numerous legislative systems of which the OLP is the most recent. Trilogues have become the standard practice in European legislation because of structural problems within the OLP. Due to the increased role of the EP, the OLP has a high potential for inter-institutional conflict (Farrell and Héritier, 2003; Mühlböck and Rittberger, 2015). Because of the OLP's structural problems and high potential for gridlock I argue we need to see trilogues in a wider comparative sense, as a kind of procedural

innovation in a bicameral legislature. Trilogues function as a work-around to this gridlock by creating an agreement that can be passed *before* the gridlock could occur. In this way, they re-balance the EU's procedures by circumventing the formal dispute-resolution mechanisms, the OLP's navette and conference committee systems. Trilogues are thus a response to a general tension between stability and gridlock that characterizes all legislative systems.

1.2 Literature Review

1.2.1 Comparative Legislatures Literature

The development, need, and role of trilogues can be better understood and contextualized with help from the comparative legislatures literature. While trilogues are unique in many regards, the comparative legislatures literature can provide useful insights as to why they have occurred and what role they serve.

The comparative legislatures literature develops important theories that can be applied to the EU and to the trilogue system. First, in bicameral systems, the structures governing interactions between houses structures behavior within them. Particularly important are the powers delegated to actors. Second, legislatures become structured around veto, proposal and agenda-setting powers. Third, these powers can create friction in legislative systems, which can slow down legislative processes. Systems that can promote delay as a means of encouraging broader support for legislation such as bicameralism and super-majority requirements, can spread these powers too wide, making legislation harder to change. Severe cases can result in gridlock when legislation becomes unable to pass any bills. In these instances legislatures or other institutions in the political system develop work-arounds which can alter how legislation is made and, ultimately, the legislation produced.

1.2.1.1 Bicameralism

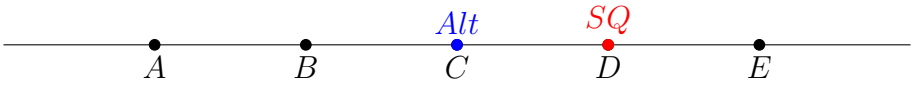
The bicameral legislatures literature views one of bicameralism's key strengths as its power of delay. Delaying legislation helps bicameralism solve a major problem of legislative decision-making, the problem of cyclical preferences. The power of delay and its relationship to gridlock is integral to the need for trilogues. I demonstrate this by first explaining the importance of the power of delay by relying on spatial voting theory to explain cyclical preferences and the problems they cause for legislation.

1.2.1.2 Spatial Voting Theory

The literature on comparative legislatures has its roots in economic and early political science game theoretic models of decision-making. These decision-making models identify patterns of behaviors for actors given specific institutional constraints. Hotelling's "problem of sameness" provides an example. Hotelling recognized that firms within the same industry were incentivized to offer products which are as close to each other as possible. Any deviation from competitors will lead to sales that fall continuously, rather than in an abrupt manner as previously assumed. Hotelling argued that this applies to American politics as well. Competition between Democrats and Republicans does not lead to a clear drawing of issues, but rather each party strives to make its platform as much like the other as possible. Any departure from this strategy would lead to a large drop off in votes for the deviating party (Hotelling, 1929).

The problem of sameness likely results from a central tendency in voting games. In political science this have been best described by what is known as the "Median Voter Theorem", ascribed to Duncan Black and his book *The Theory of Committees and Elections*. A simplified version of the Median Voter Theorem is shown in Figure 1.2. Given 5 voters, C will be able to convince A and B to move the status quo to its preferred position, as both will prefer it to the status quo (SQ). Thus, C can create a new policy, the alternative (Alt). In Black's language, the result for group decisions in a case with an odd number of voters is the value of $\Theta_{1/2(n+1)}$, which represents the median view of the committee, and is the only point which can win at least a simple majority against every other point (Black, 1958).

Figure 1.2: A simple demonstration of the Median Voter Theorem



While the Median Voter Theorem tells us a lot about group decision-making, legislative decision-making is also impacted by political coalitions, such as political parties. The way coalitions form and the role of individuals within them influences the policies they create. One view of coalitions emphasize the position of the "pivotal player" in a coalition. This pivotal player can be understood as the member of the coalition whose votes takes the coalition from a losing coalition to a winning one. Different power indices suggest different ways to identify who is the pivotal player, which changes the role they play in determining policy outcomes (Shapley and Shubik, 1954; Banzhaf III, 1964). Coalitions tend to stay as "minimum-winning coalitions" or a coalition only as big as needed to win as these are easier to maintain. Minimum winning coalition also increase the importance of the pivotal player,

which increases the price that individuals can demand in return for participation (Riker, 1962).

These views, particularly the median voter theorem, require two assumptions. The first is preference transitivity: if I prefer a to b and b to c, I should logically prefer a to c. However, this characteristic is not guaranteed for whole groups. Instead, group preferences are often completely intransitive, creating "cycles" of preferences. It can be consistent for the whole group to prefer a to b, b to c, and c to a. Cyclical preferences can occur in cases with as few as three voters facing three alternatives in one-dimension.

In these cases there is no Condorcet winner, meaning no alternative that beats all others. Rather, any policy choice has a majority that prefers an alternative policy. Voters switch to the new majority only to find it too has an alternative that a majority prefers and so on (Schofield, 1978). Once the transitivity prefers breaks down, it completely breaks down; given a particular point in a policy space, a group can wander to any other point in that policy space (McKelvey, 1976). Hence, the moniker "cycles", as these preferences can theoretically continue to twirl around each other (Black, 1958). The end result is a "disequilibrium", or the potential for the status quo to be upset by an agreement a majority is opposed to, which, to Riker, is a defining feature of politics (Riker, 1980).

The second assumption often made is that the space of possible polices is one-dimensional. We can see this in Figure 1.2; the entire possibility of alternatives can be demonstrated as a single line, with each individual having a position on that line. Generally this dimension is the traditional left-right spectrum of politics. Assuming one-dimension allows the analyst to view debate as being over one coherent issue, where actors have clear gains or losses (Riker, 1992). Reducing political competition to one-dimension isn't always a reliable assumption, and more dimensions increase the likelihood of cyclical preferences (Riker, 1992). Multi-dimensional policy spaces also increase the likelihood of a cycle (Schofield, 1978; McKelvey, 1976).

Riker argues that all systems of voting are subject to the same problem of disequilibrium as majority voting. However, institutions can account for this problem, and can influence outcomes. Political institutions, such as legislatures and parties, constrain the policies that are brought forward for consideration. Riker thought that policies produced in this way might have systematic biases in them, so that they regularly produce a certain kind of outcome over another (Riker, 1980).

Legislatures are capable of passing laws when cyclical preferences exist. However, doing so makes the legislatures who pass these policies "tyrannical majorities", as Riker refers to

them. The laws which pass are not a Condorcet winner, and thus are unstable in that they will likely be overturned in the near future. Riker suggests bicameralism as a solution to tyrannical majorities. He prefers bicameral legislatures because of their power of delay, which helps to ensure legislation has a broader base of support to pass. Legislation with a preferred alternative would not be able to pass in this situation, and thus the power of delay avoids tyrannical majorities. We now turn to discussing the power of delay more in depth.

1.2.1.3 Bicameralism's Power of Delay

Riker reviews three institutional ways to delay decision-making in cases of cyclical preferences, with the hope of creating more stable policy. These options are multipartyism, super-majorities, and bicameralism. All three make decision-making in multi-dimensional policy spaces more difficult. Bicameralism is Riker's preferred solution because it is the only one that does not also make decision-making in one-dimensional spaces harder. Super-majorities, for instance, make all decision-making more difficult as it limits possible alternatives and makes equilibrium alternatives harder to discover. This, however, also makes decision-making in one-dimensional spaces more difficult. Bicameralism, by requiring consent from two houses, delays policy and ensures agreements with wider bases of support (Riker, 1992).

To further emphasize his point, Riker compares law-making in the UK parliament vs the US Congress. Riker argues the UK has been prone to unstable laws which are often reversed when a new majority comes to power. This is because the UK regularly has tyrannical majorities due to its unicameral parliament. The US, on the other hand, does not have this problem because of its bicameral system (Riker, 1992).

Tsebelis and Money disagree with Riker's view of the UK Parliament. They argue that the UK is a bicameral institution because, although the House of Lords is weak, it still can influence the legislative process and the legislation it produces (Tsebelis and Money, 1997). This exemplifies Tsebelis and Money's central claim, that studying interactions *between* houses in a bicameral system is imperative to understanding that system.

Tsebelis and Money also promote bicameralism's power of delay. Their book, *Bicameralism*, is a seminal view in the study of bicameral legislatures. They focus on the mechanisms in bicameral systems and how they structure interactions between actors and ultimately shape legislation. This relates back to their central premise; through studying the interactions *between* chambers of a legislature we can then comprehend the behavior *within* each chamber. Tsebelis and Money emphasize dispute-resolution mechanisms, which structure debate and compromises between houses. There are two prominent mechanisms Tsebelis and Money

explore. First is the navette, or shuttle, system where legislation is sent to and from chambers. Second are conference committees that ultimately decide the final text of legislation (Tsebelis and Money, 1997).

Tsebelis and Money identify four characteristics of bicameralism. First, like Riker, they argue that bicameralism makes changing the status quo more difficult. Bicameralism does so, in part, by reducing all possible disagreements of chambers, or of parties in the chambers, to one privileged dimension, bicameralism's second characteristic. Thus, even in cases of multi-dimensional policy, bicameralism works to reduce that dimension to one.

Third, Tsebelis and Money emphasize the importance of the second chamber, even in cases in which that chamber is weak. The difference between Riker's view of the UK as a unicameral system and Tsebelis and Money's emphasis on the role of the House of Lords is illustrative of this point. While the House of Lords is relatively weak, Tsebelis and Money argue it still does influence legislation. For instance, the House of Lords can delay the passage of non-financial legislation for a year, which in the right circumstances can even kill legislation. Thus, even when the second chamber is weak, the first chamber has incentives to organize around their interactions with the second chamber. It is important to note that here Tsebelis and Money are making a positivist argument, by explaining the relationship of houses in bicameral systems in practice. This contrasts with Riker's more normative view of how bicameral legislatures *should* work.

Lastly, Tsebelis and Money argue that the mechanisms employed in the process of legislation determines outcomes. For instance, it matters in a systematic way where the bill is introduced, which house, if any, takes the final decision, how many times the bill can shuttle between the houses, who comprises the conference committees and how that committee decides. Differences between these factors change the power balance of actors, which in turn structures their behavior (Tsebelis and Money, 1997).

Party politics and ideological differences between houses and legislative decision-makers also structure actions within a house. This has been noted in the US Congress, where rules made in the House at the beginning of its term are influenced by which party controls the Senate and Presidency. The majority party in the House does so to improve its position relative to the Senate and Presidency (Sin, 2015).

Scholars of the EU have increasingly come to analyze the European legislative process as a bicameral system (Tsebelis and Money, 1997; Kreppel, 2011; Finke, 2017; Hagemann and Hoyland, 2010; Rasmussen and Toshkov, 2011; Yordanova, 2011; Häge, 2011). The OLP shares

many similarities with "strong bicameral" systems such as the US, Germany and Switzerland (Costello, 2011). Like the US and Germany, the EU has an upper house, the Council, where representation is based on sub-units or states. Selection of Council members is even similar to the pre-1913 US Senate, and to the modern-day German Bundesrat (Kreppel, 2011). Procedurally, the OLP has two common features of bicameral decision-making: a navette system and a conference committee system. The EU's navette system, its multiple readings, sends legislation back and forth between institutions, allowing each institution to influence legislation. The OLP's conference committee system, called Conciliation Committees, ensures that each institution must agree to the legislative files in order for it to pass.

Because an agreement is required, behaviors *within* each institution are structured, in part, by interactions *between* the institutions. Recognizing the bicameral structure of the EU helps to explain why each of these institutions have an impact on the internal organization and behavior of the other (Kreppel, 2011). Scholars have demonstrated how these behaviors have been structured. Coalitions within the EP are more stable in the OLP than they were with the consultation procedure. Indeed, with the OLP, coalitions which include majorities in both institutions must form (Costello, 2011). In the EP, members have formalized their activities to make best use of their time (Rasmussen and Toshkov, 2011), and Party Groups have controlled access to influence with strategic allocation of rapporteurships (Yordanova, 2011). The Council's staff, COREPER, also acts strategically. They take in consideration the EP's influence on policy and the possibility of outcomes that are far away from the Council's preferences (Häge, 2011).

Trilogues themselves reflect the OLP's bicameral nature. They are a dispute resolution mechanism similar to navettes and conference committees, creating inter-institutional meetings and agreements on legislation. Trilogues are a novel example of these mechanisms. They encourages agreements on legislation between the trilogue houses of the EU's legislature. They are unique among bicameral dispute resolution mechanisms because they occur *before* the formal legislative process, and thus before the disputes have formally occurred.

Delreaux and Laloux argue that trilogues consist of two parallel principal-agent relationships, which the agents can use to their advantage to conclude early. Each actor represents their institution inter-institutionally, while also acting as de facto deal-facilitators intra-institutionally. Rapporteurs and the Presidency use these principal-agent relationships to reach EAs by creating a tied hands situation for themselves, by bringing allies from one institutions into bargains with the other institutions, and actively searching for signals from principals and their fellow agent on the zone of possible agreements (Delreux and Laloux,

2018). Rapporteurs do better when they employ classic two-level bargaining strategies, specifically, when they can credibly claim to be constrained by their parent chamber (Costello and Thomson, 2011). However, the degree of internal cohesion within the EP does not change the EP's bargaining strategy within trilogues (O'Keeffe, Salines, and Wieczorek, 2016).

Trilogues have had a number of effects on bicameral legislation that is unrelated to bargaining strategies. Early-agreed on legislation has more amendments than other legislation (Cross and Hermansson, 2017). The first stage of salient files negotiated in trilogues take longer than similar files agreed on at the second or third stage (Toshkov and Rasmussen, 2012).

The interactions between houses in a bicameral system are also related to the distribution of powers in that system. Veto, proposal, and agenda-setting powers determine actors' influence over legislation. We now turn to the comparative legislatures literature on veto, proposal, and agenda-setting powers.

1.2.1.4 Veto, Proposal and Agenda-Setting Powers

Institutional design distributes legislative power to various actors. The key legislative powers are veto, proposal, and agenda-setting powers. The distribution of these powers shapes how legislative institutions are structured. Trilogues both result from and shape the distribution of these powers in the EU.

Veto players are individuals or collective actors whose agreements are required for status quo change. There are both institutional veto players, such as chambers of a legislature or the President in the US system, and partisan ones, such as members of a government coalition, particularly in parliamentary systems with multiple parties (Tsebelis, 1995b). Scholars view more stringent decision-making rules as a way for groups to increase power (McCarty, 2000; Diermeier and Myerson, 1999). Diermeier and Myerson find that presidential veto power and bicameral separation encourages legislative chambers to create internal veto players or super-majority requirements (Diermeier and Myerson, 1999). Doing so helps increase the success of the legislative chamber in terms of legislative outcomes closer to their preferences, as veto powers allow actors to block current proposals in favor of future, more preferable ones (McCarty, 2000).

Policy stability increases as the distance between veto players and the internal cohesion of the players increases (Tsebelis, 2000; Tsebelis, 1999). In addition, the number of veto players, the difference in their opinions, and the internal cohesion of each one increases the policy stability of the status quo. Super-majority requirements also represent a form of institutional veto players, ones that are inherent to the political system and are often

constitutionally mandated. Super-majority requirements give veto powers to participating coalitions of players, increasing policy stability (Tsebelis, 1995b). High qualified majority thresholds or equivalent requirements act like super majority requirements, thus granting veto powers to actors and increasing policy stability. The requirement that the EP amend or reject by an absolute majority of members in the OLP's second stage is one such equivalent requirement (Tsebelis, 2000).

Understanding the importance of veto players in legislative systems helps contextualize the importance of the change in the EP's voting rule in the second stage. The change in requirements for the EP has the effect of increasing the number of veto players. Crucially, it doesn't do so for *accepting* legislation, thus making the default not maintaining the status quo, as veto powers typically do, but passing the Council's proposal. This observation lead Hagemann and Hoyland to argue that the Council has conditional agenda setting powers, and thus is more powerful in legislation making than the EP is (Hagemann and Hoyland, 2010). The increase in veto players has encouraged the EP to agree early, thus promoting the use of trilogues (Brandsma, 2015; Hagemann and Hoyland, 2010; Tsebelis, 2000).

Given that veto powers can have such dramatic effects on the functioning of institutions, the literature has looked to study their effects on legislative outcomes as well. The study of veto rights in legislative institutions is often coupled with the study of proposal rights. Proposal rights are the ability of actors to make legislative proposals. Beginning with Romer and Rosenthal, the literature often compares the relative power of the two types of rights. Romer and Rosenthal argue that proposal rights gives the players the ability to set the agenda. Specifically, when an individual has a monopoly on proposal rights they are able to make a "take it or leave it" offers to voters. Voters are limited to choosing the offer or the status quo. This allows the proposer to make an offer that is as close as possible to his or her preferred outcome, while still being more preferred than the status quo by the voters. The conclusion drawn from this insight is that it is better to have a monopoly on proposal rights than veto rights (Romer and Rosenthal, 1978).

McCarty pushes back on this conclusion a bit by highlighting areas where veto powers increase the influence actors have on legislation. First, he notes that the more diffused the veto rights are, the less powerful they become, which is not true for proposal rights. Veto rights might therefore be more important than proposal rights in small groups. Second, the time horizon of actors is important to the influence of these powers. Proposal powers give actors substantial influence over current proposals. However, if the current proposal can be vetoed to allow actors to hold out for better outcomes veto powers become more powerful. The value of

veto rights relative to proposal rights should increase with the patience of veto players, or with the impatience of proposal players. McCarty speculates that veto powers are thus more influential in presidential systems than parliamentary ones since the timing of elections, and thus the period each individual or party is in power, are more certain in presidential systems. Lastly, veto and proposal rights have strong complementary effects; the effects of proposal rights reinforce the effects of veto rights and vice-versa. Failure on the part of the researcher to account for the interactions of these rights may lead to mistaken inferences about their individual effects (McCarty, 2000).

Trilogues change the distribution of veto and proposal powers. They give proposal powers to a small group of actors early in the process, while restricting veto powers to later in the process. Trilogues also have an impact on agenda-setting powers. Agenda-setting powers give actors the ability to determine which issues and bills are considered. Actors with agenda-setting powers are able to ensure policies they prefer are prioritized, while less time is spent on polices they are less interested in.

Agenda-setting powers have been credited as a source of political parties' power in legislation making. Committees in the US Congress are powerful largely because they are agenda-setters, as they both originate bills and have a second chance to re-submit winning proposals after Conference Committees (Shepsle and Weingast, 1987). Cox and McCubbins' Procedural Cartel Theory demonstrates the relationship between agenda-setting and parties in the US House of Representatives. First, they argue, parties are created to internalize electoral externalities by creating and maintaining a "brand." Recognizing parties as such allows us to recognize that they can be analogized as legal or accountancy partnerships, with various gradations of junior and senior partners. Parties maintain their brand through controlling votes when they are in the majority. Parties control votes by allocating both negative rights, such as delay or veto power, and positive rights, like acceleration or proposal rights, among senior partners (Cox and McCubbins, 2005).

These rights thus concentrate agenda power in a "Cartel" of senior partners. Agenda power has been cartelized when special agenda-setting powers are formally delegated to various offices, such as committee chairs, the House Speakership and the Rules Committee. The majority party then secures these offices for their senior members so that agenda-setting services can be procured only from cartel members. The goal is to break the theoretical equality of legislators by creating a class of agenda-setting offices (Cox and McCubbins, 2005).

Congressional cartels are able to work, Cox and McCubbins argue, because members of Congress seek re-election, internal advancement, good public policy and the maintenance of

majority status for their party. Advancement to committee chairs and other key posts requires the party to be in the majority, just as individual members' policy goals do. Thus, a party's majority status is essential to individual members personal and policy goals. The reputation of the party, i.e. the value of its brand, impacts both individual members' probability and the party's probability of securing a majority.

The party's brand, in turn, depends significantly on its record of legislative accomplishment when it's in the majority. Legislating, when done well, compiles favorable records of legislative accomplishment for the party. It is thus akin to team production and entails overcoming an array of cooperation and coordination problems. Parties' primary means of regulating its members' actions in order to overcome problems of team production in the legislative process is by delegating power to a central authority. This central authority monitors internal behavior through controlling the means through which members are rewarded or punished. Party leaders are motivated to use their powers for collective goals, rather than personal gains, because they know the only realistic route to getting and keeping these offices is for their party to attain a majority of seats.

Ultimately, the key resource that parties delegate to their senior partners is the power to set the legislative agenda, creating a procedural cartel that collectively monopolizes agenda-setting power. The main directive of the cartel is to not aid, and, in fact, to actively hinder bills that split the party, with a second directive to aid bills that most of the party likes, but only in cases that it can maintain cohesion. The cartel thus use their agenda-setting powers to make sure that bills that would "roll" the party do not hit the floor. A party is rolled when a bill which the majority of the party does not support passes anyway (Cox and McCubbins, 2005).

There are key parallels here to the trilogue system. First, party cohesion is important to the passing of trilogue legislation. Agreements made in trilogues need to be approved by the plenary at large which requires party discipline. Rapporteurship and Committee Chairs are one of the major rewards EP Party Groups have to entice discipline and these positions also have large influence on trilogues.

Cox and McCubbins as well as much of the resulting literature focus on agenda control largely in the US House of Representatives. However, Gailmard and Jenkins show that negative agenda-control power also exists in the US Senate and that this power matches the power that exists in the House (Gailmard and Jenkins, 2007). Similarly, Neto, Cox, and McCubbins find support for the Cartel theory in Brazil, despite significant differences between the United States' and Brazil's legislative processes (Neto, Cox, and McCubbins, 2002).

In the EU both national parties and supranational Party Groups structure legislative politics in the EP and the Council (Hagemann and Hoyland, 2010; Hix, Noury, and Roland, 2007; Ring, 2010; Yordanova, 2013). The power and structure of Party Groups in the EP is perhaps the most surprising. Voting in the EP mostly occurs along transnational, not national lines (Hix, 2001; Hix, Noury, and Roland, 2005; Hix, Noury, and Roland, 2007). What is most surprising is the cohesion of these groups. Agenda-control by EP leaders is more limited than in national European politics or in the US. The Commission has the exclusive right of proposal, in contrast to most of the world's legislatures which introduce legislation. The EP Party Groups don't have many instruments to discipline members. The only forms of discipline available are positions of influence in the EP, such as Committees and rapporteurs (Hitt, Volden, and Wiseman, 2017).

Ringe argues that these powers are not good enough to account for cohesion of Party Groups. Rather, he argues that cohesion of groups comes from shared preferences not discipline (Ringe, 2010). Party Groups are transient: they fail, merge and divide frequently leaving them with little opportunities to develop continual control (McElroy, 2007).

Still there is evidence for the types of party politics that occurs in European member states and in the US. Assignment to committees tends to be based on a distributional and an informational logic rather than a partisan one. However, allocation of legislative tasks, both to Party Groups and to committee members *does* follow a partisan logic. OLP reports, where the EP has more power, results in stronger partisan competition than consultation reports. Party Group coordinators use report allocation to discipline disloyal members and improve cohesion (Yordanova, 2013).

Contrary to Ringe's findings, Hix et al. finds evidence that the increase in cohesion of Party Groups is not because of increased homogeneity. Rather, there is more heterogeneity of group members. Likewise, cohesion is not created by agenda-setting power as the Cox and McCubbins' Procedural Cartel Theory would suggest. Instead there is a genuine enforcement of party discipline. Hix et al. finds that enforcement of party discipline comes from *national parties*. National parties have power over MEPs because they control candidate selection for EP elections, and control future career prospects of MEPs (Hix, Noury, and Roland, 2007). Thus, the discipline required for trilogues to function likely comes from national party enforcement, rather than PG sources.

Scholars have found cases where legislative systems use the strategic application of voting rules to set the agenda. Dion and Huber found that the US House's Rules Committee determines when to apply restrictive vs non-restrictive procedures depending on their policy

preferences vis-a-vis the policy preferences of the substantive committee and whether the two committees are on the same side of a one-dimensional policy space as the median member of the House of Representatives. When the Rules Committee is on the opposite side of the median member of the House from the substantive committee, the Rules Committee will adopt less restrictive amendment rules to allow for amendments that move the policy closer to the center. However, when the Rules Committee and the substantive committee are on the same side of the median member of the House the Rules Committee adopts more restrictive rules to prevent changes to the legislation that the substantive committee adopts (Dion and Huber, 1996). Magar et al. finds that the Chilean President makes similarly use of its urgency authority. This power imposes a deadline when the legislation needs to pass. More importantly, however, it prevents amendments to legislation (Magar, Palanza, and Sin, 2021). Trilogues similarly restrict changes, specifically ideological changes. Thus, their use may serve similarly strategic purposes.

Proposal powers in the OLP are interesting. The Commission has sole proposal powers, which is unique as the Commission is the EU's executive institution. Indeed, this proposal power is the Commission's only legislative role. Despite this, the Commission has limited ability to take advantage of this power. The Commission is not able to formally influence legislation after it has proposed it. Because of this they cannot prevent actors in the EP and Council from fundamentally changing legislation away from the Commission's preferences. The EP and the Council have effectively wrestled proposal power away from the Commission. Thus, many scholars view the Commission as having limited influence, and Crombez has even stated the Commission was "rendered irrelevant" in the OLP (Crombez, 1998; Crombez, 2002; Rasmussen, 2003; Garrett, 1995).

Trilogues have also changed the balance of legislative powers in the EU. The Relais Actors Thesis has been the trilogue literature's best exploration of how trilogues have changed this balance. The argument is compelling: actors who participate in trilogues should have a strong influence over the legislation produced because these actors gain proposal and agenda-setting powers. Despite this, evidence that these actors in fact do have influence over legislation has been mixed. These actors seem to be constrained in some manner which limits their influence. They are likely constrained by other actors' with veto powers, or with the ability to distribute powers or roles. Trilogues further demonstrates the importance of legislative powers and their distribution.

The distribution of legislative powers such as veto powers, proposal powers, and agenda-setting powers can increase the stability of the status quo. However, policy stability can

be so strong as to prevent any changes to the status quo, resulting in legislative gridlock. Trilogues' role is to resolve such gridlock. Since they are a new procedure that determines the content of legislation, they disrupt the balance of legislative powers that exists in the OLP. Identifying the new balance in the system and its effects of legislation is imperative to understanding trilogues. To best do this, it is important to understand why gridlock is a problem for legislatures and how different legislatures solve gridlock.

1.2.1.5 Gridlock

Both Riker and Tsebelis and Money promoted bicameralism's power of delay to encourage a wide base of support for legislation. The power of delay increases the policy stability of the status-quo. Veto, proposal, and agenda-setting powers can also contribute to the stability of the status-quo, preventing changes, particularly ones without broad support. Policy stability as often been considered a good thing. However, legislatures need to be able to change the status-quo when needed. Sometimes, though, legislatures become gridlocked and unable to make any changes.

Policy stability and gridlock decreases the legislature's ability to produce new significant laws (Tsebelis, 1995b). While not always a bad thing, the ability to change laws is important for government stability in parliamentary systems and regime stability in presidential ones. If the legislature is unable to change laws, judges, and/or members of the bureaucracy may become encouraged to step into the political vacuum (Tsebelis, 1999).

The literature has shown many cases where legislative gridlock has lead to either non-legislative institutions filling the vacuum or other changes to the legislative system. Some scholars have argued that gridlock is best explained by the preferences of institutions and parties (Chiou and Rothenberg, 2003). However, a more formal look at gridlock argues for a "gridlock interval", whose size relates to the amount of legislative activity. This interval depends on the preferences of actors and the legislative procedures themselves (Crombez and Hix, 2015). Hitt et al. offer the Legislative Effectiveness Model, which argues that the policy stability of the status quo can relate both to the quality of that status quo and individual legislators ability to create and promote high-quality alternatives (Hitt, Volden, and Wiseman, 2017). Junge et al. finds support for the bureaucracies filling in for a gridlocked legislature. Specifically, they find that as the risk of gridlock increases bureaucratic activity also increases (Junge, König, and Luig, 2015). Looking at the EU, Rauh finds that the increase in attention on and skepticism towards the EU has put more emphasis on the Commission as the EU's executive. They result has been the Commission altering their proposals in cases where the EP and the Council are gridlocked (Rauh, 2019).

Sinclair observed changes to the US legislative system in cases of gridlock. As the distance between Democrats and Republicans increased in the 1980's and 90's cohesion within the parties also increased. The change in partisanship was coupled with internal reforms that changed the distribution of power within both chambers from committee chair persons to party leaders. These changes to the institutional environment resulted in changes to the legislative system, which Sinclair termed "unorthodox law-making". Unorthodox law-making is the move from one process for US legislation to a plethora of legislative processes. These processes include multiple referral, where legislation is referred to multiple committees rather than one; omnibus legislation, where disparate provisions are packaged together to make legislation harder for the president to veto; an increase in use of special and nonrestrictive rules in the House; an increased use of the budget process for significant pieces of legislation; and finally an increase in post-Committee adjustments (Sinclair, 1997).

What the literature on gridlock and policy stability reveals is how responses to gridlock change how policy is formed. Policy stability that is too high, in the form of gridlock, creates a situation which legislative institutions become unable to respond to the country's needs with significant legislation. As all of the preceding authors show, when the "ordinary" processes of legislation making are shut-down or stymied political institutions develop work-arounds to ensure that policy change can occur. These work-arounds can even materialize as the development of new legislative processes, as shown by Sinclair.

Trilogues are a response to the high potential for gridlock in the OLP. Early in the life of co-decision I the EP exercised its third reading veto twice preventing the passing of legislation (Garman and Hilditch, 1998; Rittberger, 2000). These incidents forced the Council to recognize the EP's power, encouraging the Member States to formalize EAs in the Amsterdam treaty (Farrell and Héritier, 2003; Farrell and Héritier, 2007). These early conflicts highlighted structural problems within the OLP which increased the possibility of gridlock. Both the Council and the EP have limited resources which get taxed as the OLP progresses. In addition, decision-making becomes more difficult for the EP in the second stage, while QMV and unanimity requirements make decision-making in the Council always difficult.

Thus, both institutions have super-majority requirements, at least at the second stage, meaning finding an equilibrium that can change the status quo is particularly difficult. Since the EP's super-majority requirement doesn't kick in until the second stage, and because it costs the institution much of its power, the EP is heavily incentivized to pass legislation prior to the second stage. In addition, the Council's limited resources are particularly taxed by later stage agreements, also incentivizing them to agree early. What we have are two

houses in a bicameral system with super-majority requirements creating a high potential for gridlock which would be very costly for both. The result is the development of a legislative work-around, not too dissimilar from the unorthodox law-making Sinclair identified in the US. To understand the OLP's high potential for gridlock and how trilogues developed as a response, we will look at the political science literature on the EU legislative system.

1.2.2 European Union Legislation Literature

Each adoption of a new procedure creates new roles and systems for the EP, the Council, the Commission, and the European political system as a whole. Scholars have compared these procedures and the changes in power they provide the institutions. As with the trilogue literature, these comparisons often focus more on the EP, as each new procedure has expanded that institution's influence.

The cooperation procedure particularly received a good deal of attention. Introduced by the Single European Act of 1986, the Cooperation procedure was one of the principal procedures of EU legislation until the entry into force of the Treaty of Amsterdam in 1999. The Cooperation procedure increased the roles and power of the EP in legislative decision-making. Tsebelis argued that the Cooperation procedure in fact provided the EP with a key power, what he called a "conditional agenda-setting power". In this procedure, the EP was able to propose changes to legislation originally proposed by the Commission, which the Council then had to either accept or reject. Tsebelis' key insight was that it was easier for the Council to accept the EP's proposal, which it could do with a qualified-majority, than it was to reject the proposal, which the Council could only do with a unanimous vote. Thus, if the EP was able to make a proposal that made itself, the Commission and a qualified-majority of the Council better off than either the status quo, or a policy that a unanimous Council could pass, the EP's proposal would pass (Tsebelis, 1994; Tsebelis, 1995a; Tsebelis, 1996). Other scholars have found support for this finding (Pollack, 1997; Judge and Earnshaw, 2011; Garrett, 1995).

Tsebelis's argument proved to be the start of a major debate over whether the EP was stronger in cooperation or codecision I. Tsebelis and Garrett argued that the EP was more powerful under cooperation than in codecision I in large part due its conditional agenda-setting powers (Tsebelis, 1994; Tsebelis, 1996; Tsebelis and Garrett, 1997; Tsebelis and Garrett, 2000). Moser argues that this conditional power Tsebelis identifies comes from an inaccurate modeling of the cooperation procedure, and that when modeled correctly the result is that the EP is weak in this procedure (Moser, 1996). Moser does agree that there are cases where the EP can influence legislation in cooperation (Moser, 1997); however this does not compare

with the absolute veto power that the EP had in codecision I (Moser, 1996). Both Crombez and Steunenberg agreed that codecision I provided the EP with an absolute veto power, which increased its influence when moving from cooperation to codecision, although they disagree as to the extent of the EP's new power (Crombez, 1996; Crombez, 1997; Steunenberg, 1997). Crombez argues that the veto power gained in codecision I made the EP a genuine co-legislator, as important as the Council (Crombez, 1997). Steunenberg argued that the EP still had little ability to impact legislation in codecision, and was not a co-equal legislator in this procedure (Steunenberg, 1994; Steunenberg, 1997).

Tsebelis and Garrett compared four procedures, the consultation, cooperation and both codecision procedures. They argue that the consultation and cooperation procedures should promote more integration than either codecision would. However, codecision II, by putting powers in the hands of the Conciliation Committee, also puts power in the hands of both the Council and the EP. Ultimately, Tsebelis and Garrett decided that codecision II makes the institutions "co-equal legislators" because the Council no longer has power in the endgame that it did in codecision I (Tsebelis and Garrett, 2000). In hindsight, the cooperation procedure can be seen as an intermediate stage in legislative development where the EP increases its power and role as a co-legislator (Judge and Earnshaw, 2011). Under cooperation, the Commission and the EP shared agenda-setting powers. Codecision transferred the agenda-setting power from the Commission to the Council and transformed the EP's agenda-setting power to a veto power (Garrett, 1995). This transfer of roles for the EP likely comes from a provision in the OLP that changes the voting requirements for the EP in the second reading, where they need an absolute majority to amend or reject legislation, whereas in the first reading they only need a majority of members present to accept (Hagemann and Hoyland, 2010).

The Commission's role perhaps changed the most in the move to codecision. Its loss of power has been the focus of a lot of the EU's literature (Crombez, 2002; Rasmussen, 2003; Garrett, 1995). The OLP stripped the Commission of its ability to change legislation after the Commission proposed it. Thus, despite the Commission's proposal power, there is no formal requirement for the EP or the Council to take the Commission's position into account, beyond its initial proposal (Garrett, 1995). After the introduction of codecision I, the view was that the Commission has been "rendered irrelevant" (Crombez, 1998). However, more recent research points out that, although the Commission's room for maneuver is significantly decreased, it can still exert influence by strategically labeling the adoption of amendments and compromise text throughout the legislative process (Rasmussen, 2003). The increased politicization of the EU has also influenced the Commission, which is now more aware of the public attention it draws. These changes incentivize the Commission to introduce legislation

with widely dispersed regulatory benefits (Rauh, 2019).

Co-decision II has been less contentious. Tsebelis and Garret found that the EP's power in this system put it on equal footing with the Council (Tsebelis and Garrett, 2000). While this view has largely become the consensus in the literature, Hagemann and Hoyland argued against this, stating the the EP's voting rules in the second stage gives the Council conditional agenda-setting powers which makes the Council more influential in the OLP. The voting rule change makes amending and rejecting legislation difficult for the EP in its second reading, while accepting legislation is relatively easy. The Council can make changes during its first reading which are acceptable to a majority of likely present MEPs, even if they would be unfavorable to a majority of the full plenary (Hagemann and Hoyland, 2010).

The emphasis on the relative power works as a first step in understanding the intra-institutional relationships in the EU. The second step is how the institutions are embedded in the broader political system of the EU. This includes focusing on the relationship between the legislative and executive institutions and its bicameral and federal nature (Kreppel, 2011). In terms of legislation, the most important relationship is between the EP and Council. Party scrutiny of the Council, both by Party Groups and by domestic parties of their representatives in the Council is an effective means of coordinating positions at an early stage and to reinforce party unity in both institutions (Finke, 2017). Coalition formation in the Council falls along the left-right dimension of politics, similar to the EP. Perhaps predictably, then, when there is a divide in Council, there also exists a divide in the EP (Hagemann and Hoyland, 2010).

Within the EP, rapporteurs have the most active relationship with the Council because they are responsible for coordinating and negotiating with the Council. Rapporteurs are thus forced to operate in a "two-level game" between the Council and the rest of the EP. This benefits them the most in trilogues, where they can use two-level strategies to steer legislation in a more favorable direction (Costello and Thomson, 2011). Rapporteurs have the power to affect outcomes to the extent they are able to bridge partisan and institutional divides, and by making alliances within the EP and with other EU institutions (Benedetto, 2005). Rapporteurs have limited influence over legislation generally; however they do influence legislation which is negotiated in trilogues and have influence over legislation which uses the consultation procedure (Costello and Thomson, 2010).

While the EU's legislative system is unique it still shares many similarities with other legislative systems. We can thus rely on the literature on comparative legislatures to better understand the EU system and the rise of trilogues. There are three themes in this literature which are particularly important to trilogues: literature on bicameral legislatures; literature

on powers granted to legislative actors, such as veto powers, proposal powers, agenda-setting powers; and the literature on legislative gridlock.

The institutional context of the EU is important to understanding trilogues. Trilogues are the result of structural problems of the OLP. These problems were highlighted early on in the OLP's lifespan and motivated some of the changes made when moving from codecision I to codecision II. Having this understanding of the institutional context of the EU is important as we look at the literature on trilogues, especially their development in the EU.

1.2.3 Trilogue Literature

Key events in the early life of the OLP created conflict trilogues help solve. When the OLP was first introduced, the two institutions had different views as to their comparative power within the system: the Council thought the EP would still serve a consultative role, while the EP thought of themselves as an equal legislator. Not long after the Maastricht treaty, the EP was able to threaten to block legislation to win concessions, to force the Council to recognize the EP's power, and ultimately to influence later treaty changes (Farrell and Héritier, 2003). The EP was able to do so through uses of its third reading veto. The EP first used this power in July of 1994, rejecting the Council's position after the two institutions failed to agree to a joint text in a Conciliation Committee (Garman and Hilditch, 1998). The EP exercised this veto again in March of 1995, this time *after* the institutions had agreed to a joint text in the Conciliation Committee (Rittberger, 2000).

Conflicts between houses is typical of bicameralism. What makes the OLP different and requires trilogues are specific structural problems. First, trilogues solve problems with increased workload for both institutions that came with the OLP, as well as the expansion of the EU (Shackleton and Raunio, 2003). Of course, many legislatures have extensive workloads. Yet those legislatures do not require work-arounds to accommodate those workloads. In the EU, the workload is instead exacerbated by other issues, such as time and personnel, but also that many EU legislators essentially work part-time. The workload was particularly problematic for the Council, because their limited time and personnel resources are even more limited than the EP's, which especially hurts them in the OLP's Conciliation Committee system.

In addition, the Council is always required to make decisions by a super-majority, either in the form of QMV, as in most cases in the OLP, or by unanimity. As a comparison, the US Senate has some constitutionally mandated supermajority requirements, such as for ratifying treaties, and other super-majority requirements that are a rule or norm, like the

filibuster. However, these requirements aren't for *every* Senate vote. Thus, as the EP and Council have reached, or at least come close to, parity in the legislative process, agreements on legislation have become more difficult. The structural problems in the OLP play a large role in increasing the difficulty of agreements. These disadvantages in the OLP bias the Council towards concluding at earlier stages of the OLP; the Council can see only so many files through to Conference Committees. Some, perhaps even most, files must be completed early for the Council to achieve its policy goals (Häge and Kaeding, 2007).

The EP is also encouraged to agree early, particularly before the OLP's second stage. During the second stage, the OLP adds an absolute majority requirement to EP decision making (Brandsma, 2015). In the EP's first reading, the EP can amend, accept or reject legislation by a simple majority of present members. But in the second stage, while the EP can still accept by a simple majority, in order to amend or reject the legislative proposal the EP requires an absolute majority of *all* members. This requirement is the same as the requirement in the first stage if and only if all members are always present. But as the attendance during the second stage decreases towards 50%, the requirement moves toward a unanimity requirement (Hagemann and Hoyland, 2010). This is particularly difficult in the EP, as it has always had trouble with absenteeism due to its two locations (Brussels and Strasbourg) and because many MEPs have multiple occupations. This requirement is stringent enough to be considered an equivalent of a super-majority requirement (Tsebelis, 2000).

To accommodate this "need for speed", the institutions turn to informal systems. Meetings between the three institutions had been used in the cooperation procedure (Earnshaw and Judge, 1997). Once these negotiations proved useful to producing agreements and producing those agreements early, Member States sought to formalize this system in the Amsterdam treaty reforms, because they viewed these practices as beneficial to their working in the Council (Farrell and Héritier, 2007). The Amsterdam Treaty thus added a provision which allows legislation to pass at the first stage. Legislation which passes this way without using the full OLP have been dubbed "Early Agreements" or EAs. The institutions meet in trilogues to reach amendments to legislation which allows them to pass it as an EA. Trilogues are also preferred because they promote consensus (Mühlböck and Rittberger, 2015).

As informal negotiations and early agreements have increased in use, they have increasingly become institutionalized. Institutionalization of EAs began with the Amsterdam treaty in 1997, which formally incorporated the option for the institutions to agree on a legislative file in the first stage (Farrell and Héritier, 2003). EAs were able to be included in the treaties because the Member States viewed the meetings as beneficial to them (Farrell and Héritier,

2007). While trilogues themselves are not formally enshrined in the treaties, they have been underpinned by norms, standard operating procedures, and practices which link formal and informal institutions that have developed over their lifespan. These norms have shifted the practices from technical devices to "cultural constructs crystallizing different conceptions of institutional design"(Roederer-Rynning and Greenwood, 2015). This institutionalization can best be understood as an evolutionary process resulting form a growing awareness of the expanding scope of trilogues and the growing unease of their political implications (Roederer-Rynning and Greenwood, 2017).

The literature on which files receive trilogues have been conflicted, if not outright contradictory. This is, in part, due to differences in conceptualizations of what scholars study when they study trilogues or EAs. There is a divide in the literature between scholars who focus their studies on trilogues specifically and those who focus on EAs. The latter groups look at agreements made in the first stage of the OLP, often when they result from informal negotiations, but sometimes without reference to trilogues at all. Laloux (2019) identifies five different ways trilogues and EAs have been measured as dependent variables:

1. Informal negotiations (trilogues) only
2. Informal negotiations and agreement at the first or second stage
3. Informal negotiations and agreement at the first stage only
4. Agreement at the first or second stage, without any reference to trilogues
5. Agreement at the first stage only, without any reference to trilogues

Each of these buckets study a similar set of practices which result in a similar event: a legislative file passing at the first or second stage. However, there are distinct conceptual differences between each of these buckets. EAs themselves are provided for in the treaties. EAs solve a set of problems, some of which are the same problems trilogues solve. However, they also solve other problems that are different. While both EAs and trilogues are worth studying, both for EU politics and comparative legislatures more broadly there are enough conceptual differences between them that they should not be treated as interchangeable in the way that the literature often does.

As a result of the different measurements of trilogues/EAs, the literature studying which legislation receives trilogues or is an EA has been mixed and conflicting. Brandsma focuses only on if a trilogue occurred at all, and finds that the probability a file had a trilogue increased with more shadow rapporteurs. Shadow rapporteurs are MEPs appointed by their party groups to follow the progress of a file and find compromises within the committee on behalf of their group. They are appointed by Party Groups who do not control the

rapporteurship for a given legislation. Brandsma also finds that the probability of a trilogue increases with the number of amendments on the EP draft reports and the number of articles on in the proposal (Brandsma, 2015).

Looking at cases with both trilogues and an EA, De Ruiter and Neuhold find that the priorities of the Council Presidency, the Rapporteur, the major Party Groups, and other key actors, particularly if these actors view the legislation as a key priority, are important conditions for an EA (De Ruiter and Neuhold, 2012). When also looking at both EAs and trilogues, Reh et al. test multiple hypotheses based on three theories of legislative decision-making; a functionalist theory, a power-based distributional theory, and a sociological institutionalist theory. They find that files after the EU's largest expansion in May 2004 files debated while there are a larger number of ongoing co-decision files during a given Council Presidency all strongly correlate with an increased likelihood of an early agreement. Reh et al.also find a general increase in the use of EAs over time. Support for these three hypotheses promote support for both the functionalist and sociological institutionalist arguments. In addition to these three, Reh et al.find some support that the likelihood of an EA increases the more EP Committees have asked for an opinion on the proposal. Reh et al.found no support for the hypotheses that suggested a decrease in EAs with increases in saliency or for redistributive files. Interestingly, and perhaps in contradiction to De Ruiter and Neuhold, Reh et al. also found no support for files which are priorities of the Council Presidency (Reh et al., 2013).

When relying only on EAs, Rasmussen finds factors related to the bargaining context correlated with more EAs. In addition, the size of the Rapporteur's party group, and cases when the Rapporteur was from the Member State holding the Council Presidency were also correlated with EAs, as well as a general increase in the use of EAs over time. In addition, Rasmussen finds that the use of EAs is more likely the more pending legislation the Council Presidency has on their workload and when the file has an upcoming expiration date (Rasmussen, 2011). Also looking at just EAs without any reference to trilogues, Wøien Hansen finds that saliency decreases the likelihood of an EA, contradicting Reh et al.'s findings. She also finds that the likelihood of EAs decreases with greater distance between the ideal points of the median MEP and the pivotal member of the Council (Wøien Hansen, 2014).

Table 1.1 summarizes these findings and the dependent variable used. A number of these findings point in different theoretical directions or outright contradict one another. That these studies use different measurements for their dependent variables likely contributes to the mixed results. Some of these focus exclusively on trilogues, some exclusively on EAs, while others look at a combination of them. Brandsmas' dependent variable is in line with

number one on this list above, trilogues only. De Ruiter and Neuhold is a qualitative study with two cases both with trilogues and both fitting into number two on the list. Reh et al. also use a definition that falls into number two on that list. Rasmussen and Woien Hansen both look at number five on the list, stage one adoption only. Thus, there is notable variation in the definition across this literature which might influence the conflicting results.

Table 1.1: Summary of the Hypotheses in the trilogue literature

Hypothesis	Conceptualization of EA/Trilogue	Did the author(s) find support
Trilogues likelihood increases with number of Shadow Rapporteurs	Trilogues Only	Brandsma Finds Support
Trilogues likelihood increases with the number of report amendments	Trilogues Only	Brandsma Finds Support
Trilogues likelihood increases with the number of number of articles	EA and Trilogues at first or second stage	Brandsma Finds Support
EA likelihood increase if one or more key actors viewing the legislation as a priority	EA and Trilogues at first or second stage	De Ruiter and Neuhold find Support; Reh et al. did not find support
EA likelihood increases after May 04	EA and Trilogues at first or second stage	Reh et al. found support
EA likelihood increases with the number of files during presidency	EA and Trilogues at first or second stage	Reh et al. found support
EA likelihood increases over time	EA and Trilogues at first or second stage	Reh et al. found support
EA likelihood increases the more EP Committees ask for opinion	EA and Trilogues at first or second stage	Reh et al. found support
EA likelihood increases with the saliency	EA and Trilogues at first or second stage	Reh et al. did not find support
EA likelihood is higher for redistributive files	Agreement at 1st stage, no reference to trilogues	Reh et al. did not find support
EA likelihood increases with the size of the Rapporteur's PG	Agreement at 1st stage, no reference to trilogues	Rasmussen found support

Table 1.1: Summary of the Hypotheses in the trilogue literature *(continued)*

Hypothesis	Conceptualization of EA/Trilogue	Did the author(s) find support
EA likelihood increases when the Rapporteur is from Council Presidency's member state	Agreement at 1st stage, no reference to trilogues	Rasmussen found support
EA likelihood increases over time	Agreement at 1st stage, no reference to trilogues	Rasmussen found support
EA likelihood increases with the Council Presidency's workload	Agreement at 1st stage, no reference to trilogues	Rasmussen found support
EAs likelihood increases with an expiring date	Agreement at 1st stage, no reference to trilogues	Rasmussen found support
EA likelihood decreases with the saliency	Agreement at 1st stage, no reference to trilogues	Woien Hansen finds support
EA likelihood decreases with distance between the median MEP and the pivital Member of the Council	Trilogues Only	Woien Hansen finds support

The focus on stage of completion only risks incorporating "trivial EAs", legislation which are uncontroversial and relatively easy to pass without the need to meet informally. Trivial EA files are conceptually different from trilogue files. They will have different reasons for their adoption (Laloux, 2020). Understanding EAs is important for the study of EU legislation. However, it is important to be aware that when studying EAs you are studying something conceptually different from trilogues.

Requiring that legislation be passed early, even while also requiring a trilogue, also misses important nuances. When requiring an a EA a study will only look at "successful" trilogues, i.e. ones that resulted in an EA. However, this introduces bias into an analysis. Instead of explaining factors that contribute to trilogue occurrence, we instead explain factors which lead to a trilogue occurring *and being successful*. In Chapter 2 I am interested in trilogue occurrence and thus my dependent variable is when trilogues occur without reference to stage

Table 1.2: Summary of the Hypotheses on Benefits for the Institutions

Who benefits	Why	Author(s)
The Council	The limited number of actors	Andlovic and Lehmann (2014)
The Council	Still more powerful late in the OLP	Kreppel (2018)
The EP	EP gains concessions because of Council's constraned resources	Hage and Keading (2007)
The EP	EP can more effectively pass amendments	Kirpsza (2018)
The EP	Allows Rapporteur to use 2-level bargaining strategies	Costello and Thompson (2011)

of completion.

As with other changes to the EU legislative system, scholars have focused on how trilogues change the relative power of the institutions and the balance of power between them. Table 1.2 summarizes the theories on relative powers in the trilogue system. Some scholars argue that trilogues have benefited the Council. Andlovic and Lehman argues that the limited number of actors helps the Council to determine the final outcomes of trilogues (Andlovic and Lehmann, 2014). The Council is still more powerful later in the OLP. This constrains the EP and limits the Parliament's ability to benefit from trilogues (Kreppel, 2018).

There has been a particular focus on the EP in the trilogues literature. The EP has worked to adapt to the new bargaining environment both of trilogues and the OLP more broadly. They have adapted their practices and increased their resources to ensure at least parity with the Council. In doing so, the EP has relied on trilogues, which comes with a cost of decreased transparency (Huber and Shackleton, 2013).

Hage and Kaeding argues that the EP actually benefits from the use of trilogues. The Council has limited resources and thus prefers to avoid Conference Committees, even if the Council would benefit from them. Thus, the EP is able to extract concessions in return for early agreements (Häge and Kaeding, 2007). Negotiating in trilogues is an effective strategy for the EP to pass its amendments (Kirpsza, 2018). The EP's influence may depend on the strategy they use in negotiations with the Council. For example, the EP does better when Rapporteurs can employ classic two-level bargaining strategies: when they can credibly claim to be constrained by parent chambers and when gain information on the Council's win-set (Costello and Thomson, 2011).

Focusing only on institutions as winners and losers misses that actors within those institutions can also benefit or lose out from trilogues. Indeed, the central claim of the trilogue literature, on both the functioning of trilogues and their effects, is the Relais Actor Thesis. First presented by Farrell and Heritier, this thesis argues that the actors who control information flows between institutions have increased power over the legislative outcomes. Specifically, these actors are more empowered relative to others in their institutions. These "relais" or connecting actors are the rapporteurs and the Council Presidency. While they both are considered important relais actors, rapporteurs have received a bulk of the attention. It is theorized that the rapporteur is more empowered than the Council Presidency as the latter is more constrained by the need for a qualified majority in the Council. Rapporteurs, on the other hand, only require a simple majority within the EP (Farrell and Héritier, 2004; Huber and Shackleton, 2013; Shackleton and Raunio, 2003).

The thesis has seen a fair amount of support in the literature. Relais actors are able to use their role as agents with two principles to conclude early (Delreux and Laloux, 2018). These actors are also able to deviate from their mandate more than is necessary to reach an agreement (Laloux and Delreux, 2018). Rapporteurs also have more influence over legislation that is negotiated in trilogues (Yordanova, 2013).

Because of the rapporteurs' power, EP Committee Chairs and Party-Groups have fought for reforms which give them a significant role in trilogues (Héritier and Reh, 2012). Committee Chairs have become increasingly important as a part of trilogue legislation as their role has been enforced in the EP negotiating team (Roederer-Rynning and Greenwood, 2017). Because of this Party Groups increasingly seek to exercise control within Committees via both relais actors, the rapporteur, and Committee Chairs (Burns, 2013).

However, there is evidence against the Relais Actors Thesis, which argues that these actors have not enjoyed the increased influence that the thesis argues they should. The EP's opinion is not usually closer to the rapporteur's Party Group when EAs are used (Costello and Thomson, 2010). This could be that rapporteurs are not the only pivotal EP negotiator because they can be circumvented by shadow rapporteurs (Judge and Earnshaw, 2011). The final outcomes of legislation that uses trilogues have also been found to not be closer to the policy position of the rapporteur or the Council Presidency (Rasmussen and Reh, 2013). Hage and Naurin didn't find an increase in the Council Presidency's network capital relative to the other Member States (Häge and Naurin, 2013).

The rapporteur's role may be more collaborative. They are central for resolving differences between actors (Dyrhauge, 2014). Rapporteurs would prefer to agree to compromises which

would be supported by the rest of the EP, a goal which also leads to more trilogues per file (Brandsma, 2015). The EP is a consensus-driven institution which uses EAs and shared Committee competence to generate the internal agreement necessary to exercise legislative power (Burns, 2013). When conflicts emerge the relais actors craft agreements acceptable to the two largest Party Groups (Burns, 2013). This might explain why trilogue legislation does not tend to be closer to their position than other legislation.

The debate on the Relais Actor Thesis is not settled, and there is evidence both for and against it. The lack of clarity and consensus may result from focuses on a limited number of salient and controversial cases where these actors' influence might be limited (Laloux and Delreux, 2018; Laloux, 2020). A look at more cases, with more variation between cases could demonstrate the conditions in which relais actors are and are not influential.

Trilogues' impact hasn't been contained to just the relais actors, the EP, and the Council. A number of scholars have studied other actors' reactions to trilogues and the ways the increased use of trilogues has impacted these actors. The most notable actor in this group is the Commission. Cross and Hermansson track changes made to the Commission's proposal and finds that EAs have more amendments than non-EA legislation (Cross and Hermansson, 2017). However, this may not mean that the Commission has less influence over trilogue legislation. Kreppel finds that the EP still relies on coalitions with the Commission and that when these two institutions are united they can constrain the Council (Kreppel, 2018). Similarly, the European Council, the collective body made up of Europe's heads of state or government, can still exert influence on informal trilogues as both an agenda setter and through pressure on the legislative institutions (Bressanelli and Chelotti, 2016).

Within the EP and the Council, bureaucrats and civil servants have also had to adapt to the new trilogue norm. Civil servants in the EP generally take over some of the policy-making tasks from elected actors including steering and intervening in informal negotiations directly (Dobbels and Neuhold, 2013). Among these there is variation as to which actors are involved in trilogues. Accredited parliamentary assistants, in particular, are less involved in trilogue legislation than other files, as well as being less involved than central Secretariat staff and party group political advisers (Pegan, 2017). In the Council, COREPER plays a large role in trilogue legislation, by providing a mandate to Council negotiators and reviewing the negotiations (Roederer-Rynning and Greenwood, 2015).

Actors outside of the EU institutions have also been impacted by development of trilogues. Business interest groups are better equipped to influence the outcome of EAs, whereas other interest groups have a reduced influence (Andlovic and Lehmann, 2014). The most studied

actors, however, have been national parliaments. Members of national parliaments have often made reference to EU legislation, and do so when the file receives national media attention, and when it takes longer to negotiate the file. However, they seem to reference trilogue legislation less than other legislation, although support for that assertion is only moderately significant (De Ruiter, 2013). When opposition parties are strong in the EP, but weak domestically, they are more willing to scrutinize highly politicized files, while domestically strong parties that are weak in the EP will scrutinize the proposals negotiated in trilogues (Finke, 2017). Trilogues have made scrutinizing EU legislation difficult because they de-sync EU decision-making and national parliament actions by speeding up the decision-making mode in the EU. National parliaments have yet to catch up (Jensen and Martinsen, 2015). This, perhaps, might be less of a bug than a feature, as reducing national parliamentary involvement can help to decrease the number of veto players in the OLP. The reduction in veto players can help reduce constraints on actors and simplify the process.

Throughout the EU system trilogues have created winners and losers. Within the EP this has triggered intra-institutional conflicts. While we would expect reforms regulating winners and boosting losers, Heritier and Reh found a lack of consistent policy on fast-track legislation and limits to institutional changes. In their view the winners were able to resist reforms and thus adopted rules that fell short of the authors' expectations (Héritier and Reh, 2012). For example, the role played by Committees and shadow rapporteurs, differ Committee by Committee. The LIBE Committee, for instance, had institutionalized its role more than other Committees (Servent, 2009). There have been attempts by the institutions to formalize practices and particularly with the goal of improving the accountability of trilogue legislation. The EP specifically attempted to promote the role of Committees and the Committee Chair in their 2009 Code of Conduct. These Codes formally recognized the position of the EP's trilogue negotiating team, and institutionalized trilogues by establishing Committees as the main responsible body during negotiations (Judge and Earnshaw, 2011; Héritier and Reh, 2012).

The EP has also developed technical support for rapporteurs when negotiating in trilogues (Greenwood and Roederer-Rynning, 2015; Bray, 2014). Specifically, the EP's 2007 Code of Conduct, which updated Parliament's rules of procedures, include support provisions for the EP. The EP's negotiating team was to be given "all of the resources necessary" to conduct their work properly. In terms of personnel, this includes an administrative support team of the Commission secretariat, a political adviser for the rapporteur, and the legal service.

Debates over changes to the relative power of both institutions and individual actors inform

not only our understanding of trilogues, but our understanding of both the EU as a whole and comparative legislatures more broadly. Trilogues are a change to the EU's legislative system. For the EU, therefore, it is imperative to know how how this change impacts legislation. Understanding which actors gain influence over legislation is one way of approaching this question. Similarly, understanding how changes such as trilogues impact the system develops our understanding of legislative institutions. The impact of changes such as trilogues can tell us about how similar changes could impact other legislatures, but can also provide insight into the deeper workings of how legislatures function, how they distribute power, and how they respond to changes.

There are also important normative concerns with how trilogues change legislation. Trilogues have received criticism from the literature as problematic because of their lack of transparency. Trilogues are both informal and secluded. They are highly restricted to a small select groups of decision makers and documents are not publicly available (Reh et al., 2013). This hurts citizens, national parliament and non-Relais MEPs because it prevents monitoring of legislative decision-making (Roederer-Rynning, 2019). Internal reforms, including reporting on trilogues has fallen short (Reh, 2014), especially in reaching the requirements for reporting on what is discussed in the meetings (Brandsma, 2019). Trilogues may violate the requirements of transparency in the EU treaties (Berthier, 2016; Curtin and Leino, 2017; Leino, 2017). Institutions are only representative of their constituencies when they act as a whole, and thus trilogues, which restrict the number of actors who have a say on the agreement, may not be representative. This risks lowering the legitimacy of EU legislation (Lord, 2013).

Overall, the literature presented in this section shows trilogues as a work-around to the OLP designed to prevent gridlock. The OLP has been shown to be prone to gridlock because of its key structural problems of limited resources for both institutions and its super-majority requirements. This view of role of trilogues informs for which files they are used and what their effects are, which are key contributions to the trilogue literature.

1.3 Contributions

I contribute to the study of trilogues, EU legislation and comparative legislatures more broadly with three articles on trilogues and their role in EU legislation. Chapter 2 identifies legislative characteristics that correlate with increasing the probability a trilogue is convened for a given file. Chapter 3 looks at legislative amendments and whether trilogue legislation receives more or fewer changes. Finally, Chapter 4 looks at the impact of trilogues on the political content of legislation.

Chapter 2 addresses when trilogues are used. As I have demonstrated, the literature has struggled with addressing this question, resulting in conflicting and sometimes contradictory results. In this chapter I argue that the complexity of the legislation is important in determining if a trilogues is convened for it. Complexity is understood to impose costs on the end user, i.e. the individual citizen. Variables related to complexity, the number of recitals, pages and articles in the Commission's proposal, the number of amendments in the Rapporteur's draft report, and files that were B-points on the Council's agenda all correlate with trilogues. However, correlation between these variables suggests a latent variable. In this chapter I use a factor analysis that identifies that these variables do, in fact, correlate with a latent variable. I argue this variable is the complexity of legislation, and the factor scores were shown to relate to the use of trilogues. I then use weighted complexity rank and its two components, average section depth and entropy, to more directly measure complexity. These direct measures of complexity were associated with the use of trilogues.

Chapters 3 and 4 address the effects of trilogues on EU legislation. Both specifically look at changes made to trilogue legislation when compared with non-trilogue legislation.

Chapter 3 looks at any changes made to a legislative file. I use a minimum edit distance algorithm named DocuToads to measure the edits made between the Commission's proposal and the final legislative text. I find that trilogue files do not relate to more or fewer changes in legislation. The complexity of the legislation, specifically its weighted complexity rank, and the entropy of its language, also relates with more legislative changes. The ideological distance between the median member of the Committee and the median MEP relates with fewer changes. Lastly, the number of pages in the file also relates with more changes made.

Chapter 4 looks at a specific type of change, changes to the ideological content of legislation. To measure ideological changes, I use the scaling algorithm WORDFISH. Trilogue legislation received fewer ideological changes than non-trilogue files. The legislation's complexity, both its weighted rank and its entropy, and the ideological distance between the median member of the Committee and the median member of the EP relates with more changes.

Together, Chapter 3 and 4 provide a view of trilogues that shows trilogues as a system that restricts ideological changes. Trilogues do not promote more or fewer changes of any kind to be made. This is likely due to the fact that trilogues are used for complex legislation and complex legislation requires more changes. However, allowing these changes to impact the file's ideology can delay legislation and prevent it from passing on time. Thus, trilogues limit ideological changes made.

I contribute to the study of European Union politics through the development of the EU institutional and political context. Developing our understanding of this institutional context in turn helps us develop our theories of the EU. Scholars have argued that institutions cannot be effectively studied in isolation from both the other institutions and the broader political environment (Kreppel, 2011). This has been shown most clearly in the US, where the House sets different internal rules depending on their relationship to the Senate and President (Sin, 2015). Trilogues, and their increased use will thus change how the EP and the Council behave. I contribute through the development of a theory of *when* trilogues are used. This further helps explain *why* trilogues are used. I also develop our understanding of *how* trilogues impact the EU legislative system and its laws.

Thus, through the study of trilogues, I further develop our understanding of how legislation is made in Europe and whose interests are represented. Trilogues are a change to the institutional process which can impact the people of all twenty-seven member states of the EU.

Through developing our understanding of trilogues I also contribute to the comparative legislatures literature more broadly. First, trilogues are a unique form of dispute-resolution mechanism in a bicameral system. Trilogues occur before formal disputes have emerged, making them different from navettes, which occur while houses are debating on legislation, or conference committees, which occur after. Thus, trilogues have a unique impact on the structures of legislation that will develop our understanding of bicameral legislatures more broadly. Because trilogues are unique amongst other bicameral legislative institutions, studying its effects on EU legislation will contribute to our understanding of other legislative processes, specifically dispute resolution between houses in a bicameral legislature.

Chapter 2 demonstrates that trilogues are used to pass complex legislation. Trilogues are needed because complex legislation presents difficulties for the system. Some of these difficulties are shown in Chapters 3 and 4. Complex legislation sees more overall changes and more changes to ideology. Both of these types of changes increase the likelihood of gridlock in the OLP, which the EU solves with the use of trilogues.

Trilogues themselves do not seem to relate to more or less amendments to legislation. Chapter 3's finding in this regard is puzzling considering the hypothesized function of trilogues; they promote agreements on legislation, and then discourage all other changes. Trilogues not decreasing changes does not contradict this claim *per se*. It might simply be the case that legislation that requires trilogues need the same number of changes made as any legislation, but that all of these changes result from trilogues. Thus, the system might still discourage

changes made *except for* the ones made in trilogues.

Future research can explore whether or not this is the case by looking at *when* these changes are made using a method similar to the one in Chapter 3. To do so would require identifying a document that could serve as the result of the trilogue negotiation. Laloux and Delreux used the EP's first reading position when determining how much agents deviated (Delreux and Laloux, 2018). One could then use DocuToads to measure changes made between the Commission proposal and the EP's first reading to see if legislation remains the same in the number of changes after they come out of a trilogue. Similarly, they could compare the first reading document to the final text to see the difference between trilogue files there. The expectation would be that trilogues relate to no difference in the former case, while relating to difference in the latter.

However, trilogues *do* relate to less of a specific type of change, ideological changes. Chapter 4 shows that the ideology of a file changes less when a trilogue meets for that file than when a trilogue does not. This finding does support the notion that the trilogue system limits changes, it is just contained to one type of change. That ideological change is what is limited makes sense. Ideology is the most likely component of a bill to spark contestation, disagreements, and increase the probability of gridlock.

I also contribute by highlighting the importance of complexity of legislation. I show that complexity relates to the increased used of trilogues, with more amendments to a legislation, and with more ideological changes. Complexity thus has important ramifications for EU legislation. Legislative files with high levels of complexity introduces challenges to legislators and legislative systems. These legislation present high costs to knowledge acquisition for both the legislators themselves and to citizens. That they also contribute to more ideological changes suggests that they also come with diverging preferences.

Complexity has important implications for legislation and legislative systems and should be incorporated into the study of the EU and of comparative legislatures more broadly. For the comparative legislatures literature, it's important to note that the consequences of complexity may change depending on the context. In the EU, it has fueled the turn to trilogues as a way to ensure complex legislation passes on time. Whether other legislatures turn to similar unorthodox lawmaking for complex legislatures is important to explore. Different contexts may respond differently though, and understanding the approach taken by different contexts can expand our understanding of the functioning of legislative systems.

These findings also suggest that the complexity of legislation needs to be explored in other

legislative contexts. How complex legislation is handled may differ depending on institutional context. How different institutions handle complex legislation could deepen our understanding of legislative systems. Thus, the complexity of legislation is an area which needs to be more deeply explored by the comparative legislatures literature.

Chapter 2

Complexity, Political Contestation, and the Use of Trilogues in EU Legislation

2.1 Introduction

The introduction of the European Union's (EU) Ordinary Legislative Procedure (OLP) represented a massive change in European legislation making, because of the inclusion of the European Parliament (EP) as co-legislator with the Council of the European Union (the Council). In doing so, the OLP became the EU's first truly bicameral legislative process. How the institutions and their individual actors have adjusted to this change is still being developed and understood.

Perhaps the most important adjustment to the OLP has been the rise of trilogues. Trilogues are an informal negotiation among the European Union's three main institutions; the Council, the EP, and the European Commission (the Commission). Trilogues occur early in the legislative process and influence the content of the legislative file. They are extra-constitutional in that there is no explicit provision for them in any of the EU's governing treaties. Instead they are a system that seems to have emerged from previous iterations of the EU legislative processes (Earnshaw and Judge, 1997).

The OLP was developed over the course of a number of the EU's treaties, particularly the Maastricht, Amsterdam and Lisbon treaties of the 1990's and 2000's. The OLP was designed to maintain the influence of the Member States in legislation through the role of

the Council, while improving the democratic performance of the EU through the increased role of the directly elected EP. Trilogues circumvent this balance by encouraging a system of agreement which bypasses the OLP, where decisions are made by only a select number of actors, excluding many others especially in the EP. Trilogues increase the influence of these actors and change the functioning of the OLP.

The trilogues literature has viewed trilogues as a process to increase the speed legislation is passed at the cost of openness. However, Chapter 1 displays that this view misses important nuances that informs a lot of how trilogues function. Specifically, trilogues are a legislative work-around that corrects the structural problems inherent in the OLP. These structural problems leave the OLP prone to gridlock that prevents legislation from passing.

First, trilogues solve problems with the increased workload that came with the OLP and the EU's expansions. This workload is exacerbated by other issues, such as the limited time and personnel of both the EP and the Council. Both institutions struggle with their legislators effectively working part-time, with representatives in the Council having duties for their national government positions, and in the EP many MEPs have additional professions. Lastly, both institutions have super-majority requirements or equivalents. The Council must make decisions by a qualified majority or by unanimity. The EP has a voting rule change in its second reading that works as an equivalent to a super majority. Collectively these problems result in a high potential for gridlock that presents significant costs for the institutions.

Trilogues help to facilitate early agreements (EAs) for legislation that the institutions would otherwise struggle to adopt at the pace they need to. Thus, trilogues are needed to ensure legislation passes "on time". However, not all legislation needs a trilogue to facilitate an EA. Certain legislation is more likely to create gridlock than others. In this chapter I identify two characteristics of legislation that make the legislation more likely to create gridlock. These are the complexity of the legislative file and political contestation over the file.

Complex legislation has more provisions, is more specific, and often requires more changes in order to pass. All of these features of complex legislation increase the likelihood of gridlock, specifically in a system prone to it like the OLP. Complexity adds costs to comprehend the law for both legislators and citizens. Specifically, complexity increases the costs associated with knowledge acquisition, the ability of individuals to absorb, store, and analyze new information. As it relates to law, citizens will be less likely to comply with law that has high knowledge acquisition costs. Legislators will want to reduce their costs.

Knowledge acquisition costs also increase burdens on legislators themselves, who must also

acquire knowledge of the legislation as it passes through the legislative system. These costs increase the likelihood of gridlock. To ensure legislation passes before the OLP's second stage, the Council, EP, and Commission will meet in trilogues to facilitate an EA.

Similarly, when there is a high political contestation over legislation it will be more difficult to reach an agreement before the OLP's second stage. These files will also be more likely to create gridlock. I understand political contestation to be both inter-institutional disagreements, specifically between the Council and EP, and as disputes among actors within the institutions.

This chapter employs a binary logistic regression model using variables measuring the complexity of and political contestation over legislative files to predict the use of a trilogue for that file. The results of these models support the role of complexity. However, these variables also demonstrate a high level of empirical correlation and a conceptual relationship. I argue both are due to the existence of complexity as a latent variable. Therefore, Section 2.4 uses a factor analysis model to identify this latent variable. This model identifies the existence of two latent variables, one I identify as complexity and one as political contestation.

The existence of the latent variable complexity in the data from Section 2.3 prompts measuring complexity more directly. The variables used in Section 2.3 work as proxies for complexity. However, our understanding of complexity can be improved by a more direct measure. I thus introduce weighted complexity rank from the field of legislative studies to measure complexity. Weighted complexity rank and its components, average section depth and entropy, measure dimensions of complexity that exists in the structure and text of the legislative file. Legislation with high average section depth and entropy are ranked highly in weighted complexity rank. These legislation ultimately have high knowledge acquisition costs for both citizens and legislators will have a high likelihood of creating gridlock, and will thus require a trilogue to pass on time.

Trilogues change the function of the EU legislative system and thus affect both the laws themselves and the lives of EU citizens. Understanding trilogues is thus necessary for the study of the EU. Trilogues are also important for the study of bicameralism and comparative legislatures more broadly as they represent a unique change to a bicameral legislative system. Building our knowledge of trilogues first starts with understanding *what* problems they solve and *when* they are used. This chapter thus contributes to the trilogue, EU, and comparative legislatures literature with a theory on when trilogues are used. This further explains *why* trilogues are used.

I also contribute to the study of European Union politics through the development of the EU

institutional and political context. This context is important as it is necessary to understand the institutions' context in order to understand their behavior. Scholars have argued that institutions cannot be effectively studied in isolation from both the other institutions and the broader political environment (Kreppel, 2011). Trilogues have changed the inter-institutional relationship and in order to understand what this means for the political context of the EU it is imperative we understand their causes.

This chapter further contributes by highlighting the importance of complexity, specifically in causing legislation to be difficult to pass. Complexity in law and legislation creates high costs to knowledge acquisition for both legislators and citizens. The results in this chapter suggests the comparative legislatures literature needs to take a deeper look at the impact legislative complexity has on legislative systems and legislation making.

2.2 Literature Review

The literature on EA and trilogue occurrence, while mixed, has found some evidence of EAs and trilogues being used for legislation which would otherwise create gridlock. EAs, both with and without trilogues have been shown to be more likely when the institutions, particularly the Council, are experiencing a high volume of work. EAs have also been shown to be more likely when there is more pending legislation and when the file in questions has an upcoming expiration date (Rasmussen, 2011). Similarly, EAs occurring after a trilogue has met is more likely when there are a larger number of ongoing files during a given Council Presidency (Reh et al., 2013). Both of these results makes sense given that the workload in the OLP is a source of gridlock.

Trilogues have been shown to be more likely when the legislation is complex. Legislation with more articles are more likely to receive trilogues (Brandsma, 2015). The more articles a legislation has the more likely it is to be complex, as it includes more provisions and likely has more nested subsections, reflected by the need for more specificity and complex solutions. Thus, that the number of articles to trilogues suggest complexity relates to trilogues.

The relationship between trilogues and political contestation has been more uncertain. On the one hand, EAs are more likely when the rapporteur is from the member state holding the Council Presidency, thus, when the views of these key actors are more likely to be aligned (Rasmussen, 2011). Similarly, the saliency of a files decreases the likelihood it passed as an EA (Wøien Hansen, 2014).

However, the priorities of the key actors, specifically the Council Presidency, the rapporteur

and/or the major PGs, and particularly if more than one of these actors view the file as a key priority, is also an important condition for EAs (De Ruiter and Neuhold, 2012). When looking at EAs that result from trilogues, Reh et al. found support for the idea that the likelihood of an EA increases the more EP Committees asks for an opinion on a proposal (Reh et al., 2013). When looking at trilogues only, Brandsma finds that trilogues are more likely when more shadow rapporteurs have been assigned to a file, and the more amendments on the EP's draft reports (Brandsma, 2015). The findings from Reh et al. and Brandsma suggest that EAs/Trilogues are more likely when there is more scrutiny from the EP on the file, which is likely a reflection of increased intra-EP political contestation. It is important to note that the articles finding support for political contestation looked at EAs and trilogues or trilogues only. Rasmussen looked at EAs only when finding that political alignment relates to EAs.

The EA and trilogue occurrence literature as a whole has issues with the conceptualization of the dependent variables, with some scholars looking at EAs, some at trilogues, and some a combination. EAs and trilogues are conceptually different from one another and must be treated as such. The difference between these conceptualizations is explained more in Section 2.4.1. Trilogues are important to study on their own because of how they fundamentally change the OLP and what this changes means for bicameral legislatures more broadly. Because of this my dependent variable in this chapter is cases where a trilogue is convened regardless of if it was an EA.

Political contestation is a chief source of gridlock and the impact of trilogues on the political relationship of actors has been a particular focus of the trilogue literature. First, there is a debate over how trilogues have changed the power structure among institutions. Some have argued that the Council has benefited, either because of their smaller negotiating teams (Andlovic and Lehmann, 2014) or because of their ability to leverage their power later in the OLP (Kreppel, 2018). Others argue, however, that the EP has come out on top because the EP is able to extract concession in exchange for EAs because the Council can't afford to have the OLP go to its second or third stage (Häge and Kaeding, 2007). EP amendments have faired better when legislation is negotiated in trilogues (Kirpsza, 2018). The EP's power may be impacted by their bargaining strategy, specifically the rapporteur's ability to employ two-level bargaining strategies (Costello and Thomson, 2011; Delreux and Laloux, 2018).

Other institutions and actors have been impacted by trilogues. Cross and Hermansson track changes made to the Commission's proposal and finds that EAs have more amendments than non-EA legislation (Cross and Hermansson, 2017). However, this may not mean that

the Commission has less influence over trilogue legislation. Kreppel finds that the EP still relies on coalitions with the Commission and that when these two institutions are united they can constrain the Council (Kreppel, 2018). Similarly, the European Council, the collective body made up of Europe's heads of state or government, can still exert influence on informal trilogues as both an agenda setter and through pressure on the legislative institutions (Bressanelli and Chelotti, 2016).

Actors within the institutions have also been impacted by trilogues. The central claim of the trilogue literature, the Relais Actor Thesis, focuses on how the "relais", or connecting, actors have benefited from trilogues. First beginning with Farrell and Heritier, this thesis argues that the relais actors control information flows between institutions, giving them increased power over legislative outcomes. These actors are the rapporteurs and the Council Presidency. The rapporteur is more empowered than the Council Presidency as the latter is more constrained by the need for a qualified majority in the Council (Farrell and Héritier, 2004; Huber and Shackleton, 2013; Shackleton and Raunio, 2003).

Support for the Relais Actor Thesis has been mixed. On the one hand, the EP's opinion is not usually closer to the rapporteur's Party Group when EAs are used (Costello and Thomson, 2010). This could be that rapporteurs are not the only pivotal EP negotiator because they can be circumvented by the shadow rapporteurs (Judge and Earnshaw, 2011). The final outcomes of legislation which uses trilogues have also been found to not be closer to the policy position of the rapporteur or the Council Presidency (Rasmussen and Reh, 2013). Hage and Naurin didn't find an increase in the Council Presidency's network capital relative to the other member states (Häge and Naurin, 2013). This might be because the rapporteur's role may be more collaborative. They are central for resolving differences between actors (Dyrhauge, 2014). When conflict emerges the relais actors craft agreements acceptable to the two largest Party Groups (Burns, 2013).

Yet, the thesis has seen a fair amount of support in the literature. Relais actors are able to use their role as agents with two principles to conclude early (Delreux and Laloux, 2018). These actors are also able to deviate from the mandate more than necessary for agreements (Laloux and Delreux, 2018). Committee Chairs have become increasingly important in trilogue legislation as their role has been enforced in the EP negotiating team (Roederer-Rynning and Greenwood, 2017). Party Groups increasingly seek to exercise control within Committees via the relais actors (Burns, 2013).

Generally, there is a lack of clarity and consensus in the literature, which may result from focuses on a limited number of salient and controversial cases where these actors influence

might be limited (Laloux and Delreux, 2018; Laloux, 2020). It may also again be because of the different conceptualizations of EAs and Trilogues. Finding evidence that trilogues are more or less likely with political contestation has important implications for the Relais Actors Thesis and the role and powers of the relais actors.

The trilogue literature lacks a more comprehensive understanding of complexity. Complex legislation will be more difficult to agree on and will thus be more likely to create gridlock. Trilogues thus are needed to reach agreements on for complex legislation in order to prevent gridlock.

This chapter contributes to the literature on trilogues by highlighting the roles of both complexity and political contestation in determining when trilogues are used. The complexity of a given file particularly is found to be integral to whether or not a trilogue is convened for that file. The role of complexity has important implications for the study of trilogues and EU legislation. I also contribute by looking at political contestation. I find contestation does not predict trilogue occurrence and thus calls into question the relationship between political contestation and trilogues.

2.3 Which files receive trilogues?

The ostensible goal of trilogues in the OLP is to ensure legislation is passed "on time". Passing files on time is important to both the Council and the EP due to the OLP's structural problems, as discussed in Chapter 1, which encourage both institutions to make EAs. Therefore, trilogues should be convened for legislation that the Council and the EP would struggle to to pass before the second stage, or files which are hard to reach an early agreement on. There are two characteristics of legislation that increases the likelihood of gridlock; complexity and political contestation.

Legislation varies in its complexity, often because of the problems it addresses or the solutions it requires. In law, this often means legislation with exacting specification, a plethora of provisions, as well as legislation that is multifaceted with an inordinate amount of moving, interlocking parts. Certain legislative files cover a wider breadth of topics, or tackle a challenging problem that requires a manifold or detailed solution. In these cases, the legislation itself becomes more complex.

Here complex legislation is understood as legislation that is multifaceted with an inordinate amount of moving, interlocking parts. These files will thus create high costs to comprehend legislation, increasing costs to knowledge acquisition for both legislators and citizens. Complex

legislation is inevitably harder to resolve as an EA because of increased opportunities for changes to be made and will be more difficult to form a consensus on. The multifaceted nature of these files will mean a plethora of possible changes that could be made and legislators will need to determine which ones will be made. In addition, the potential increase in knowledge acquisition costs to the body of law will motivate legislators to limit these increases where possible. Without trilogues these files would be more likely to create gridlock. Ultimately, without trilogues these files would persist to later stages of the OLP. Rather than rely on agreements at these later stages, key decision-makers of EU legislation instead rely on trilogues to pass legislation. Thus:

Hypothesis 2.1: *The probability a trilogue is convened will increase with the complexity of the legislative file.*

Along with complexity, conflict between key actors makes agreements more difficult, and in the EU case increases the likelihood legislation extends beyond the first stages. In these cases actors have large differences between positions, and it is less likely there is a legislative agreement that beats all other alternatives. This increases the likelihood of gridlock over that file. To avoid instances where political contestation would bog down a legislation's passing, the EU will turn to trilogues to ensure an agreement is made and is passed on time. Thus, trilogues will be more likely when there is internal conflict, either within the EP or within the Council.

Hypothesis 2.2: *The probability a trilogue is convened will increase as political contestation within an institution increases*

Together these hypotheses present a theory of when trilogues are used, i.e. to prevent gridlock in the OLP by facilitating an EA. The OLP's propensity for gridlock is exacerbated by complex legislation and political contestation. The institutions will turn to trilogues to prevent this.

2.3.1 Data and Methods

When discussing trilogues it is important to define the relationship between EAs and trilogues that one is conceptualizing. This is due to the frequent conflation of EAs and trilogues in the trilogue literature. The relationship between EAs and trilogues can be conceptualized in five ways:

1. Informal negotiations (trilogues) only
2. Informal negotiations and agreement at the first or second stage

3. Informal negotiations and agreement at the first stage only
4. Agreement at the first or second stage, without any reference to trilogues
5. Agreement at the first stage only, without any reference to trilogues

The focus on stage of completion only risks incorporating "trivial EAs": legislation that are uncontroversial and relatively easy to pass without the need to meet informally. These files will have different reasons for their early adoption than files that are negotiated informally (Laloux, 2020). To put another way, trivial EAs are the non-difficult legislation that do not require trilogues to pass on time.

Requiring an EA, however, also misses important nuances. These studies only look at "successful" trilogues, i.e. ones that result in EAs. This introduces bias into the analysis: instead of explaining factors that contribute to trilogue occurrence we instead explain factors that lead to a trilogue occurring *and being successful*. Because I am interested in trilogue *occurrence* and not necessarily their *success*, I study the difference between cases when a trilogue was convened, regardless of which stage it passed, compared to all other legislation. In this chapter I conceive of trilogues in line with the first of the conceptualizations listed above.

Thus, my dependent variable, *Did a trilogue occur?*, is whether or not a trilogue was convened for a given legislative file. Since it is dichotomous, I use a binary logistic regression model to test my hypotheses. Whether a trilogue was used was obtained from Brandsma, as part of data he collected for his 2015 article, *Co-decision after Lisbon: The politics of informal trilogues in European Union lawmaking* (Brandsma, 2015). Brandsma collected the number of informal trilogues for every piece of legislation between the entry into force of the Lisbon Treaty, in December 2009, and the final legislative act adopted before the 2014 EP elections. He obtained the number of trilogues from internal EP reports that are meant to give the EP's Conference of President's an overview of progress on codecision files. These files are drawn up in monthly intervals and list all trilogues taking place for each file (Brandsma, 2015).

I use two measures of complexity: the number of recitals, *Recitals*, and the number of pages, *Pages*, in the Commission's initial proposal. Recitals are incorporated into the Commission's initial proposal. They are reasons listed by the Commission arguing why a particular piece of legislation should be adopted. They have been shown to be positively correlated with the importance of a piece of legislation (Häge, 2007; Häge and Naurin, 2013; Wøien Hansen, 2014). I argue that there will be more listed reasons for complex legislation than for less complex legislation. The more a proposal imposes additional costs of knowledge acquisition to the body of EU law, the more justification the Commission would need to defend the

proposal. All else equal legislators would prefer less complex legislation to more complex legislation so increases in complexity would require a sufficient rationale.

I collected pdf copies of the Commission's initial proposal for each file in my study from each file's entry in the Official Journal of the European Union, accessed on the EUR-Lex website. These proposals contain the recitals the Commission included in the proposal. Recitals are typically at the beginning of file, usually introduced with "Whereas."

In addition, the increased number of provisions and more complex statues will require longer legislative files. Thus, the number of pages in the legislative file should be indicative of more complex files. *Pages* is the number of pages in the Commission's initial proposals.

For contestation within the EP, I look at the distance in preferences between key actors using NOMINATE. I have calculated NOMINATE scores for all members of the 7th EP term. I use two measures of ideological difference within the EP: the distance between the rapporteur and the median member of their committee; and second the distance between the rapporteur and the median MEP.

To measure ideology of MEPs, I calculated NOMINATE scores for all Members of the European Parliament who served the full 7th EP term. I collected vote data from itsyourparliament.eu, which offers roll call data on each vote in the EP. I used these data to calculate NOMINATE scores for these MEPs with the wnominate and pscl packages in R using scores from the first dimension. Next, I calculated the median nominate scores for each EP committee and for the EP as a whole. I calculated the difference between the Rapporteur for each legislation and the median members of the responsible committee, with *Rapporteur-Committee Distance*, and between the rapporteur and the median member of the EP as a whole with the *Rapporteur-EP Distance*.

To capture intra-Council political contestation, I look at a file's status as a B-Point on the Council's agenda. A file enters the Council agenda at the B-point level when Council bureaucrats are uncertain about ministers' opinion or when they are uncertain that a legislative file has the support of a qualified majority. When this happens, the minsters get formally involved in the legislative process and afterward keep a close eye on its progress. Thus, the inclusion as a B-point signifies both internal political contestation, because this type of contestation is a criteria for B-point status, and the creation of more political contestation with the increased involvement of ministers. It is of course important to note the inclusion of the agenda as a B-Point may not reflect political contestation at all. These files may not have any contestation within the Council. However, involvement of ministers is a big step for

the Council to make, and their presence has been shown to increase contestation. Thus, I argue that it will correlate with the increased probability of a trilogue.

Brandsma used the number of times the file was a B-point. I dichotomized this variable to create *Was file ever a B-Point?*. I argue that any inclusion as a B-point signifies contestation over legislation. Brandsma obtained information on the number of times a file was a B-point on the Council's agenda from PreLex.

For control variables, I included variables Brandsma found to correlate with the use of trilogues. First among these are the number of shadow rapporteurs assigned to the legislative file. Shadow rapporteurs are appointed by party groups not holding the rapporteurship and become members of the EP's negotiating team in trilogues. Shadows occasionally deviate from the EP's official line in trilogues (Roederer-Rynning and Greenwood, 2015). Similarly, the Council will occasionally negotiate directly with shadows if the Council is unhappy with the rapporteur's position on a given file (Judge and Earnshaw, 2011). Brandsma obtained his data from the EP's legislative observatory. *Shadow Rapporteurs* represents the number of shadow rapporteurs assigned to a file.

My second control variable is the number of articles in the Commission's proposal. Brandsma argued that longer legislation would require more trilogues because there was simply more content that both institutions need to agree on. However, it is also possible that the number of articles is indicative of more complex legislation, as more complex problems require more articles for the solution. *Articles* is the number of articles in the Commission's initial proposal.

Finally, I include the number of amendments on the rapporteur's draft report. Prior to a trilogue, the rapporteur creates a draft report proposing amendments to the Commission's proposal. These reports are discussed in the rapporteur's committee and are open to further amendments both from this committee and from the EP as a whole. It is not uncommon for these amendments to contradict one another, and often require additional amendments to reconcile them. Brandsma argues that amendments are a sign of intra-EP contestation, with more amendments signifying more disagreement with the rapporteur's position. However, complex legislation will likely have more amendments than less complex legislation, as there will be more content to amend or there will be a need for increased precision on the legislation's previsions. *Amendments* was taken from Brandsma's dataset, collect from the EP's legislative observatory.

Table 2.1: Descriptive Statistics

Variable	Mean	Median	Min	Max
Did a trilogue occur?	0.76	1.00	0.00	1.00
Recitals	21.02	17.00	3.00	114.00
Pages	35.93	24.50	4.00	246.00
Rapporteur-Committee Distance	-0.05	-0.02	-0.90	0.97
Rapporteur-EP Distance	-0.07	-0.04	-0.89	0.93
Was file ever a B-point	0.39	0.00	0.00	1.00
Shadow Rapporteurs	3.57	4.00	0.00	8.00
Articles	18.19	9.00	1.00	488.00
Amendments	166.53	52.50	0.00	2322.00

Table 2.1 displays the descriptive statistics for all of the variables used. Figure 2.1 further displays descriptive statistics in the form of the frequency distributions. The figure also shows the bivariate correlations among the variables, as well as bivariate scatter plots to further display the relationships between them. There are two bivariate relationships with high correlations, with *Recitals* and *Pages* correlated at 0.82 and *Rapporteur-Committee Distance* and *Rapporteur-EP Distance* are correlated at .99. These highly correlated variables were not included in models together. A number of other variables were also correlated with one another. These correlations will be discussed more in Section 2.3.2 and Section 2.4.

2.3.2 Results

Table 2.2 shows the results of the four logistic regression model outputs. These models vary in the number of independent variables used. The first two models do not include the number of articles in the Commission's proposal and the number of amendments to the rapporteur's draft report because of their correlation with recitals and the number of pages (see Figure 2.1). Model 1 tests Hypothesis 2.1 using *Recitals*, Hypothesis 2.2 with *Rapporteur-Committee Distance* from the EP side and from the Council side with *Was file ever a B-Point?*, and the control variable *Shadow Rapporteurs*. Model 2 swaps in *Pages* to replace *Recitals* and *Rapporteur-EP Distance* for *Rapporteur-Committee Distance*, but keeps all other variables from Model 1. Model 3 takes the variables from Model 1 and adds the controls *Articles* and *Amendments*. Model 4 adds these two variables to Model 2.

In Model 1 *Recitals* is highly correlated with the probability of a trilogue, with a p-value

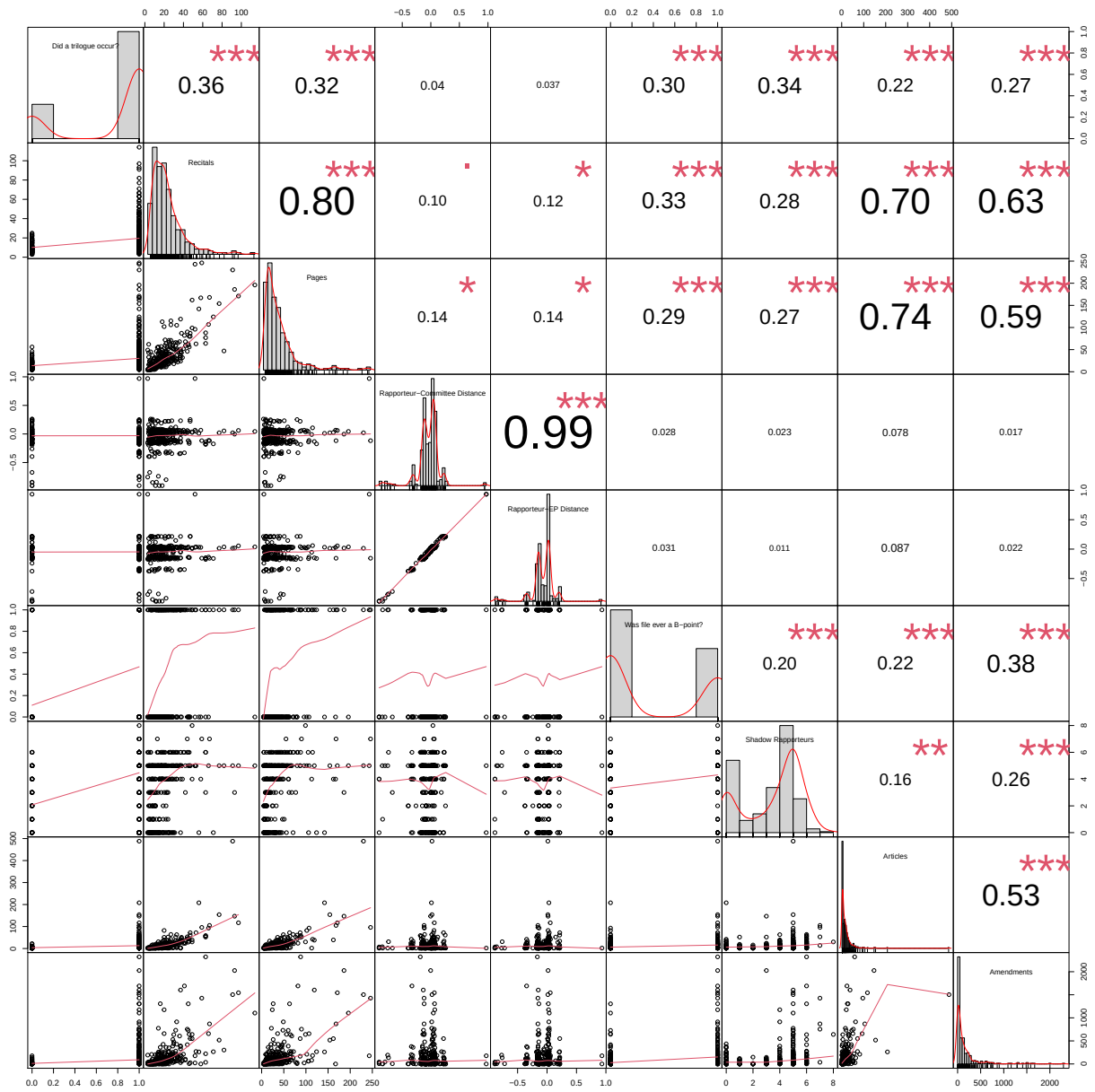


Figure 2.1: Correlation among variables

lower than 0.001. This variable's positive coefficient implies that the probability of a trilogue increases with more recitals, thus supporting Hypothesis 2.1. However, in Model 3 when *Articles* and *Amendments* are included, *Recitals* significance drops. The coefficient remains positive, providing some support for Hypothesis 2.1.

In Model 2, *Pages* is positive and significant in this model, supporting Hypothesis 2.1. However, like *Recitals*, it loses this significance when included in a model with *Articles* and *Amendments*[1].

Rapporteur-Committee Distance is positive in both models it is in, implying that the probability that a trilogue occurs increases as this distance increases. However, it is not significant, thus not providing support for Hypothesis 2.2. *Rapporteur-EP Distance* is also positive in all models in line with the prediction in Hypothesis 2.2. However, it is also insignificant in these models. Together these variables do not support Hypothesis 2.2 from the EP side.

Was file ever a B-Point? is significant in Model 1, with a p-value less than 0.05. Its coefficient is positive, supporting Hypothesis 2.2 from the Council's side. Interestingly, it increases in significance, with a p-value less than 0.01, in Model 2 when the number of pages is included rather than the number of recitals. *Was file ever a B-Point?* loses its significance when *Articles* and *Amendments* are included. This is likely due to its moderate correlation with the number of amendments in the rapporteur's draft report.

For the control variables, *Shadow Rapporteurs* is highly significant in the first two models as it was in Brandsma's analysis. Similar to Brandsma's analysis, it loses significance when included in a model with *Articles* and *Amendments* in Model 3. However, it loses all significance in when included in Model 4[2]. *Articles* is significant at the 0.05 level in both Model 3 and Model 4, which is consistent with Brandsma's findings. Similarly, *Amendments* is also significant in Models 3 and 4, with a p-value less than 0.01.

These results show mixed support for both hypotheses. *Recitals* and *Pages* in the Commission's proposal are significant when on their own, however, they lose significance when included with *Articles* and *Amendments*. *Was file ever a B-point?* follows a similar pattern.

The pattern demonstrated in these results is likely the result of the significantly high correlations between the variables, as seen in Figure 2.1 in Section 2.3.1. First, *Recitals* and *Pages* are highly correlated at 0.82. Both are also fairly highly correlated and significantly correlated with *Amendments*, and *Articles*. *Was file ever a B-point?* legislation is significantly,

[1]Its p-value is slightly out of significance threshold, at 0.07

[2]Similar to the number of pages, the number of shadows has a p-value of 0.07

Table 2.2: Which Files Receive Trilogues?

	Dependent variable:			
	Did a trilogue occur?			
	Model 1	Model 2	Model 3	Model 4
Recitals	0.124***		0.020	
	(0.024)		(0.033)	
Rapporteur-Committee Distance	0.210		0.184	
	(0.734)		(0.800)	
Pages		0.067***		0.031
		(0.014)		(0.017)
Rapporteur-EP Distance		0.153		0.104
		(0.760)		(0.817)
Was file ever a B-point?	1.011*	1.170**	0.139	0.030
	(0.406)	(0.403)	(0.491)	(0.499)
Shadow Rapporteurs	0.272***	0.256***	0.168*	0.154
	(0.073)	(0.074)	(0.084)	(0.085)
Articles			0.106**	0.099*
			(0.041)	(0.040)
Amendments			0.019**	0.017**
			(0.006)	(0.006)
Intercept	−1.816***	−1.464***	−1.381**	−1.545***
	(0.394)	(0.353)	(0.422)	(0.398)
Observations	310	310	292	292
Log Likelihood	−122.183	−122.370	−99.598	−97.898
Akaike Inf. Crit.	254.366	254.739	213.195	209.795
Note:				*p<0.05; **p<0.01; ***p<0.001

although weakly, correlated with *Recitals*, *Pages*, *Articles*, and *Amendments*.

In addition to being correlated empirically, these variables are also related conceptually. Recitals and Articles will be larger for longer files, as longer files will likely have more reasons for adoption and will need more articles to cover its positions. The number of amendments to the EP's draft report will also be larger for longer files, as more content means more opportunities for changes and often more changes. However, *Recitals*, *Pages*, *Articles*, and *Amendments* also all reflect a file's complexity. Complex legislation requires longer and more intricate proposals, which increases the number of pages and articles needed. Complex legislation also need more reasons to justify increases in complexity to the body of law thus increasing recitals. Complex legislation also requires more changes, as will be seen in Chapter 3, and thus more amendments to the EP's draft report.

These empirical and conceptual connections suggest the existence of a latent variable, *Complexity*. To determine if this is the case I use a factor analysis in the next section.

2.4 Factor Analysis

The variables I used in the analysis above were highly correlated, as shown in Figure 2.1. These correlations suggest the existence of a latent variable that is partially captured by the number of recitals, pages, articles, and amendments. To define the latent variable and then examine its significance level, I will use a factor analysis model.

Factor analysis seeks to reduce the dimensionality that exists in data. This dimensionality reduction typically means moving from a large number of variables to a smaller number of factors. Factors are linear components of observed variables that represent an underlying structure that explains or represents the variance of the original variables (Figueiredo et al., 2014). These factors, referred to as latent variables, are hard to directly observe but can be inferred from observed variables. Factor analysis identifies the latent variables that most efficiently predicts a set of actual variables. It can do so even if some or all of these actual variables measure something in addition to the latent variable or contain some random error (Coppedge, Alvarez, and Maldonado, 2008).

There are two types of factor analysis that could be used in the case of trilogues in European legislation: exploratory factor analysis (EFA) and confirmatory factor analysis (CFA). Typically, EFA is better for theory development, while CFA is more adequate for theory testing. CFA defines *a priori* the nature of the latent dimension to be measured and proposes a hypothesis about which variables would be most useful for each dimension. The cost is

CFA does not incentivize researchers to question their assumptions and conceptualizations about the number of dimensions and their content. It does not guarantee that a serious alternative hypothesis is tested, rather than a straw man argument built from these strict original conceptions (Coppedge, Alvarez, and Maldonado, 2008).

EFA, on the other hand, does not lock in a given conception about the dimensions in the data. This leaves the researcher open to identifying what is empirically the most natural dimensions in the data. EFA, of course, comes with a downside. Specifically, EFA only provides weak guidance on the interpretation of the content of the identified latent variable (Coppedge, Alvarez, and Maldonado, 2008). While I have some conception as to the content of potential latent variables, I do not think these conceptions are strong enough for CFA. In this case, a CFA would be vulnerable to "conceptual blinders", as Coppedge et al. term it, and not be open enough to identifying the empirically most justifiable dimensions. Thus, for this article I will use an exploratory factor analysis. Based on the results of my logistic regression and correlation analysis, I expect there to be a dimension that explains the covariance in the number of recitals in the Commission's proposal, the number of pages and articles in that proposal and the number of amendments to the rapporteur's draft report.

First, I review the variables I will use, which include the variables used above as well as the other variables Brandsma used in his analysis. Next, I test the variables for their factorability. Third, I report the results of the factor analysis model. Finally, I discuss the interpretation and content of the identified factors. The other preparatory steps, including the checking of assumptions can be viewed in the appendix, in Section A.

2.4.1 Variables

For a comprehensive EFA, I use a mixture of the variables from my previous analysis and variables from Brandsma's analysis I had not previously used[3]. Adding these additional variables will further reduce conceptual limitations and allow for the empirical exploration of the potential dimensions in these variables. I will review the variables not covered in Section 2.3.1.

First, I added Brandsma's rapporteur Party Group size variable. This variable measures the number of seats held by the rapporteur's Party Group. Brandsma argued that Party Group size should correlate with the number of trilogues per file, as larger groups would need less meetings because their rapporteurs will have more support for their agreements made in

[3]I did not include Brandsma's number of times a file was a B-point on the Council agenda, because of its similarity with my own Council B-point variable.

trilogues. In addition, Brandsma argued that smaller Party Groups would have more extreme point of views than larger groups, and their rapporteurs would need to do more to secure support. These arguments also apply to whether a trilogue is convened in the first place.

Second is the EP committee's past experience with the OLP. Since the OLP expanded to certain issue-areas, and thus Committees, sequentially, rather than all at once, some Committees have more experience with the the OLP process than others. Other Committees will be new to the OLP, as the OLP expanded with the Lisbon treaty adoption in 2009. This is particularly important because of the time period under study, which is the first EP term post-Lisbon. Brandsma argues that Committees new to the OLP would struggle more with reaching inter-institutional agreements than other Committees, and will thus need more trilogues to pass legislation.

Finally, Brandsma argues that legislative proposals amending existing legislation would require fewer trilogues. This is included as a binary variable with 1 equaling an amending act and 0 otherwise.

2.4.2 Factorability

Once the assumptions are checked, we need to test if the data are likely to create a factor, given the correlations and partial correlations. I use two tests of factorability; the Kaiser-Meyer-Olkin (KMO) statistic and Bartlett's sphericity test. KMO ranges from 0 to 1 and roughly estimates the proportion of variance in the data that might be explained by factors. The suggested cutoff for factorability is a KMO statistic higher than 0.60. The overall KMO statistic for my data was 0.75, well above the suggested cutoff, thus implying factorability of my data.

Bartlett's sphericity test serves as a second test of factorability. Bartlett's tests the null that the correlation matrix of the sample data comes from a population in which the variables have zero correlations with each other. For factorability, the null should be rejected. The p-value for this test was statistically significant, with a p-value that rounds to 0. This further suggests the factorability of these variables. Results of both tests are displayed in Table 2.3.

2.4.3 Results

Exploratory factor analysis attempts to identify all possible factors that exist in the data. Not all of these factors identify significant relationships between the observed variables. We must determine how many factors to retain. I did so by first by examining the eigenvalues of

Table 2.3: Factorability statistics

Statistic	Value
KMO	0.76
Bartlet Chi squared	2323.58
Bartlet p-value	0

Table 2.4: Eigenvalues

Factors	Eigenvalues
1	3.780
2	2.114
3	1.097
4	0.882
5	0.786
6	0.720
7	0.697
8	0.448
9	0.277
10	0.190
11	0.007

the observed data, next with a parallel analysis, and finally by examining a scree plot of the eigenvalues.

Table 2.4 reports the eigenvalues of the observed data. The convention is to keep factors with an eigenvalue greater than 1. Eigenvalues from my data suggest between two and three factors, as the eigenvalue for factor three is only slightly above 1.

Parallel analysis compares our data to a randomly generated data set with the same number of subjects and sub tests. The procedure calculates estimated eigenvalues from this randomly generated data, and then compares them to the eigenvalues from our observed data. Parallel analysis uses reduced eigenvalues from the observed data, shown in Table 2.4. Parallel analysis recommends finding the points where 95% of the randomly drawn data's eigenvalues, column four in Table 2.4, exceeds the eigenvalues of the observed data, column two in that table. In our data that is at four factors. The eigenvalues are close at three factors which suggests that factor three isn't well defined in our data, at least as well defined as factor one or two. We can say that the parallel analysis suggest between two and three factors.

Finally, I looked at the scree plot of the eigenvalues. Scree plot analysis tends to be more subjective than the other alternatives. The rule of thumb is to identify where the slope of

Table 2.5: Parallel Analysis

Factor	Reduced Eigenvalue, observed	Mean Eigenvalue, parrellel data	95th percentile Eigenvalue, parrellel data
1	3.367	0.380	0.470
2	2.079	0.277	0.347
3	0.387	0.197	0.268
4	0.075	0.132	0.185
5	0.028	0.071	0.110
6	0.015	0.021	0.060
7	-0.010	-0.031	0.004
8	-0.058	-0.080	-0.043
9	-0.081	-0.131	-0.099
10	-0.146	-0.186	-0.148
11	-0.179	-0.250	-0.203

the plot levels out, and keep all of the factors before that point.

The plot suggests between two and three factors, in line with the eigenvalues and the parallel analysis. Similarly, the third factor is not as defined as the previous two, as the slope does levels off at factor three, again suggesting that two factors are optimal. Given the results of all three tests, I will include two factors in my analysis[4].

In addition to the number of factors, factor analysis also requires the choice of extraction and rotation method. I have chosen principal axis factor as my extraction method and Promax rotation.

Principal axis factor extraction method was chosen as a commonly used alternative to maximum likelihood in cases with non-normally distributed data. Tests for normality for my data revealed the data to be non-normally distributed, prompting the need for principal axis over maximum likelihood[5]. Principal axis factoring is a method of extracting factors from the correlation matrix which uses the squared multiple correlation coefficient as the initial commonality between variables.

Promax rotation is an oblique rotation which allows factors to be correlated. It can also be calculated more quickly than other rotation forms. Factors can often be correlated in the social sciences and thus it is useful to start with Promax rotation.

[4]I did test three factors, but only one variable (Council B-point) was noticeably correlated with this factor, so I dropped the third factor from the analysis.

[5]Results of tests for normality in the appendix

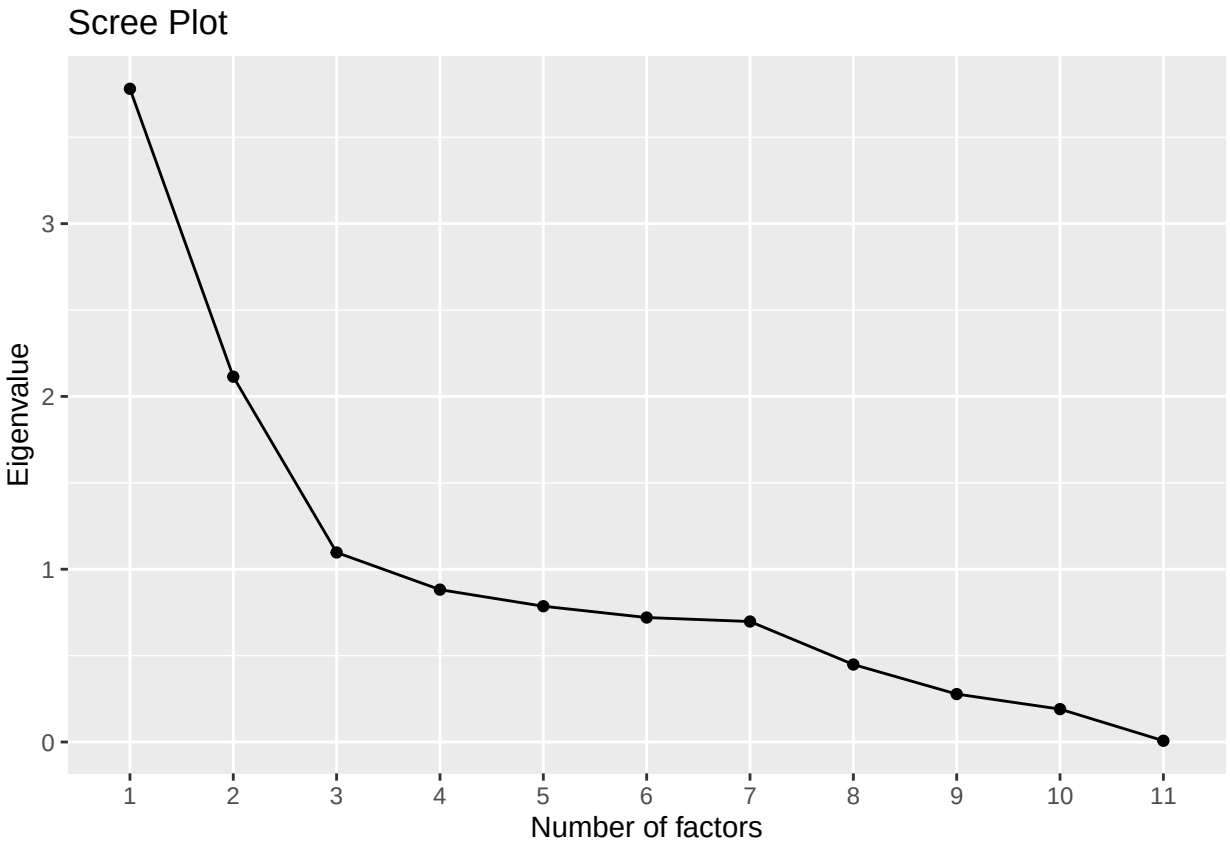


Figure 2.2: Skree Plot of factors

Table 2.6: Variance accounted for by factor

Factor	Eigenval	PcntVar	Cumul_Pcnt_var
1	3.78	34.37	34.37
2	2.11	19.22	53.59
3	1.10	9.97	63.56
4	0.88	8.02	71.57
5	0.79	7.14	78.72
6	0.72	6.55	85.27
7	0.70	6.34	91.61
8	0.45	4.08	95.68
9	0.28	2.52	98.20
10	0.19	1.73	99.93
11	0.01	0.07	100.00

Table 2.6 shows the variance accounted for by each factor. Factor one is the highest at about 35%, with factor two slightly lower at 19%. The variance accounted for drops off noticeably after that point. This pattern further suggests two factors are appropriate.

We can now look at the pattern coefficients for each factor, displayed in Table 2.7. These are the percentage of variance in the observed variable that is explained by each factor after removing the variance explained by the other factors. They can be interpreted as multivariate regression coefficients that would result from each indicator being regressed on the latent components. Thus, the greater the absolute value of the component, the greater the contribution of the component to the variable.

There are differing views on the correct cutoffs for practical significance of factor loadings. For Hair et al. it depends on sample size, with a recommended cutoff of .35 for samples between 250 and 350 (my sample is 313) (Hair et al., 1998). Tabachnick et al. offer a series of cutoffs; 0.32 is "poor", 0.45 is "fair", 0.55 is "good", 0.63 is "very good" and 0.71 is "excellent" (Tabachnick, Fidell, and Ullman, 2007). Using the latter criteria, Factor 1 has four variables that are "excellent": *Amendments*, *Articles*, *Recitals*, and *Pages*. Factor 1 has two "fair" variables, files that were *B-points?* and files that were not amending acts[6]. Finally, Factor 1 has one variable just shy of Tabachnick et al.'s "poor" category, *Shadows*, whose coefficient is 0.321. Factor 2 has more ambiguous results. It has two variables with "excellent" values, *Rapporteur-Committee* distance and *Rapporteur-EP* distance. It then has one variable that scored "poor", *PG Size*.

[6]As stated above, the amending act variable was reverse coded so that files which were not an amending act were coded 0. This was done to make the presentation of factor loadings clearer.

Table 2.7: Pattern Coefficients

	Factor 1	Factor 2
Shadow Rapporteurs	0.326	-0.029
PG Size	0.116	0.346
OLP Novice	-0.283	-0.090
B-point?	0.420	-0.026
Amendments	0.726	-0.088
Amending Act	-0.463	-0.019
Articles	0.761	-0.026
Recitals	0.911	-0.019
Pages	0.864	0.016
Rapporteur-Committee	-0.138	1.027
Rapporteur-EP	-0.132	1.023

Figure 2.3 displays the factor diagram for these two factors. The relationship between factors and variables are shown only for variables which exceeded Tabachnick et al.'s lowest cutoff, the "poor" category. With this criteria, we see two variables that are not well explained by the factors, *Shadows* and *OLP Novice*.

I next tested the correlation between the two factors which was found to be 0.28. Since this is lower than the cutoff value used above it is safe to say that these factors are not correlated.

The last step is to evaluate the factors using factor scores. Factor scores are composite variables that provide information on individual case's placement on the factor. There are a multitude of methods to create factor scores, which generally fall into two broad buckets: "refined" and "non-refined" (DiStefano, Zhu, and Mindrila, 2009). I use both a refined and a non-refined method.

Refined methods use sophisticated and technical approaches to create scores. They are more exact and complex than non-refined methods. The resulting scores are linear combinations of the observed variables that consider what is shared between each item and the factor, as well as what is not measured. They seek to maximize the validity of the score by creating scores that are highly correlated with their factor (DiStefano, Zhu, and Mindrila, 2009).

I have chosen Bartlett scores as a refined method of generating factor scores. The Bartlett method maximizes validity with highly correlations between factor scores and their factors, while not allowing for correlations between factor scores and other factors. Not allowing

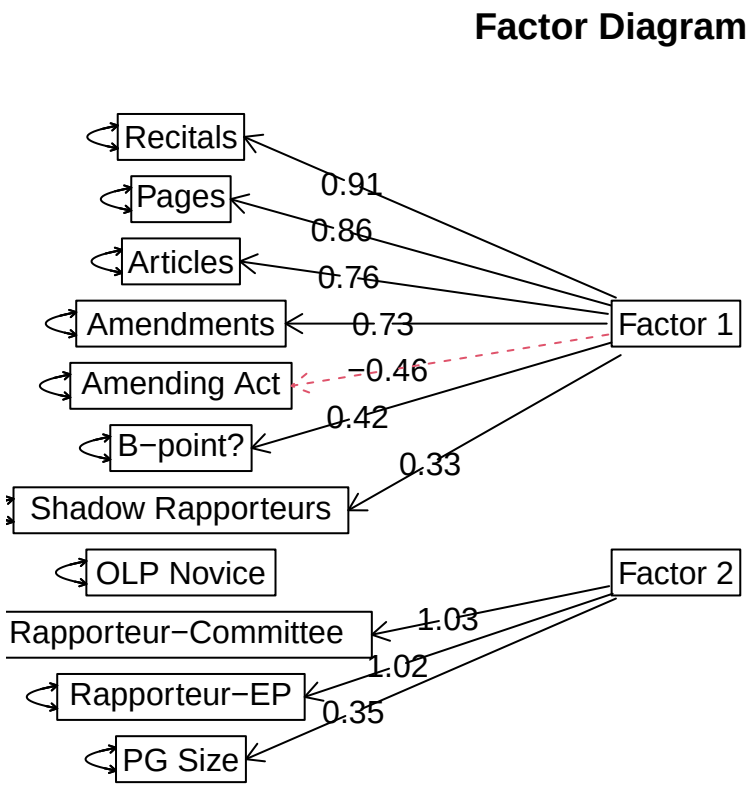


Figure 2.3: Diagram for the factors

correlations between factor scores and other factors is both a positive and negative with Bartlett's as these correlations sometimes do exist in cases of orthogonal factors. Given that the factors in my data do not appear to be orthogonal, and given the low correlation between the factors, I think this potential disadvantage of Bartlett's is minimized. Bartlett's produces unbiased factor scores, which is a great benefit of this method compared with other refined methods (DiStefano, Zhu, and Mindrila, 2009).

Non-refined methods are relatively simple, cumulative procedures to provide individual cases' placement on a factor distribution. This simplicity allows them to be easy to compute and interpret (DiStefano, Zhu, and Mindrila, 2009). Non-refined scores have also been found to be more stable than refined scores (Grice and Harris, 1998).

To calculate a non-refined score, I first weighted each variable by that variable's loading onto the factor that variable is associated with. Weighting allows for contributions to the factor score to match the variables contribution to the factor. I next calculated the mean of the weighted variables for each file. For the mean I reversed the coding of Amending Acts so the contribution to the factor score mean was positive. I used the mean instead of the sum to make the scores more comparable across factors, as Factor 1 has more variables then Factor 2, a sum would result in some-what artificially larger numbers for Factor 1.

I used both a refined and non-refined method of computing factor scores because of the different strengths of the two types of methods. Refined scores provide more valid scores, i.e. scores that are highly correlated with the factor. However, non-refined methods tend to produce scores that are more stable.

Table 2.8: Descriptive Statistics of Factor Scores

Variable	Mean	Median	Min	Max
Bartlet Factor 1	-0.02	-0.25	-1.10	6.47
Bartlett Factor 2	-0.03	0.16	-4.26	4.86
Weighted Mean Factor 1	32.51	17.01	0.38	328.67
Weighted Mean Factor 2	20.08	20.61	-0.48	29.98

Table 2.8 shows summary statistics for the factor scores. The values for the means factor score are much higher than for the Bartlett scores, which is unsurprising given the difference in the way they are estimated. The weighted mean for Factor 1 is higher than for Factor 2. However, this is clearly due to some high outliers in Factor 1, given Factor 1's lower median.

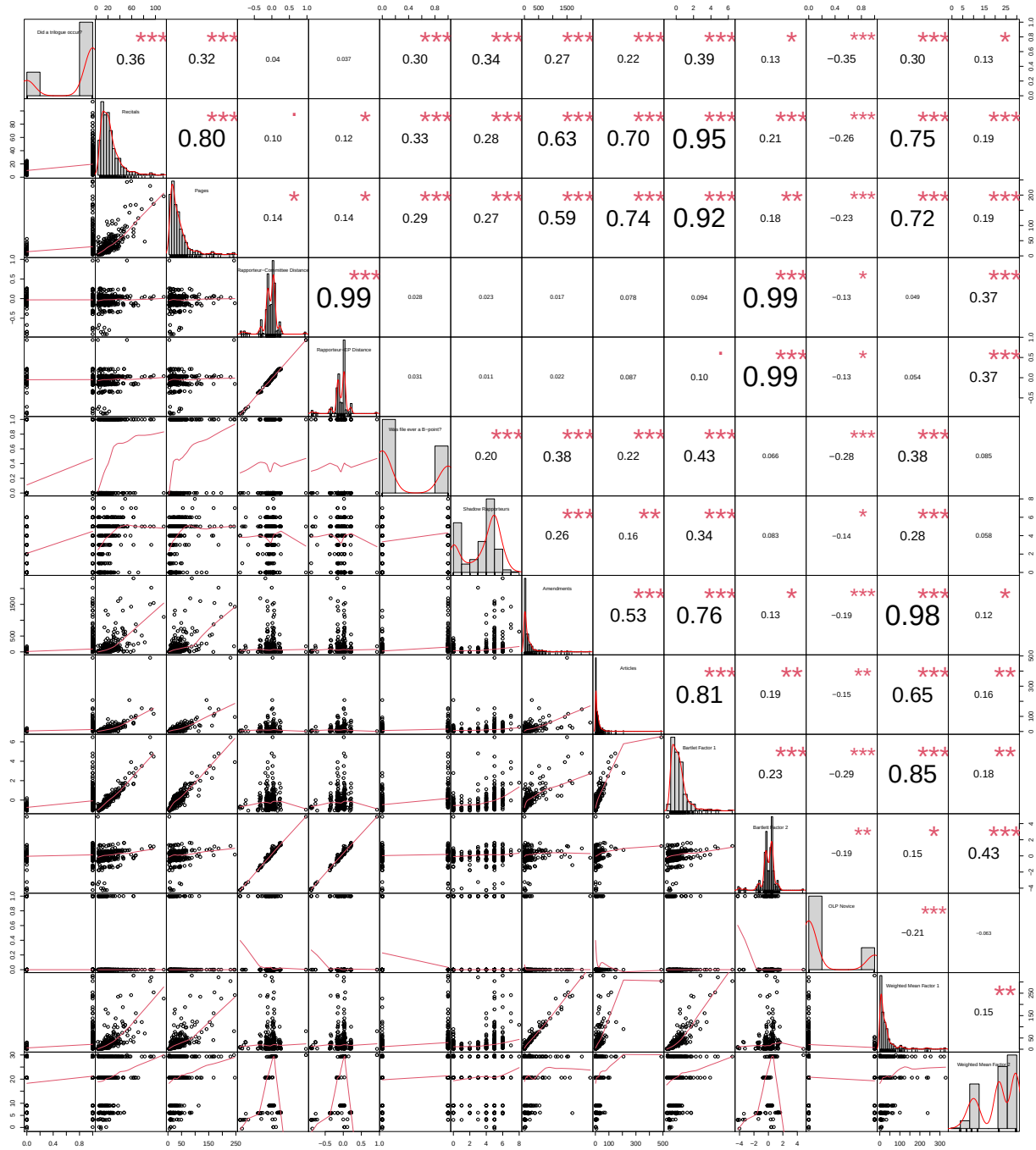


Figure 2.4: Correlation among variables and their factor scores

Figure 2.4 provides the correlation of the factor scores with the other variables used in this section. The figure also provides additional variable summaries in the forms of the variables' distributions and bivariate scatter plots. The Bartlett variables have high correlations with the variables that loaded onto the factor, which as stated above is a goal of the Barlett method. The contrast can be seen well with the lower correlations between the weighted means and the variables of those factors, especially Factor 2. Factor 1 Bartlett and Factor 1 Means are also highly correlated with each other; however, Factor 2 Bartletts and Factor 2 Means are not.

Table 2.9: Factor Scores effects on Trilogue occurrence

	Dependent variable:	
	Did a trilogue occur?	
	Model 5	Model 6
Bartlet Factor 1	3.833***	
	(0.616)	
Bartlett Factor 2	0.005	
	(0.160)	
Weighted Mean Factor 1		0.174***
		(0.030)
Weighted Mean Factor 2		0.018
		(0.018)
OLP Novice	−0.339	−0.431
	(0.394)	(0.356)
Constant	3.057***	−1.221*
	(0.410)	(0.475)
Observations	276	313
Log Likelihood	−95.611	−108.680
Akaike Inf. Crit.	199.221	225.360
Note:	*p<0.05; **p<0.01; ***p<0.001	

Lastly, I evaluated the factor score's impact on trilogue occurrence with two binomial logit models. I separated the factor scores that measure the same factor due to their correlations with one another. Both models included *OLP Novice* as a control variables given that this

variable did not load onto any factor.

Model 5 looked at the two Bartlett's factor scores. Factor 1 was significantly correlated with trilogue occurrence, with a high effect size. Factor 2 was negative and not significant. *OLP Novice* was also negative and insignificant. Model 6 included the weighted mean factor scores. The pattern was largely the same as in Model 5. Factor 1 was positive and significant, although its effect size was much smaller than the Bartlett method's factor score. Factor 2 was positive, but still insignificant. *OLP Novice* was again negative and insignificant.

The relationship between the factor scores and trilogue occurrence suggests that Factor 1 relates to a trilogue occurring. Given the argument presented here that Factor 1 is the complexity of the legislative file these results supports Hypothesis 2.1 arguing that complexity increases the probability a trilogue is convened. The lack of a significant relationship between Factor 2 and trilogue occurrence, however, calls into questions the relationship between intra-EP contestation and trilogue usage. Both of these results are consistent with the findings in Section 2.3. While Factor 2 does not support my expectations, the results for both methods of measuring Factor 1 does.

2.4.4 Discussion

These results demonstrate the presence of two factors in the data. *Recitals*, *Pages*, *Articles*, and *Amendments* all loaded excellently on to Factor 1. In addition, *B-point?* and *Amending Act* loaded fairly well onto Factor 1. That these are the variables associated with Factor 1 suggests this factor measures legislative complexity.

The number of articles, pages and recitals are all clear demonstrations of complexity. More complex legislation will require longer and more intricate proposals, which is reflected in the number of articles and the number of pages. When legislation is complex it requires a more hierarchical structure with sub-topics nested within larger topics. The result is an increased number of articles to cover these topics and sub-topics. The increased number of topics and the hierarchical structure needed to contain them results in a larger number of pages to cover the material. The increase in material covered requires more recitals needed to explain it, thus increasing the number of recitals, as well as the increased costs to knowledge acquisition.

Amendments to the rapporteur's draft report is a less obvious measure of complexity. Brandsma included this variable in his model as a measure of political contestation. This makes sense as when party groups disagree on legislation, they will want to make their own changes. The number of amendments does relate to complexity. As I show in Chapter 3,

more complex legislation receives more changes than less complex legislation. More complex legislation has more articles, sections, and provisions, and is longer, all of which offer more opportunity and need for more changes to be made. Thus, it is not a surprise that amendments loads more on to Factor 1 than Factor 2.

B-point legislation has a similar relationship with complexity. Brandsma also included it as a measure of contestation. However, it is likely that bureaucrats would be more likely to seek the opinion of ministers in complex cases. In cases of complex legislation, bureaucrats will be less likely to know the ministers' position on every part of the legislation and thus will require their input. B-points' relatively weaker loading suggests that it captures more than complexity, however.

Amending acts are likely some of the least complex legislation. There are few new provisions on these acts. In addition, a lot of the content of these act have likely been previously agreed on. Thus, non-amending acts should be more complex than amending acts. We see this reflected in amending acts negative coefficient; amending acts have a negative correlation with factor one, meaning non-amending acts relate to more complex legislation. This variable's relatively weak loading is likely due to the variation between legislation in the "not an amending act" category.

Factor 2 is more difficult to interpret. The extremely high loadings of Rapporteur-Committee distance and Rapporteur-EP distance suggests this is a measure of political contestation. However, none of the other variables that were expected to capture political contestation load onto Factor 2. The only other variable that does load on Factor 2 is the rapporteur's party group size. This suggests a relationship between party group size and rapporteurs that are ideological outliers. Party Group size correlating positively, albeit weakly, with both distance variables suggests that the larger Party Groups are more able or more willing to appoint rapporteurs which are ideological outliers[7]. It is possible that this factor captures this propensity towards ideological outliers.

The negative results presented here described the relationship between the factors and trilogues usage. Both methods of calculating factor scores for Factor 1, the complexity factor, were significantly related to trilogue occurrence. However, both methods of calculating factor scores for Factor 2, the intra-EP political contestation factor, were missing. These results support the claim that legislative complexity is related to the use of trilogues, while the claim that intra-EP contestation is also related remains unsupported.
More work can be done to confirm the content of these factors. Specifically, the correlation

[7]For correlations, see the appendix in Section A

between direct measures of legislative complexity and Factor 1 would further support my interpretation of this latent variable. Additionally, this measure could be included in the logistic regression models in Section 2.3 to see if it is a stronger predictor of the use of a trilogue.

The next section provides these steps using variables that directly measure complexity. I plan to adopt Katz and Bommarito's legislative complexity variables to the EU legal context and test its relationship to Factor 1 and the use of trilogues. Katz and Bommarito provide a method to measure the complexity of the the US code (Katz and Bommarito, 2014).

2.5 Complexity in Legislation

I have argued in Section 2.3 and Section 2.4 that a legislative proposal's complexity predicts whether a trilogue will be convened for that file. However, examining the relationship between a more direct measure of complexity and trilogue occurrence will tell us more about complexity's role. As a more direct measure of complexity I employ a method proposed by Katz and Bommarito in their 2014 article *Measuring the complexity of the law.*

Katz and Bommarito's method is a weighted rank of the complexity of Titles in the US Code. The authors identify multiple dimensions along which a Title could be complex. These dimensions measure the relative legal complexity of legislation through the framework of **knowledge acquisition**. Knowledge acquisition exists at the intersection of psychology and computer science, and studies the protocols that individuals use to acquire, store and analyze new information. An individual acquires knowledge by absorbing and storing the new information into their memory, and thus retains the ability to remember it later. Katz and Bommarito's framework measures complexity from the side of the hypothetical "user," i.e. the individual citizen who encounters this law and must decide whether or not to comply. Users are less likely to comply with more complex laws, *ceteris paribus*. Complexity imposes a cost to the end user attempting to comply, by increasing the difficulty of the knowledge acquisition process (Katz and Bommarito, 2014).

When considering passing legislation, legislators are assumed to be sensitive to users experience of the law. Thus, legislators will prefer legislation that is no more complex than it needs to be. The goal is to reduce the costs of knowledge acquisition and, by doing so, hopefully increase compliance with the law (Katz and Bommarito, 2014).

Katz and Bommarito developed their measures for the US Code, with an eye to other legislative contexts. I have adapted their concept to the case of EU legislation. For EU

legislation, I have chosen two dimensions for measures of complexity. First, average section depth will be used to measure the structure of legislation. Second, word entropy will be used as a measure of the variability of the legislation's language. Each legislative file in the data set discussed in Section 2.3.1, was ranked on each of these dimensions. I create the Weighted Complexity Rank variable by ranking the legislative proposals by the mean of their rank on both these dimensions.

2.5.1 Average Section Depth

The first component of the weighted rank of complexity is the average section depth (ASD), which measures the file's structure. It measures the degrees away from the main text the average section is. A proposal's structure is indicative of its complexity. Proposals covering more complex topics, or that require more complex solutions, will require deeply hierarchical documents with many nested sections and sub-sections. The deeper in the hierarchy the sub-section, the more specific the sub-section will be. The deeper and more specific the average section, the more complex the whole proposal will be.

Legislative proposals are structured hierarchically, with various Titles, Chapters, Sections and Articles nested within one another. Figure 2.5 displays a legislative proposal, an abridged version of COD 2011/0438, Directive of the European Parliament and of the Council on public procurement, as a hierarchical tree. In Figure 2.5, each node corresponds to an **element** of the legislative file. The white node, labeled with the proposal's name, is the **root** element of the tree; the remaining nodes are **leaf** elements. A tree must have one root element and at least one leaf element. The proposal, and all content before the first leaf element begins, is the root of the tree. Each of its first-order elements (in the case of Figure 2.5, these are the Titles), are its direct leaf "children". Because COD 2011/0438 has Chapters within Titles, each Title's Chapters are that Title's leaf children. This process continues until we get to Articles, the deepest element type in this proposal.

The assumption is that given this structure, the depth of an element is a measure of the specificity of that element. Leaves farther away from the root cover more specific concepts than ones closer to the root. *Ceteris paribus*, proposals with more specific elements will be more complex. Compared to a proposal with low average depth, proposals with high average depth will have more specific and narrow elements and will incur more costs for the end user in terms of understanding that legislation's provisions.

To measure average level of depth, I assigned each element a value depending on its distance from the root. These values are the number of "steps" needed to reach that element when

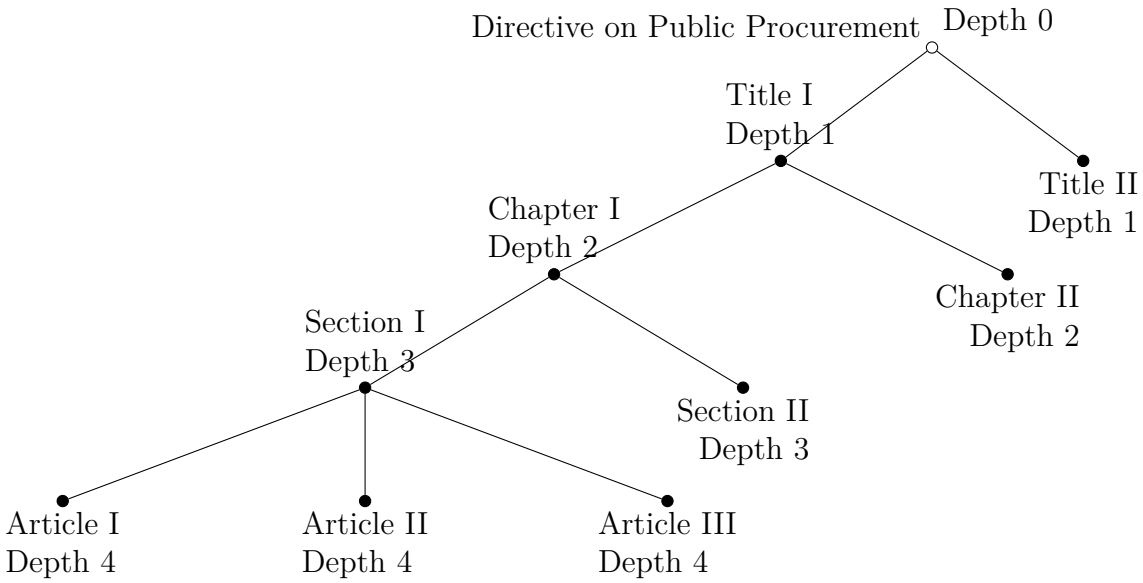


Figure 2.5: Example of an abridged version of COD 2011/0438, Directive of the European Parliament and of the Council on public procurement. The ASD for this example is 2.7

starting from the root element. As seen in Figure 2.5, the root node has depth 0, the first level of leaves have depth 1, and so on. I then average the depth of all sections except the root node. *Average Section Depth (ASD)* is the average section depth for the given legislation.

2.5.2 Word Entropy

The second component of the complexity rank measure is word entropy, which measures the variability of a file's language. Word entropy specifically measures the variability of words used in a legislative proposal. The language used to describe the provisions in a piece of legislation is how the end user encounters and interfaces with the legislation. The word choice of the proposal's writers can increase the costs of knowledge acquisition required when reading the document. This is particularly true when there is substantial variability in the language used, as variability makes predicting what comes next harder. Proposals covering more complex topics or that require more complex solutions will depend on language which is more varied, necessitating words that are more specific and thus used less frequently.

Entropy is thus used here to measure the diversity of language and concepts within a proposal. *Ceteris paribus*, a proposal with high concept and word variance will be more difficult to assimilate information than one with more homogeneous material.

While entropy originated with thermodynamics, its use in language of comes from information theory and the work of Claude Shannon. It is a statistical measure of uncertainty or variance

in a signal, message or body of text. Entropy is the prediction of the content of a message; content is harder to predict when the message is drawn from an environment with greater variance. Higher entropy indicates a proposal whose language and concepts are harder for the reader to predict. A user's ability to predict language should relate to knowledge acquisition as harder to predict texts will have more variability and heterogeneity, which will increase the costs required to comprehend and remember a document's contents (Shannon, 1948; Shannon, 1951).

To calculate entropy, I first "tokenized" the entire text. These tokens are contiguous strings of text; typically these are words but they may also include numbers, citations or abbreviations. Next, I removed stopwords, such as "and", "it", and "the", from the text as these do not represent concepts but rather serve primarily grammatical purposes and their presence can artificially skew results (Katz and Bommarito, 2014). Next, for each of the remaining tokens, w, I calculated the probability of that token appearing in the text, p_w; specifically how frequently w appears divided by the number of remaining tokens, W. Using the probability distribution of each token I calculated the Shannon entropy for a given proposal, i, using the following formula:

$$Entropy_i = -\sum_{w \in W} p_w \log_2(p_w)$$

2.5.3 Weighted Complexity Rank

Average Section Depth and *Entropy* both measure different elements of the complexity of legislation. *Average Section Depth* measures a language's hierarchical structure and finds complexity that is embedded in nested topics and sub-topics. However, a legislation without a deep hierarchical and nested structure might still have a complex word environment that itself increases costs for user knowledge acquisition. *Entropy* measures that word environment and the complexity embedded within it. Entropy alone is not enough, as a less complex word environment might have a high level of complexity embedded within its structure. Thus, *Average Section Depth* and *Entropy* work together to measure the complexity of a file.

To facilitate *Average Section Depth* and *Entropy* Katz and Bommarito to create a *Weighted Complexity Rank (WCR)* variable. Their goal was to rank legislation from the least complex to the most complex. WCR allows ASD and Entropy to be combined in an easily interpretable way.

The first step to creating *WCR* is to rank each legislation on *ASD* and then on *Entropy*. For

ASD, I ranked the files in descending order of complexity, so that the file with the highest average depth was ranked first, the lowest ranked last.[8] I next did the same with *Entropy*.

The last step was to combine them into a weighted rank, with the weight of each dimension equal to one. The rank of each file was averaged across the two dimensions. The files were then re-ranked according to their averaged ranking. This time they were ranked in ascending order, so that the **least complex** file received **rank one**. This was done for ease of interpreting regression coefficients, which will represent a change in the dependent variable when moving from lower complex legislation to higher complex legislation.

I expect more complex files to be more likely to receive a trilogue. In the next section I will use a binomial logistic regression to test the following hypothesis:

Hypothesis 2.3: *The probability a trilogue is convened will increase with the weighted complexity rank of the legislative file.*

Hypothesis 2.3 test the relationship between *WCR*, as a measure of complexity, and the use of trilogues. Support for this hypothesis will further demonstrate the relationship between complexity and the use of trilogues. Using *WCR*, *ASD*, and *Entropy* looks at complexity through understanding the structure and the word choice of legislation. Support for Hypothesis 2.3 demonstrates that these elements of legislation factor into, either directly or indirectly, whether a trilogues is convened for a given file.

2.5.4 Results

Since *WCR* measures complexity, there should be high correlations with variables that loaded on factor one. These correlations are shown in Figure 2.6. Figure 2.6 shows the distribution of each variable and the bivariate correlations of each pair of variables, as well as a scatter plot of the relationship of each pair. Together, they provide information both about the variables individually and about their relationships with each other.

WCR is fairly correlated with all of these variables and is strongly correlated with *Recitals* and *Pages*, and is only slightly less correlated with *Articles*. Because of these correlations, these variables were not included in the following models.

I estimated three models. Each model included *Was file ever a B-Point?*, *Shadow Rapporteurs*, and *Amendments* as control variables. Model 7 looked at *WCR*'s effect on the probability of

[8]To rank, I used the frankv function from the data.table package. frankv has the "dense" option to resolve ties, which assigns the same rank to proposals tied on average depth. So if three files tie for the fifth largest average depth, they would all be ranked fifth, and the next highest would be ranked eighth.

a trilogue. Models 8 and 9 then looked at the dimensions of *WCR* individually, with *ASD* in Model 8 and *Entropy* in Model 9.

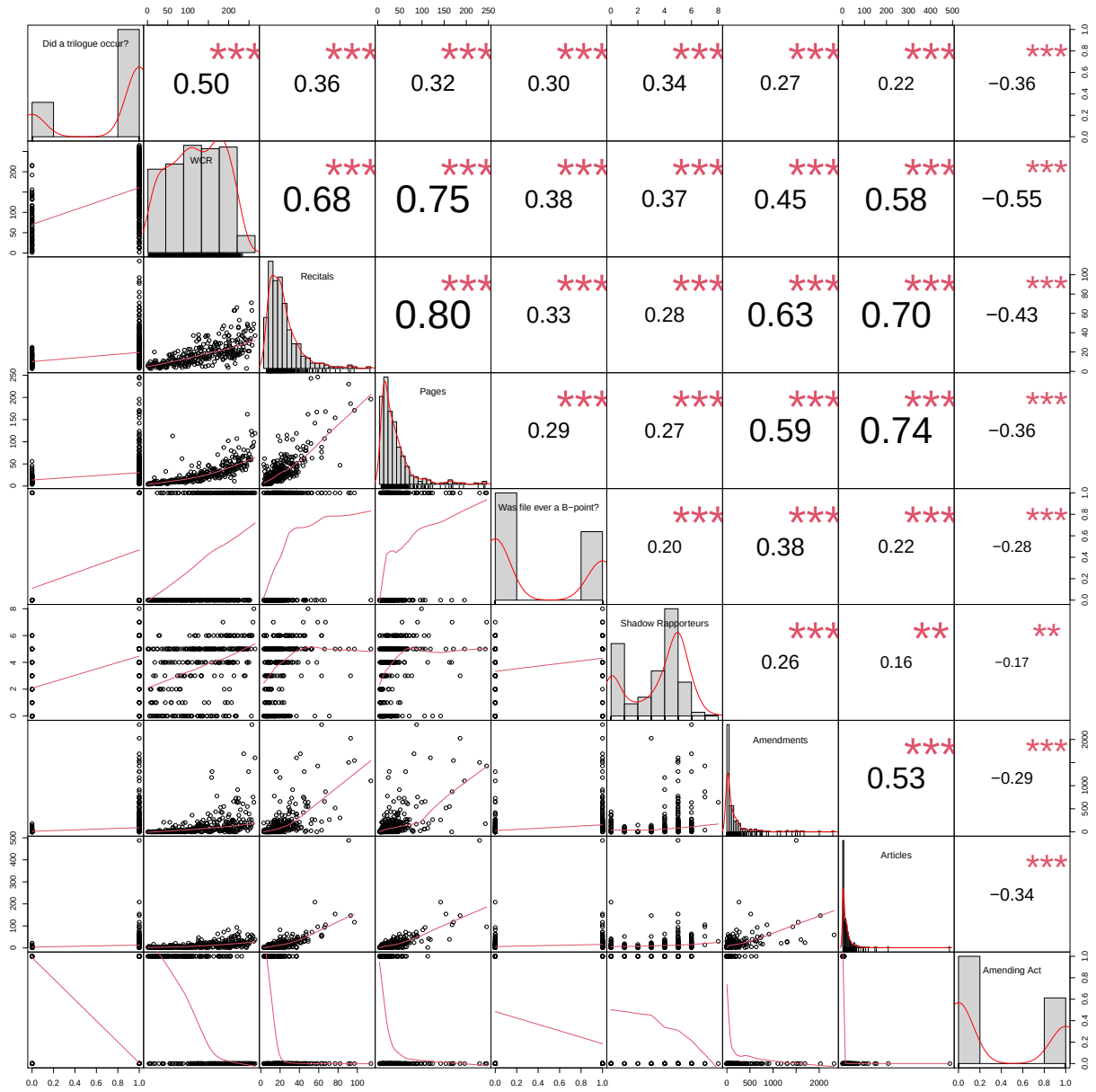


Figure 2.6: Correlation with WCR and Components

Table 2.10 displays the results of these models. *WCR* is both positive and significant, in line with Hypothesis 2.3. *ASD* is positive, as predicted in Hypothesis 2.3; however, it is not statistically significant. *Entropy*, on the other hand, is statistically significant. It is positive, in line with Hypothesis 2.3. Of note, the effect size for *Entropy* is larger than for *WCR*. These results suggest that *Entropy* better captures legislative complexity.

Table 2.10: Weighted Complexity Rank and its component's effects on Trilogue occurrence

	Dependent variable:		
	Did a trilogue occur?		
	Model 7	Model 8	Model 9
WCR	0.010^{**}		
	(0.003)		
Average Section Depth		0.586	
		(0.511)	
Entropy			0.873^{**}
			(0.292)
Was file ever a B-point?	0.111	0.282	0.112
	(0.483)	(0.464)	(0.478)
Shadow Rapporteurs	0.203^{*}	0.227^{**}	0.208^{*}
	(0.082)	(0.079)	(0.082)
Amendments	0.021^{***}	0.028^{***}	0.021^{***}
	(0.006)	(0.006)	(0.006)
Intercept	-1.642^{***}	-1.554^{*}	-7.830^{***}
	(0.384)	(0.624)	(2.341)
Observations	294	294	294
Log Likelihood	-104.480	-109.398	-105.354
Akaike Inf. Crit.	218.959	228.797	220.707
Note:			*p<0.05; **p<0.01; ***p<0.001

Was file ever a B-point was positive across all three models, but was not statistically significant in any of them. *Shadow Rapporteurs* was positive and significant in all three models. Its significance varied across the three, with its lowest p-value in Model 8 when *ASD* was measuring complexity. When complexity is better accounted for, the impact of *Shadow Rapporteurs* is less certain. *Amendments* is positive and significant in all models. It has a fairly low effect size; however, it certainly has an impact on the probability of a trilogue.

Complexity, *Entropy* more specifically, is thus a significant predictor of whether a trilogue is convened on a given piece of legislation. These results further support my argument: trilogues are convened for complex legislation. Trilogues are a mechanism for identifying legislative proposals that are hard to amend and agree on before the later stages of the OLP, to help pass legislation "on time."

Legislation with deeply hierarchical structures and a highly varied word environment is harder for legislators to agree on. These legislation will require high levels of precision in the text. As a result, legislators will want to ensure the legislation works as intended. Chapter 3 shows these considerations result in more amendments made to the complex files, while Chapter 4 shows they also result in more ideological changes made to more complex files. Complex legislation, thus, increases the probability of gridlock, especially in a legislative system that is prone to gridlock, like the OLP. The EU then turns to trilogues to ensure that these files will pass.

2.6 Conclusion

Trilogues are an important feature of the Ordinary Legislative Procedure. They resolve structural problems in the procedure that biases the Council and EP towards preferring early agreements. Still, trilogues are not convened for every legislative file. This article offers an explanation for what characteristics relate to the use of trilogues.

I argue that the complexity of the legislative proposal is an important characteristic determining the use of trilogues. Complexity is understood to mean a proposal that presents costs to comprehension both for legislators and citizens. These costs come from a larger number of provisions, each with high levels of details and specifications. Variables related to complexity, the number of recitals, pages, and articles in the Commission's proposal, the number of amendments to the rapporteur's draft report and files that were B-points on the Council's agenda, were all shown to be significantly related to the convening of trilogues in a binary logistic regression model.

Both the correlation between these variables and their conceptual relationship suggested a latent variable. I thus employed a factor analysis model, which identified two factors. The first factor explain a majority of variance in the number of recitals, pages, and articles in the Commission's proposal, the number of amendments to the rapporteur's draft report, and files that were B-points on the Council's agenda. Thus, I argued this latent variable captured the complexity of these legislation. Two sets of factor scores for each factor were constructed, first using Bartlett's method and second using a weighted mean of the variables associated with that factor. Two binary logistic regressions were then used, with the two methods of factor score construction appearing in separate models. Both factor scores associated with Factor 1 were significantly associated with an increase in the likelihood that a trilogue was convened for a given file. Neither measure of Factor 2 were associated with a change in the likelihood of a trilogue

Finally I introduced variables that have clearer conceptual relationships to complexity. Katz and Bommarito developed *WCR* to measure the complexity of US legislation. I adapted this measure to the EU, capturing two dimensions of complexity. First, *ASD* captured the amount of sub-topics and specificity of provisions by capturing the average depth of each section within the hierarchical structure of the legislation. Next, *Entropy* captures the variability of language used with more variability being indicative of more complexity. These were used to rank files, as described in Section 2.5.3.Both Entropy and WCR were significant predictors of a trilogue being convened. Entropy's effect size was substantially larger, while *ASD* was not significantly related.

Measures of political-contestation performed poorly in these analyses. Specifically, measures of inter-EP contestation were not significant predictors of trilogue usage. These variables related to a second factor, whose content was unclear. As stated above, this factor was not significantly related to trilogue use. Variables of internal Council contestation, *Was file ever a B-point*, seem to be better explained by complexity due to its relationship with the complexity factor and its loss of significance when complexity is better accounted for in Table 2.10.

This article contributes to the literature on trilogues by identifying the relationship between complexity and trilogues. Further work needs to be done on understanding how using trilogues for complex legislation shapes both the legislative process and the outcomes of the OLP. In addition, a more direct measure of legislative complexity, such as one offered by Katz and Bommarito, would be useful for identifying complex legislation directly.

In the next two chapters, I contribute to understanding the role of complexity of EU legislation I look at the relationship between complexity and amendments in the next chapter, and

complexity and politicization of text in chapter four.

Chapter 3

Legislative Amendments, Complexity, Political Contestation, and the Use of Trilogues

3.1 Introduction

Legislative systems are designed to bring disparate legislators together to agree on legislation. To do so, these legislators agree on changes made to the initial proposals. Understanding how a legislative proposal changes as it moves through the legislative process provides information on the process itself. One way to track changes made is through the number of amendments that are made. Variations in the number of amendments resulting from key legislative characteristics informs us about how the legislative system in question accommodates these characteristics.

The European Union's Ordinary Legislative Procedure (OLP) increased the role of the European Parliament (EP) and created a bicameral legislative system. In this system both the EP and the Council of the European Union (the Council) are able to make amendments to the Commission's proposal. Not all legislation receives the same number of changes and what accounts for differences between legislation in the number of amendments has so for been poorly understood.

Limiting changes made where possible is important in the OLP. As shown in Chapter 1, this procedure is prone to gridlock, particularly as the legislation moves beyond the first stage of the OLP. Both the EP and the Council have limited time and personnel resources. The

Council's resources gets particularly taxed and the institution is limited in the number of legislators it can see through Conciliation Committee. In addition, the EP has an incentive to not let legislation go to the second stage due to a change in its voting rule that limits the EP's power. Both institutions are thus is incentivized to limit changes made to prevent disagreements within and between institutions that could prolong the process.

In this chapter, I argue that three elements influence the number of amendments: opportunities to change the legislation offered by the political system; characteristics of the legislation itself; and disagreements between actors and their preferences.

The specific legislative process used impacts the number of amendments as different processes change the roles of key actors and those actors' incentives. The EU's system of trilogues, informal meetings between legislators, is one such process. As seen in Chapters 1 and 2, trilogues are a legislative work around to ensure legislation passes on time. Trilogues result in a set of amendments that the institutions can agree on and that discourage further changes, ultimately decreasing the number of changes made. Limiting changes works to prevent gridlock, which is a major concern for the OLP.

In addition, certain characteristics of the proposal itself encourages more or fewer changes to be made. Specifically, its complexity, salience, and the amount of content in the legislation all encourage more changes. That complexity in legislation encourages more changes provides additional context to complex legislation's relationship with trilogues. The more changes that can be made, the more likely the OLP will extend to later stages. Trilogues can prevent this through reaching an agreement up front and then discouraging future changes.

Lastly, disagreements among actors ultimately limit changes that can be made. The farther apart actors are, the less room for compromise, and thus the fewer possible changes that can be made. In this chapter I look at disagreements among actors within the EP and find that fewer changes are made when key EP actors disagree. This helps explain the findings in Chapter 2, that disagreements among key EP actors do not lead to a higher probability of trilogues. If these disagreements limit changes, perhaps trilogues are less needed in these cases to prevent legislation from moving to the OLP's later stages.

In this chapter I find that ideological differences between the responsible Committee and the EP as a whole results in fewer changes made. I also find that the complexity of a legislative file and its length both relate to an increase in the number of amendments made. Importantly, I do not find a clear effect for the use of trilogues. The lack of a relationship between trilogues and amendments has important implications for the role that trilogues play in EU legislation.

Trilogues not having a relationship with the number of changes made opens up questions as to trilogues' impact on legislation. Trilogues' effect are more narrow than the general type of changes viewed in the chapter.

To measure the changes to a legislative file, I use the DocuToads minimum edit distance algorithm (MEDA). It tracks the amount of additions, deletions, substitutions and transpositions needed to turn one document, in this case the proposal made by the Commission, into another, the final legislative file. DocuToads is a useful method to track the amount of changes made directly.

This chapter uses DocuToads as a novel means of testing theories of amendments made to legislation. Doing so improves our theories on how legislation is made, how different legislative systems impact legislation, and how characteristics of the legislation itself impacts legislation. This chapter specifically highlights the importance of complexity in the legislative amendment process. Legislation that is more complex requires more changes made. This finding has implications for the comparative legislatures literature more broadly as complexity in legislation has a demonstrable impact on the functioning of legislatures

3.2 Literature Review

In the EU the Commission has sole legislative proposal power. Scholars have argued the extent to which the Commission is able to leverage this power to set the legislative agenda. The Commission can exclude certain items and frame the items it chooses to present in ways that are beneficial to its position (Daviter, 2007). However, the Commission's agenda setting power is limited by the EP and Council being able to amend the Commission's proposal without any input from the Commission. At a minimum, the Commission must consider the opinions of the other institutions (Crombez and Hix, 2015), and at worst it has been completely marginalized (Garrett, 1995; Crombez, 1998; Rasmussen, 2003). Legislatures can use amendments to address agenda setting problems within a political system, and researchers can use the changes made to asses the role of agenda setting (Martin and Vanberg, 2005; Martin and Vanberg, 2011; Martin and Vanberg, 2004).

The EP's role in legislation making has increased, specifically since the introduction of the Ordinary Legislative Procedure (Tsebelis, 2000). Tsebelis et al. found that amendment success of the EU institutions changed between the OLP and the previous procedure, the Cooperation Procedure (Tsebelis et al., 2001). The OLP is a bicameral system and thus both the EP and the Council are able to make changes to a legislative file (Tsebelis and

Money, 1997; Kreppel, 2011; Finke, 2017, Hagemann and Hoyland, 2010). The EP's new role can change how amendments are made in EU legislation. However, certain features of the OLP, for instance Conciliation Committees, still favor the Council's ability to amend legislation (Franchino and Mariotto, 2013). Cross and Hermansson used DocuToads to find that both formal and informal institutions influence the number of changes, as well as specific characteristics of the legislation itself (Cross and Hermansson, 2017). It is important to note that this literature demonstrates how different systems provide actors with different abilities to change legislation. Differences across procedures are thus likely to create variation in the number of amendments, as will be explored with trilogues in this chapter.

Hermansson & Cross 2016 and Cross & Hermansson 2017 introduced DocuToads to measure amendments made to legislation. *DocuToads* is a minimum edit distance algorithm that calculates the difference between two texts as the minimum number of editing operations required to change one string to another. *DocuToads* tracks four types of changes made to texts: additions, deletions, substitutions and transpositions (Hermansson and Cross, (2016), Cross and Hermansson, 2017). Hermansson & Cross 2016 find DocuToads to produce superior measures of amendments tracking than hand coded efforts, largely because of its efficiency (Hermansson and Cross, 2016).

MEDAs have been used in a range of fields to measure edit operations. These fields include bioinformatics, computer science, and natural language processing. They have been used to address diverse problems, such as creating accurate spell-checkers (Wagner, 1974; Wagner and Fischer, 1974; Wong and Chandra, 1976), the difference between dialects in computational linguistics (Kessler, 1995; Nerbonne and Heeringa, 1997) and genetic alignments in computational biology (Fitch and Margoliash, 1967; Dayhoff, Schwartz, and Orcutt, 1978; Henikoff and Henikoff, 1992). The structure of capturing changes between two versions of "texts" in these applications is similar in nature to that of differences in political texts, thus offering promising applications for MEDA in political science (Hermansson and Cross, 2016).

Cross and Hermansson built DocuToads off of the groundwork laid by the Levenshtein Distance algorithm. Levenshtein's algorithm finds the differences between two strings of text units, which is calculated as the minimum number of edits required to turn one string into another (Levenshtein et al., 1966). It is computed using a dynamic programming approach that views the solution of large problems to be a sum of the solutions to a series of sub-problems, avoiding the high costs of recalculating the solutions to the sub-problems (Bellman, 1957).

Levenshtein has a weakness that is common to many MEDAs; they struggle with accurately accounting for transposition-type edits. Transpositions, also known as copy-paste replacements, occur when a section is moved from one location to another. Most MEDAs treat these operations as two changes made; once where the deletion occurs and once where the re-introduction occurs. However, in cases such as legislation, where the order of the text does not matter as much as the inclusion of the text, MEDAs double counts transpositions.

There have been a couple of attempts at correcting for this problem. First has been "fingerprinting", which randomly draw a sample of words and infers their similarity (Hoad and Zobel, 2003). These method is efficient, but imprecise. An alternative uses suffix trees, indexes of every possible combinations of words in each text, and includes transpositions as a singular edit operation so as not to artificially inflate the number of changes made (Smyth and Smyth, 2003). This method is highly accurate, but is very computationally taxing. DocuToads corrects for these issues by including transpositions as a singular edit operation so as not to artificially inflate the number of changes made.

I build on this literature by using DocuToads to assess the changes made to legislative files passed using the OLP. In the next section I argue for three sources that influence the amount of changes for a given legislation. These sources are the legislative process uses, the characteristics of the legislation itself, and disagreements between key actors.

3.3 Hypotheses

Legislative proposals rarely pass through the legislative process without any changes. However, not all proposals require the same amount of changes. The amount of amendments legislation will receive are the result of three sources: opportunities to change the legislation offered by the political system; characteristics of the legislation itself; and disagreements between actors and their preferences.

The rules of the legislative process affect changes to legislation. The EU has a number of legislative process and instruments, so the instruments used change the amendment process. For example, Cross and Hermansson found that EU legislation that used the consultation procedure received fewer amendments compared to in the OLP, which they argue was the result of amendments requiring unanimity to pass under consultation.

The EU's trilogues system is another example of a legislative instrument that impacts the number of amendments per file. Trilogues are meant to prevent gridlock in the OLP. They do so by encouraging agreements between the EP and the Council that can allow legislation

to pass on time. To do so requires limits to any potential disagreements. The trilogue system facilitates this by limiting the number of changes that can be made to legislative files. The institutions meet to agree on a set of changes to be made, and legislators are disincentivized to deviate from the agreement made, as deviation will jeopardize the ability to pass legislation. Thus, my first hypothesis is:

Hypothesis 3.1: *The number of amendments made to a legislative proposal will be lower for files for which a trilogue was convened.*

Cross and Hermansson found evidence that use of early agreements (EAs), legislation passed in the first or second stage of the OLP, *increased* the number of changes to a legislative files. They argue EAs make amendments easier to push through. While EAs are often connected with trilogues in the EU literature, as trilogues' ostensible goal is to produce an EA, I argue that we should expect there to be differences between EAs and trilogues when it comes to changes made. Although trilogues often result in an EA, they do not always. Thus, some of the effects of trilogues are lost when looking only at trilogues that resulted in EAs.

Looking at EAs only, without also requiring a trilogue, risks incorporating "trivial EAs": legislation that are uncontroversial and relatively easy to pass without the need to meet informally. These files will have different reasons for their early adoption than files that are negotiated informally (Laloux, 2020). To put another way, trivial EAs are the non-difficult legislation that do not require trilogues to pass on time. Trivial EAs will have different effects on legislation than EAs that require trilogues, and including both in an analysis will obscure these differing effects.

Requiring an EA in addition to a trilogue, however, also misses important nuances. These studies only look at "successful" trilogues, i.e. ones that result in EAs. This introduces bias into the analysis: instead of explaining factors that contribute to trilogue occurrence we instead explain factors that lead to a trilogue occurring *and being successful*. Trilogues on their own will have an effect on the legislation that is made, and isolating that effect from EAs effect is important for the development of the trilogue literature, the EU literature and the Comparative Legislatures literature.

It is also important to note that Cross and Hermansson's analysis does not incorporate the role that complexity plays in determining which files receive trilogues Chapter 2 demonstrated that complex files are more likely to receive trilogues than less complex files. When complexity is not accounted for in a regression model, trilogues may look like they are associated with increased changes made. However, as I will show below, this change is most likely due to

trilogues' relationship to complexity, not its relationship to amendments. So once the effects of complexity are accounted for trilogues will be associated with a decrease in amendments.

Next, each legislative file will have its own features that impacts how it will change during the legislative process. Each of the characteristics explored here requires *more* changes be made. More changes increase the possibility of disagreements between institutions and ultimately increases the probability of gridlock. Its no surprise, then, that each of these characteristics were also related to increases in the probability of trilogues in Chapter 2. Identifying characteristics that lead to more changes is important to developing our understanding of the EU legislative system. Particularly important are the complexity of the file and its provisions, the file's salience and the amount of content in the files.

Legislation will regularly be designed to address difficult, sensitive, or highly technical problems. To do so requires provisions in the legislation that are difficult even for legislative actors to understand. Complexity in legislation increases the costs of knowledge acquisition, the ability for both citizens and legislators to absorb, store, and analyze new information. Complex legislation requires precision and legislators want to ensure that legislation will work as intended to create the desired results. In addition, citizens will be less likely to comply with a law that has high knowledge acquisition costs. Ultimately legislators try to reduce costs on the end users and will work to make changes to legislation to reach these goals. Thus, more complex legislation will see more changes.

Hypothesis 3.2: *The number of amendments made to a legislative proposal will increase as the complexity of the file increases.*

Similarly, legislation that is more pressing, relevant, or otherwise has captured public attention will also have legislators wanting to ensure the legislation will work as intended and that it is as precise as possible. Because of this salient legislation will require more changes made in order to pass.

Hypothesis 3.3: *The number of amendments made to a legislative proposal will increase as the importance or salience of the file increases.*

Lastly, longer legislative files contain more provisions. More provisions simply means more content that legislators need to agree on and more opportunities for them to disagree. Both of these naturally lead to more changes being made, all else equal.

Hypothesis 3.4: *The number of amendments made to a legislative proposal will increase as the length of the file increases.*

Finally, disagreements among actors limit the number of changes that can be made by limiting the possible alternatives The farther apart actors preferences are from one another, the less opportunities for compromise, resulting in fewer amendments.

EP Committees are powerful actors in the OLP, particularly when it comes to making amendments. Committees propose amendments to legislation, and any amendments to a file requires Committee support. However, Committees do not act unilaterally. Amendments must still pass the full EP. The Committee and the EP will be able to agree on fewer amendments and thus fewer changes will be made:

Hypothesis 3.5: *The number of amendments made to a legislative proposal will decrease as the distance between the policy preferences of the median member of the responsible Committee and the policy preferences of the median member of the EP increases*

3.4 Data and Methodology

The dependent variable I use in this chapter is the number of changes made to a legislation from when it is first proposed to when it passes. To measure changes made, I use the *DocuToads* algorithm created by James P. Cross and Henrik Hermansson (Cross and Hermansson, 2017; Hermansson and Cross, 2016). *DocuToads* is a minimum edit distance algorithm (MEDA) that calculates the difference between two texts as the minimum number of editing operations required to change one string to another. It does so by comparing operations on individual words, the most basic element of a text. Using *DocuToads*, I calculate the number of operations needed to change the Commission's initial proposal to the final legislation's text. I collected pdf copies of the Commission's initial proposal and of the final legislation for each file in my study from their entry in the Official Journal of the European Union, accessed through the EUR-Lex website.

DocuToads tracks four types of changes made to texts: additions, deletions, substitutions and transpositions. The latter are *DocuToads'* innovation over previous MEDAs. Transpositions, also called "cut-and-paste" changes, are when sections of a text are moved from one location to another. Previous MEDAs recorded these changes as two operations: a deletion at the point of its original location and an addition at its new point. These types of changes are unlikely to be meaningful in the case of legislation, however, as a piece of text's location in legislation matters less than its inclusion in the document (Hermansson and Cross, 2016). *DocuToads* includes transpositions as a singular edit operation so as not to artificially inflate the number of changes made.

DocuToads assumes that changes to legislation have substantive policy outcomes. Legislation relies on formalized and precise language as to limit ambiguities as much as possible. There are thus a limited number of ways to express the same idea. When ambiguities do exist in the text, they are often done purposefully (Wallace, 2012). Any single change may have substantive consequences for in the real world, which forces conflict to focus on the specific words. Thus, every word matters and so the number of words that have been edited between versions is a credible indicator of substantive changes (Cross and Hermansson, 2017).

DocuToads has two stages. First, it starts by creating a word matrix, $D(i, j)$, with the width and height of the number of words in the longest of the two files. Each cell, $d(i, j)$, in $D(i, j)$ compares $S_1(i)$, one word in the first text, with $S_2(j)$, the word in the second text in the same position as $S_1(i)$. $d(i, j)$ is given a value based on the match between these two words, as well as the values in surrounding cells:

$$d(i,j) = \begin{cases} d(i-1, j-1) + 1, & if S_1(i) = S_2(j) \\ 0, & otherwise \end{cases}$$

Once applied to all cells in $D(i, j)$, the result is a matrix with very useful features. First, sequences of matching words become sequences of rising numbers along the diagonal. Edit operations are "gaps" of zeros that interrupt these sequences. Deletions are a column of zeros; additions, a row of zeros; and substitutions are represented by both a row and a column of zeros. Lastly, transpositions are a sequence of rising numbers that have been "shifted" horizontally, accompanied by columns of zero at a corresponding location. Table 3.1 displays each of these.

	A	Simple	Minimum	Edit	Distance	Algorithm
A	1	0	0	0	0	0
Simple	0	2	0	0	0	0
Minimum	0	0	3	0	0	0
Edit	0	0	0	4	0	0
Distance	0	0	0	0	5	0
Algorithm	0	0	0	0	0	6
Vector	1	2	3	4	5	6

(a) Identical text sequences

	A	Simple	Minimum	Edit	Distance	Algorithm
A	1	0	0	0	0	0
Minimum	0	0	1	0	0	0
Edit	0	0	0	2	0	0
Distance	0	0	0	0	3	0
Algorithm	0	0	0	0	0	4
Vector	1	0	1	2	3	4

(b) Deletion

	A	Simple	Minimum	Edit	Distance	Algorithm
A	1	0	0	0	0	0
Simple	0	2	0	0	0	0
New	0	0	0	0	0	0
Minimum	0	0	1	0	0	0
Edit	0	0	0	2	0	0
Distance	0	0	0	0	3	0
Algorithm	0	0	0	0	0	4
Vector	1	2	1	2	3	4

(c) Addition

	A	Simple	Minimum	Edit	Distance	Algorithm
A	1	0	0	0	0	0
New	0	0	0	0	0	0
Minimum	0	0	1	0	0	0
Edit	0	0	0	2	0	0
Distance	0	0	0	0	3	0
Algorithm	0	0	0	0	0	4
Vector	1	2	3	4	5	6

(d) Substitution

	A	Simple	Minimum	Edit	Distance	Algorithm
Minimum	0	0	1	0	0	0
Edit	0	0	0	2	0	0
Distance	0	0	0	0	3	0
Algorithm	0	0	0	0	0	4
A	1	0	0	0	0	0
Simple	0	2	0	0	0	0
Vector	1	2	1	2	3	4

(e) Transposition

Table 3.1: Examples of types of changes identified by DocuToads. Example from Hermansson and Cross 2016

The second stage for DocuToads creates a vector of the maximum values of each columns. The last row in each example in Table 3.1 shows the vector for that example. These maximum values represent the longest unbroken sequence of words in each column. Unbroken sequences of matching words results in an unbroken sequence of rising values in this vector. This vector is used to detect additions, deletions, substitutions, and transpositions through "breaks" in these unbroken rising sequences.

These breaks are then accounted for by the algorithm and calculate the minimum edit distance. Specifically, all the zeros in the vector (except the first) equals a word that is in one text but not the other, and is either a deletion or a substitution. Every other value that is not a part of unbroken sequences, i.e. it does not equal the previous value plus one, is either an addition or transposition. Using these rules, DocuToads counts the instances of zeros or broken progressions to find the minimum number of edits needed to transform S_1 into S_2.

The algorithm assigns a penalty to each type of change, represented in Table 3.2. Additions and deletions have the highest penalty as these changes are the least efficient type of change, and they are never assigned when the conditions for a more efficient change are met. Transpositions are more efficient as no text is changed, only the positioning of text. Substitutions are also more efficient than additions or deletions as these changes simply swap one word for another. Due to their efficiency, transpositions and substitutions have a penalty of 1. DocuToads looks classifies the change as the type of change with the minimum penalty for which all criteria are met. The end result of the algorithm is *Number of Changes*, which represents the minimum number of changes needed to transform the final legislative text back to the proposal.

Table 3.2: DocuToads steps and penalties

Step	Penalty
No edit operation	0
Transposition	1
Substitution	1
Addition	2
Deletion	2

Table 3.3: Document Changes Descriptive Statistics

	Summary
Mean	7131.85
Median	4963.00
Max Value	76656.00
Min Value	26.00
Standard Deviation	8365.04

Descriptive statistics for changes made are shown in Table 3.3. First, there is a large range in the number of changes made across files in the data. In addition, the large differences between the mean and median suggests that there are fewer of these files on the upper end of these changes. Figure 3.1, which displays the distribution of *Number of Changes* confirms this. The distribution is right-skewed with a majority of files receiving between 0 and 20,000 changes, but with some files receiving substantially more changes. The data also shows signs

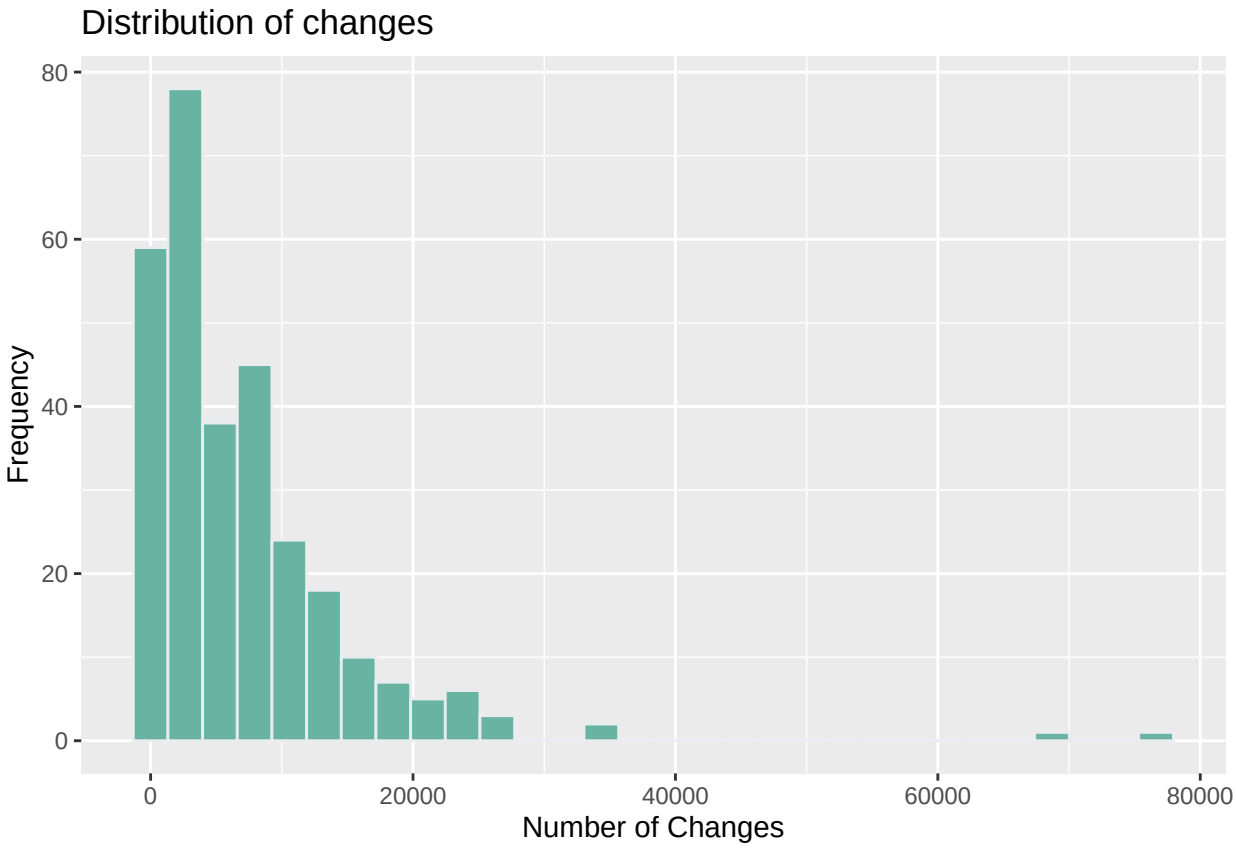


Figure 3.1: Distributions of changes by legislative file

of over-dispersion[1]. Because of this over-dispersion, and because *Number of Changes* is of a count nature, I use a negative binomial model.

Next, data on the convening of a trilogue was obtained from Brandsma, as part of data he collected for his article, *Co-decision after Lisbon: The politics of informal trilogues in European Union lawmaking* (Brandsma, 2015). Brandsma collected the number of informal trilogues for every piece of legislation between the entry into force of the Lisbon Treaty, December 2009, and the final legislative act adopted before the 2014 EP elections. He obtained the number of trilogues from internal EP reports that are meant to give the EP's Conference of Presidents an overview of progress in codecision files. These files are drawn up in monthly intervals and list all trilogues taking place for each file (Brandsma, 2015). *Did a Trilogue Occur* is 1 for files for which a trilogue was convened and 0 otherwise.

For the characteristics of the legislative file, I collected pdf copies of the Commission's proposal for each legislation in my study. The test was collected from their entry into the Official Journal of the EU, accessed through EUR-Lex.

To measure the complexity of legislation I use Katz and Bommarito's measures of complexity. They approach complexity through the framework of knowledge acquisition. Knowledge acquisition exists at the intersection of psychology and computer science, and studies the protocols that individuals use to acquire, store, and analyze new information. An individual acquires knowledge by absorbing and storing the new information into their memory, and thus retains the ability to remember it later. Katz and Bommarito's framework measures complexity from the side of the hypothetical "user," i.e. the individual citizen who encounters this law and must decide whether or not to comply. Users are less likely to comply with more complex laws, *ceteris paribus*. Complexity imposes a cost to the end user attempting to comply, by increasing the difficulty of the knowledge acquisition process (Katz and Bommarito, 2014).

When considering passing legislation, legislators are assumed to be sensitive to user experience of the law, for the purpose of user compliance. Thus, legislators will prefer legislation that is no more complex than it needs to be. The goal is to decrease the costs of acquiring knowledge and, by doing so, hopefully increase compliance with the law (Katz and Bommarito, 2014).

The first measure of complexity is *Average Section Depth*, which measures the legislative file's structure. A proposal's structure is indicative of its complexity. Proposals covering more complex topics, or that require more complex solutions, will require deeply hierarchical

[1]In a model with only Number of Changes the dispersion parameter was 0.86 with a standard deviation of 0.062.

documents with many nested sections and sub-sections. The deeper in the hierarchy the sub-section, the more specific the sub-section will be. The deeper and more specific the average section, the more complex the whole proposal will be. To measure average level of depth, I assigned each element a value depending on its distance from the root. These values are the number of "steps" needed to reach that element when starting from the root element.

The second measure of complexity is word entropy, which measures the complexity of a proposal's language. Word entropy is a measure of the variability of words used in a text. The language used to describe the provisions in a legislative proposal is how the end user encounters and interfaces with the legislation. The word choice of the proposal's writers can increase the costs of knowledge acquisition required when reading the document. This is particularly true when there is substantial variability in the language used, as variability makes predicting what comes next harder. Proposals covering more complex topics or that require more complex solutions, in turn, requires language that is more varied, necessitating words that are more specific and thus used less frequently. *Ceteris paribus*, a proposal with high concept and word variance will be more difficult to assimilate information than one with more homogeneous material. *Entropy* measures this variability.

Katz and Bommarito used average section depth and word entropy to rank the legislative files in their data set to create a *Weighted Complexity Rank* variable. I calculated the *Weighted Complexity Rank* by first ranking the files based on *Average Section Depth* and *Entropy* individually. The legislation with the largest *Average Section Depth* was ranked first while the legislation with the smallest depth was ranked last, with the same being true for *Entropy*. These ranks were then averaged to get their weighted rank. The weighted rank was ranked in ascending order, i.e. the least complex file received *rank 1*. This was done for ease of interpreting the regression coefficients, which will represent change in the dependent variable when moving from lower complexity legislation to higher complexity legislation.

Weighted Complexity Rank improves upon using either *Average Section Depth* or *Entropy* on its own. *Average Section Depth* and *Entropy* both measure different elements of the complexity of legislation. *Average Section Depth* measures a language's hierarchical structure and finds complexity that is embedded in nested topics and sub-topics. However, a legislation without a deep hierarchical and nested structure might still have a complex word environment that itself increases costs for user knowledge acquisition. *Entropy* measures that word environment and the complexity embedded within it. Entropy alone is not enough, as a less complex word environment might have a high level of complexity embedded within its structure. Thus, *Average Section Depth* and *Entropy* work together to measure the complexity of a file.

Salience of legislation is measured through the *Recitals* in the legislative proposal. Recitals are incorporated into the Commission's initial proposal. They are reasons listed by the Commission arguing why a particular piece of legislation should be adopted. They have been shown to be positively correlated with the importance of a piece of legislation (Häge, 2007; Häge and Naurin, 2013; Wøien Hansen, 2014). Legislation that is more important will be more difficult to agree on than legislation that is less salient, and thus may require more changes for it to pass.

The length of the legislative file is measured by its page length. *Pages* is the number of pages of the legislative proposal. It was collected from the English language version of the Commission's proposal.

For Hypothesis 3.5 I use NOMINATE scores to measure the policy preferences of MEPs. I calculated NOMINATE scores for all Members of the European Parliament who served the full 7th EP term. I collected vote data from itsyourparliament.eu, which offers roll call data on each vote for the 7th EP. I used this data to calculate NOMINATE scores for these MEPs with the wnominate and pscl packages in R using scores from the first dimension. Next, I identified the median NOMINATE scores for each EP Committee and for the EP as a whole. I look at the distance between the median member of the responsible Committee and the median member of the EP as a whole, with the variable *Committee-EP Distance*.

As a control variable I included the legislative instrument used. Cross and Hermansson found this variable to be significant predictor of the number of changes made to a file between when it was introduced to when it passes (Cross and Hermansson, 2017). The legislative instrument for each file was obtained from EUR-Lex. The legislative instruments included are Decisions, Directives, and Regulations. Decisions is the reference category.

3.5 Results

Table 3.4 displays three models, with each model differing in the measure of complexity used. Model 1 uses *Average Section Depth* to measure complexity, Model 2 uses *Entropy*, and Model 3 uses *WCR*. This was done to make sure that WCR and its components were not included in the same model, to avoid concerns of multicollinearity as all three variables measure an element of complexity. *WCR*, specifically, is best to not include in a model with *Average Section Depth* or *Entropy* as the latter two variables are used to construct *WCR*.

In Model 1, *Did a trilogue occur* is positive, meaning it is associated with more changes made. This goes against the predictions of Hypothesis 3.1; however, the coefficient is not significant.

Table 3.4: How many amendents do files receive?

	Dependent variable:		
	Number of Changes		
	Model 1	Model 2	Model 3
Did a Trilogue Occur?	0.124	−0.140	−0.121
	(0.122)	(0.125)	(0.126)
Average Section Depth	−0.016		
	(0.102)		
Entropy		0.583***	
		(0.101)	
WCR			0.006***
			(0.001)
Recitals	0.009	0.004	0.002
	(0.006)	(0.006)	(0.006)
Pages	0.028***	0.018***	0.018***
	(0.003)	(0.003)	(0.003)
Committee-EP Distance	−4.852*	−6.480***	−6.189**
	(1.989)	(1.924)	(1.934)
Directives (vs Decisions)	0.100	0.214	0.216
	(0.187)	(0.182)	(0.183)
Regulations (vs Decisions)	−0.381*	−0.241	−0.283
	(0.167)	(0.161)	(0.161)
Constant	7.672***	3.053***	7.355***
	(0.194)	(0.816)	(0.189)
Observations	295	295	295
Log Likelihood	−2,816.839	−2,804.406	−2,806.373
θ	1.466*** (0.110)	1.573*** (0.118)	1.555*** (0.117)
Akaike Inf. Crit.	5,649.679	5,624.812	5,628.746
Note:			*p<0.05; **p<0.01; ***p<0.001

Similarly, *Average Section Depth* is negative, against the prediction of Hypothesis 3.2, but is also not significant. *Recitals* is positive, as expected from Hypothesis 3.3, but again is not significant.

Looking at Hypothesis 3.4, *Pages* is both positive and significant, and thus supports the hypothesis that longer files will lead to more changes. *Committee-EP Distance* is also significant and is negative, in line with Hypothesis 3.5. It also has a large effect size, implying a lot of changes with differences in *Committee-EP Distance*. Thus, in this model, when the Committee is an outlier from the full EP there will be fewer amendments made to a legislative file. Finally, looking at the Legislative Instrument, *Directives* is positive, as it was for Cross and Hermansson, but it was not significant. *Regulations* is significant, but is negative, in contrast to what Cross and Hermansson found.

Model 2 has *Entropy* in as the measure of complexity. In this model, *Did a trilogue occur* becomes negative, as expected by Hypothesis 3.1, but is still not significant. *Entropy* is positive and significant, and has a large effect size. *Recitals* and *Pages* are both the same in Model 2 as they were in Model 1. *Committee-EP Distance* is negative and significant again. However, it does have a smaller p-value in Model 2, with less than .001, and has a larger effect size then it does in Model 1. *Directives* is again positive and not significant. *Regulations* is again negative, but this time is not significant.

Lastly, Model 3 replaces *Entropy* with *WCR*. *WCR* is positive and significant. However, it has an effect size just above zero. All other variables are the same in Model 3 as they were in Model 2.

In sum, there is no support in these models for Hypothesis 3.1. *Did a trilogue occur* is insignificant in all three models. Thus trilogues do not seem to relate to the number of changes made.

Hypothesis 3.2 is more mixed. *Average Section Depth* is negative, contrary to the expectation of this hypothesis, but it is also not significant. Both *Entropy* and *WCR* are positive, as expected, and are significant. There is a large difference in effect size, with *Entropy* nearing 6 and while *WCR* is barely above zero. Together, these results suggest that *Entropy* captures variance associated with complexity, while *Average Section Depth* does not. The largest changes across these models occur when *Average Section Depth* is replaced with *Entropy*, either when *Entropy* is on its own or is combined with *Average Section Depth* in *WCR*. We perhaps see this the best with the changes in *Did a trilogue occur*. It is positive when included with *Average Section Depth*, while negative in the other models. As seen in Chapter

2, trilogues are more likely for complex legislation. That association with complexity is likely being picked up in the coefficient for *Did a trilogue occur* in Model 1. When complexity is better accounted for in Models 2 and 3, *Did a trilogue occur* is negative as expected by Hypothesis 3.1. *Entropy* capturing the variation associated with complexity more than *Average Section Depth* could also explain the difference in effect size between *Entropy* on its own and *WCR*. When *Entropy* is combined with *Average Section Depth*, the effect is smaller than when *Entropy* is alone.

Hypothesis 3.3 does not receive support in these models. *Recitals* is insignificant in all three models, and thus does not seem to relate to changes made. Hypothesis 3.4, on the other hand, is supported, as *Pages* is significant in all three models. Unsurprisingly, longer files receive more changes than shorter files.

Lastly, Hypothesis 3.5 is also supported. *Committee-EP Distance* is negative and significant in all three models. Committees who are ideological outliers from the full EP are less able to see their amendments pass. Ultimately, fewer changes are made to these files.

3.6 Conclusion

In order to pass legislation, legislators must come to an agreement on a final text. Legislation rarely passes without any changes; however, not all proposals require the same amount of changes. The factors that explain the differences in amendments across legislation informs us of how the legislative system accommodates these features. In this chapter I explored how the legislative system used, important characteristics of the legislation, and disagreements between key actors all impact the number of changes made to EU legislation.

For legislative system used, I looked at the EU's trilogue system. Chapter 1 argued that the trilogue system was designed to prevent gridlock, which the OLP is prone to. Since trilogues play this role, I expected that trilogues would decrease changes made, as more changes would increase the probability of gridlock. The results presented here do not support this expectation. Instead no relationship between trilogues and changes was found. These results thus create further questions as to the effects of trilogues.

While the number of changes made is only one possible type of impact, trilogues' lack of effect is telling. Trilogues are believed to facilitate legislators reaching an agreement and then discouraging deviations from that agreement. Trilogues not decreasing changes does not contradict this claim *per se*. Trilogues might simply only transform the files for which they meet, ones that otherwise might require a lot of changes, and have them look like files where

no meetings are necessary, at least in terms of total changes. The changes that are made could simply be changes that result from the meetings themselves, and then no changes are allowed after the initial round of changes.

Future research can explore *when* these changes are made using a method similar to the one used here. To do so would require identifying a document that could serve as the result of the trilogue negotiation. Laloux and Delreux used the EP's first reading position when determining how much agents deviated (Delreux and Laloux, 2018). One could then use DocuToads to measure changes made between the Commission proposal and the EP's first reading to see if legislation remains the same in the number of changes after they come out of a trilogue. Similarly, they could compare the first reading document to the final text to see the difference between trilogue files there. The expectation would be that trilogues relate to no difference in the former case, while relating to difference in the latter.

Trilogues not relating to changes from beginning to end implies there are other impacts they have on legislation. Chapter 4 explores this more through a specific type of legislative changes, changes made to legislative ideology.

As for legislative characteristics, this chapter found that two characteristics were important: the complexity of a legislative file and the file's length. Both characteristics increased the number of changes made.

Complexity is of particular interest. Complexity in legislation and law impose knowledge acquisition costs on users, i.e. citizens. High knowledge acquisition costs result in lower compliance with law. Lawmakers thus pay a lot of attention to complexity. The result is more changes made to legislation. More complexity requires more precision. Changes need to be made to ensure that the legislation will work as intended and will reduce knowledge acquisition costs where needed.

Complexity's relationship to amendments also help explain complexity's relationship to trilogues. Complexity requiring more changes likely increase the probability of gridlock as each change represents a new proposal that all legislators will need to agree to. In the EU, the lack of agreement means the legislation passes to later stages, where decision-making is harder for both institutions and gridlock is more likely. The EP and the Council thus turn to trilogues to pass complex legislation, as seen in Chapter 2.

Longer files were also associated with more changes. The longer a file is, the more provisions are needed to make agreements on. The legislative system responses with more changes, as was expected.

Lastly, disagreements between key actors resulted in fewer changes made. This may be due to specifics of the EU, particularly the role Committees play in amendments. EP Committees propose amendments and while other MEPs can also propose amendments later, these latter amendments typically require Committee support to pass. Large differences between the Committee and the full EP mean lower amendments passed.

The findings in this chapter have implications for both the EU and the Comparative Legislatures literatures more broadly. First, is the importance of complexity. Chapter 2 demonstrated that legislatures respond to proposals that are complex. This chapter reinforces that finding by presenting a reason why trilogues are used in this case: complex legislation requires more effort to reach agreements. Whether this is true cross-nationally, or only in the EU case, can further develop our understanding of the differences between the EU system and other legislatures. Thus, its important to observe complexity and its effects elsewhere.

Second, that disagreements between Committees and the EP lead to fewer amendments has important implications. It shows that these disagreements prevent changes *but do not prevent legislation from passing*. This, again, might be EU specific as few EU legislative proposals fail to pass. Once again, differences between the EU and other legislative systems would be telling. The EU is perhaps different because of the importance of Committees in the amendments process. The EU also could be different because of its emphasis on collaboration, which may allow more legislation to pass in these situations of disagreements. Identifying differences between the EU and elsewhere and isolating the drivers of these differences would contribute to our knowledge of legislative decision-making.

Chapter 4

Complexity, Political Contestation, and Trilogues on the Legislation's Ideology

4.1 Introduction

The legislative process provides individual legislators the power to influence legislation to better fit their and their constituents' needs. Understanding what changes are made during the legislative process can tell us a lot about the legislative process itself. To better understand the changes made we can look at one type of change, changes to the ideological position of the legislation.

This chapter specifically explores the legislative system of the European Union, known as the Ordinary Legislative Procedure (the OLP). The OLP allows the Council of the European Union (the Council) and the European Parliament (the EP) to make amendments to legislation proposed by the European Commission (the Commission). Chapter 3 explained what conditions promote more or less amendments of any kind to be made to a file. In this chapter, I expand on this work through explaining one type of change, specifically changes in ideology.

Passing legislation requires negotiations, agreements, and, ultimately, changes to legislation. When there is more contestation over a legislative files, the negotiations and agreements over it becomes more difficult, resulting in more changes made. I argue here that three conditions impact this contestation and as a result the changes that are made to a legislation's

ideological position: opportunities to change legislation offered by the legislative system used; characteristics of the legislation itself; and disagreements among key legislative actors.

The specific legislative process used impacts changes made to ideological content. Certain processes allow for more or less involvement of certain actors and encourage more or fewer changes. Specifically, the EU's system of trilogues encourage fewer changes to the ideological position of legislation. Trilogues are used to pass legislation on time. To achieve this goal, legislators are discouraged from making changes to legislation beyond what was agreed on in the trilogues themselves. The result is fewer changes in the legislation's ideology.

In addition to the legislative system, specific characteristics of legislation also can necessitate more ideological change to a legislation. First, the more complex a legislative file is, the more changes will be made. Legislators want to ensure that their ideological position is reflected in the intricate and specific provisions that the complex legislation proposes. Similarly, the more salient a legislation is the more changes its receives as legislators want salient legislation to best reflect the ideology of both institutions as a whole. Finally, longer legislative files encourage more ideological changes as the length of these files means more provisions, and thus more content legislators need their position reflected in.

The last condition, disagreements between actors, are a clear source of ideological change. When large differences between actors emerge, these actors will have clear divergences in opinions on the legislation. For the legislation to pass, it will need ideological changes to make it more agreeable to more legislators.

In the EU, EP Committees are key actors in the legislative process with significant influence on the content of legislation and specifically amendments that are made. Ideological differences between the responsible Committee and the full EP create more changes to legislation's ideological position to reconcile those differences. Chapter 3 showed that these disagreements lead to fewer overall changes made. However, the changes that do get made are shown here to be ideological in nature, leading to more ideological changes than when these disagreements do not occur.

To measure the ideological position of legislation I use the *WORFDFISH* scaling algorithm. *WORFDFISH* estimates the ideological position of text, placing it on the left-right policy dimension through estimating the importance of a given word in discriminating between the ideological position of the texts and then examining the frequency with which these words appear. It is an improvement over other methods of determining ideological position of texts by not relying on error-prone and time intensive methods such as expert surveys, hand-coding

texts, or the use of reference documents.

This chapter finds that the legislative system, legislative characteristics, and disagreements between actors all contribute to changes in legislative ideology. Trilogues, the legislative system explored here, was found to decrease the number of ideological changes made, while both the complexity of a file and ideological differences between the Committee and the EP increases the number of ideological changes made to legislation.

The trilogue system restricts contestation over legislation to encourage the legislation to be passed on time. More changes risks sending debate on the legislative file to later stages of the OLP. However, restricting legislative debate, particularly over the ideological composition of a piece of legislation risks harming the legitimacy of EU decision making. Next, complexity requires provisions that are specific and nuanced, creating more avenues for contestation over the legislation. Lastly, when the responsible Committee is an ideological outlier from the EP as a whole more debate and contestation emerges over the legislative files. The ideological content of the legislation is thus revised as agreements are made. Legislation that is complex also creates contestation.

These results have important implications for the study of trilogues, the EU, and comparative legislatures more broadly. First, these results demonstrate an effect trilogues have on law, specifically that they decrease ideological changes. Beyond the impact on legitimacy mentioned above, trilogues limiting ideological changes may give the Commission more influence as their proposals are less likely to see ideological changes. Whether the Commission does gain influence is not certain.

Next, these results again reaffirm that complexity has important implications for legislation. Complexity makes more need for compromise and thus changes made to legislation. How this relates to other legislative systems to legislation is an important avenue of study. Lastly, the effect of disagreements between key actors is also important. In the EU, these changes result in more compromises. These results may be specific to the EU due to its emphasis on consensus and that most files pass through the process. Identifying differences and understanding what causing these differences builds our understanding of legislatures generally.

4.2 Literature Review

Any change to legislation can result in changes to the legislation's ideological content. Still, we can better understand the legislative process by identifying what contributes to more or less ideological changes. I emphasize three drivers of ideological change; the legislative

process used, characteristics inherent to a legislative file, and differences between key actors and their preferences.

The EU has multiple legislative processes or "procedures," such as the consultation procedure, the cooperation procedure, and the OLP. While this chapter specifically focuses on legislation that used the OLP, there are still variations within that legislative process that impacts the ideology of legislation. Most important is the use of trilogues. Trilogues are an extra-constitutional meeting of legislative actors ostensibly designed to encourage legislation to pass "on time". Trilogues were developed because of legislative gridlock in the OLP created by the systems' high potential for inter-institutional conflict. (Farrell and Héritier, 2003; Mühlböck and Rittberger, 2015). The use of informal negotiations resulted from early conflicts between the EP and the Council as the former gained equal legislative power with the latter (Farrell and Héritier, 2003). Member states found these negotiations to be beneficial to them, specifically their ability to result in early agreements (Farrell and Héritier, 2007). Since EAs were institutionalized in the Amsterdam Treaty, trilogues have continually increased in use (Rasmussen, 2011; Reh et al., 2013).

The literature argues trilogues solve problems with increased workload for both institutions that came with the OLP, as well as the expansion of the EU (Shackleton and Raunio, 2003). The workload was particularly problematic for the Council, because they have limited time and personnel resources, which especially hurts them in the OLP's Conference Committee system. These disadvantages in the OLP biased the Council towards concluding at earlier stages of the OLP (Häge and Kaeding, 2007). The EP also faces trouble as the OLP moves past the first stage. Specifically, the EP faces changes in voting rules in its second reading, requiring an absolute majority of MEPs to amend or reject at this stage, while only a majority of MEPs present to accept legislation. Due to problems with attendance, this rule makes amending or rejecting legislation more difficult than accepting at the second stage or than amending or rejecting at the first stage (Brandsma, 2015; Hagemann and Hoyland, 2010). Trilogues thus encourage agreement on legislation that helps them pass "on time", before the OLP moves to its latter stages when agreements become more difficult to reach. Because trilogues limit discussion in this way, we would expect them to limit ideological changes as these ideological changes would encourage more debate and expose the legislation to be stuck in gridlock.

The next set of drivers of ideological change are important characteristics of the legislation, specifically complexity, salience, and length. Legislation is often used to address difficult, sensitive or highly technical problems, adding complexity to legislation. Complexity can be

best understood as increasing the costs of knowledge acquisition for the end user, i.e. the individual citizen (Katz and Bommarito, 2014). Chapter 2 found complexity increased the probability of a trilogue being convened for a given legislation, while Chapter 3 showed that more complex files received more changes of any kind. Collectively these chapters showed that complexity impacts legislative outcomes, and thus we should expect it to relate to ideological changes. Next, the salience of legislation increases attention and focus paid to it and can impact the legislative process (Häge, 2007; Häge and Naurin, 2013; Wøien Hansen, 2014). The length of legislation has also been shown to impact legislation and the legislative process, both by relating to the probability a trilogue is convened in Chapter 2, and the number of amendments made to legislation in Chapter 3.

Different legislative actors have different roles for each file and thus identifying which actors impact which files can tell us about how that file is shaped. In the case of the EU, this means the institutions. When looking at the EU institution's effects on legislation, it is natural to start with the Commission, which has sole legislative proposal power. The Commission might use this proposal power to set the legislative agenda, but, scholars disagree the extent to which the Commission actually has this agenda setting power. The Commission can exclude certain items and frame the items it chooses to present in ways that are beneficial to its position (Daviter, 2007). However, the Commission's agenda setting power is limited by the EP and Council being able to amend the Commission's proposal without any input from the Commission. At a minimum, the Commission must consider the opinions of the other institutions (Crombez and Hix, 2015), and at worst it has been completely marginalized (Garrett, 1995; Crombez, 1998; Rasmussen, 2003). The Commission's impact on a file's ideology is thus viewed to be at best limited and at worse non-existent.

What this means for the ideology of EU legislation is that ideology is set through the course of the legislative process, after the Commission has proposed the initial text. Thus, the EP and the Council can shape the file's ideology. The OLP is a bicameral system and thus both the EP and the Council are able to make changes to a legislative file (Tsebelis and Money, 1997; Kreppel, 2011; Finke, 2017; Hagemann and Hoyland, 2010). The EP's role in legislation making has increased, specifically since the introduction of the Ordinary Legislative Procedure (Tsebelis, 2000). Tsebelis et al. found that the amendment success of the EU institutions changed between the OLP and the previous procedure, the Cooperation Procedure (Tsebelis et al., 2001). However, the certain features of the OLP, for instance Conciliation Committees, still favor the Council's ability to amend legislation (Franchino and Mariotto, 2013).

In addition to inter-institutional contestation on legislation, intra-institutional contestation

impacts ideological changes. Particularly impactful are EP committees. In the EP, Committees perform most of the legislative tasks. However, Committee's impact may be overstated as political groups may have a larger influence on legislation (Yordanova, 2013). Committees play a consensus-building role in the EP, despite a movement towards greater differentiation across policy areas and legislative procedures (Settembri and Neuhold, 2009). Committees generally do seem to be ideologically representative of the EP as a whole (McElroy, 2006; Yordanova, 2009), however, Committees that are specialized and information-driven attract MEPs with relevant expertise and assignment to these Committees can be influenced by special interests outside the EP (Yordanova, 2009; Yordanova, 2013). Chapter 3 showed that ideological differences between the Committee and full EP resulted in fewer changes to legislation. This chapter expands on this finding by looking at ideological changes as a specific type of changes.

In this chapter, I build on this literature by evaluating the changes in the ideological position of legislation as it moves through the EU's process. I specifically focus on the legislative process used, characteristics of the legislation itself and disagreements between key actors. All three factors influence ideological changes made. These results have implications for the trilogue, EU, and comparative legislatures literatures more broadly as all three literatures can learn from these effects.

First, trilogues are shown to have an effect on legislation and this effect is perhaps a cost. This is important to all three literatures, as trilogues having a potential cost as well as a benefit mean these need to be compared to evaluate the full impact on the EU and its legislative system, and evaluate how other systems weigh these costs and benefits.

Second, the findings in this chapter inform us how the EU system treats situations of complexity and disagreements. In the EU case, both lead to more compromises in the form of ideological changes. Whether this is true in different contexts can be used to explore key differences between the EU and other legislative systems.

4.3 Theory and Hypotheses

Passing legislation requires negotiations, agreements, and, ultimately, changes, particularly in a large legislative body like the EU's legislative system. Certain legislation necessitates or prevents the ideological movement of legislation. What differentiates files in this manner comes from three sources: the legislative process used; the characteristics of the legislation itself; and disagreements between actors and their preferences.

Factors that contribute to increases in ideological changes made connects to higher levels of contestation over the legislative file. These legislative files require more negotiations, and agreements to allow it to pass, resulting in more changes. The higher the level of contestation, the harder the agreement will be to reach, resulting in more changes.

Ideological content is the portion of legislation that is the most likely to change when contestation is high. The contestation is often over how the legislation's provisions fit with the legislators' ideological worldview and beliefs on how legislation needs to affect society. For legislation to pass, actors will create compromises that change its ideological positions.

The legislative process itself can impact the contestation over legislation. Certain legislative procedures and practices can either create more conflict or restrict conflict. The OLP is a process known to have a high potential for conflict (Farrell and Héritier, 2003; Mühlböck and Rittberge, 2015). Trilogues have developed as a means to restrict this conflict and contestation. Trilogues are convened to reach agreements on legislation. The EU's legislative institutions meet to agree on a final legislative text, and legislators are disincentivized to deviate from that agreement, as deviation can jeopardize the ability to pass legislation on time. Deviation on ideological content can be particularly jeopardizing. To ensure files are passed on time legislators will be encouraged to make as few changes as needed, even if this requires legislators not reflecting the ideology of both institutions as a whole. Trilogues do so by limiting contestation over legislation in order to move the legislation forward. Thus, trilogue files will have fewer changes between the proposed and final legislation.

Hypothesis 4.1: *The difference in ideology between the proposed legislation and the final text decreases for legislation in which trilogues are convened.*

This conclusion makes sense given trilogues' role. Trilogues prevent inter-institutional gridlock by passing legislation "on-time". In addition, previous research on trilogues support this conclusion. After an agreement has been made in a trilogue, MEPs are routinely discouraged from using their ability to table amendments (Rasmussen and Shackleton, 2005). MEPs are told that any further amendments would undermine the agreement with the Council (Shackleton and Raunio, 2003). As a result, only the changes agreed on in trilogues, the minimal amount of changes to reach an agreement, are made to a legislative file.

Next, certain characteristics of legislation also create a need for negotiation, agreements and changes. Particularly important are the complexity of the file and its provisions, the file's salience, and the file's length. All three of these characteristics increase the number of ideological changes made. In Chapter 3, all three increased the number of amendments in a

legislative file, although the effects of salience weren't significant. All three will cause larger nuances and divergences in opinions on the legislation. This, in turn, creates more debate, more need for compromise and ultimately more changes to the legislation, and specifically, more changes to the legislation's ideological content.

First, legislation varies in its complexity. Complexity in legislation increases the costs of knowledge acquisition for the end user, i.e. the individual citizen. Legislation is often required to address difficult, sensitive, or highly technical problems. To do so, the legislation becomes more complex as its provisions become more specific, precise, and involved. Increased complexity of legislation creates nuances and divergences in opinions and beliefs on the legislation and its provisions. The divergence in opinion created by these increased provisions and the nuances in opinion, leads to contestation, compromises, and, ultimately, changes that bring the legislation more in line with the ideological positions of the EP, ultimately leading to more ideological changes.

Hypothesis 4.2: *The difference in ideology between the proposed legislation and the final text increases as the complexity of legislation increases.*

Similarly, when legislation is pressing, relevant, or otherwise high profile, lawmakers will again have greater nuances and divergences in opinions creating more contestation. The more politicized and salient a legislation is, the more entrenched and deeply held these opinions are likely to be. Thus, again, compromises will be need to be made, resulting in changes to the ideological content.

Hypothesis 4.3: *The difference in ideology between the proposed legislation and the final text increases as the salience of the legislation increases.*

Finally, when a legislative file is longer it naturally has more content and provisions. In this case, simply having more content means there is more to amend. As with the previous two characteristics, length again results in more changes to a legislative file, as seen in Chapter 3. With more changes comes an increase in the likelihood there is contestation over the file, resulting in changes to the ideological content of the legislation.

Hypothesis 4.4: *The differences in ideology between the proposed legislation and the final text increases as files become longer.*

Naturally, ideological differences among key actors creates contestation over legislation. And since this contestation is by its nature ideological and the changes that result are changes that modify ideology. Looking at the EP, the major form of disagreement is between the

Committee and the EP as a whole.

Committees are integral to the OLP, particularly when determining the text of legislation. Committees have significant influence over amendments made to legislation, both amendments proposed by Committees themselves, but also those proposed by the plenary. Additionally, Committees are comprised of representatives of the EP's political groups, each with different ideological perspectives. Committees, then, may have ideological positions that are outliers from the full EP.
Committees are thus not always perfectly representative of the EP as a whole. Committees whom are outliers relative to the EP will have to negotiate more with their colleagues in the full EP. Committees that are outliers will be more likely to continue with legislation that is ideologically farther away from the EP. The result is more negotiations, agreements, and changes in order for legislation to move forward. The ideological content of legislation is the most likely to change, as the Committee reconciles its position with the full EP.

Hypothesis 4.5: *The differences in ideology between the proposed legislation and the final text increases as the distance between the median member of the responsible Committees' preferences and the preferences of the median member of the EP increases.*

Together these hypotheses show the importance of contestation over legislation in determining ideological changes made to legislation. Factors that relate to more contestation result in more changes. Complexity, salience, and length are all hypothesized to increase changes because these characteristics all create nuance and divergences in opinions and beliefs about the legislation. These divergences need to be reconciled for the legislation to pass, leading to more ideological change. Similarly, differences between the responsible Committee and the full EP represent a divergence in opinions and beliefs, that can only be reconciled with more changes. Still, more changes that need to be made increases the possibility of gridlock, as these changes might not always be reconcilable. The trilogue system uses the meetings to reach agreements that can be passed and then discourages any future changes being made. The result is fewer changes to ideology.

4.4 Data and Methodology

The goal of this chapter is to evaluate the content of changes made to a legislative file during the legislative process, specifically changes made to a file's ideological position. Evaluating the ideological content can be difficult, and often requires hand coding methods. These methods can be time and resource intensive, as well as unreliable, either because errors or

disagreements between coders. To evaluate a large set of legislation over a multi-year period I use the computer-based *WORDFISH* scaling algorithm, created by Slapin and Proksch (Slapin and Proksch, 2008). I accessed *WORDFISH* from the *austin* R package.

Slapin and Proksch created *WORDFISH* to estimate policy positions of party manifestos using word frequencies. *WORDFISH* offered a number of advantages over previous means of evaluating the ideology of text. First, algorithms generally are an improvement over more intensive methods such as expert surveys and hand coding text. Expert surveys are difficult and expensive, and are difficult for researchers to apply historically, as memories become fuzzy or are lost altogether. Hand coding is also expensive and time intensive, while presenting issues of human error and disagreements among coders. Lastly, hand coding can be difficult to replicate. Algorithms such as *WORDFISH* avoid all of these pitfalls as they do not rely on human coders, preventing errors and improving replicability, and do not rely on human memory, allowing for analysis of texts historically (Slapin and Proksch, 2008). Algorithms like *WORDFISH* have their own potential for errors, of course. However, the gain in efficiency allows for more resources to be used to catch and correct these changes.

Slapin and Proksch also argue that *WORDFISH* is an improvement over previous computer-based text analysis methods. The authors specifically argue that it is an improvement over its closest predecessor *WORDSCORES*. *WORDSCORES* relies on a hand-coded dictionary and reference texts that need to be identified by researchers. Hand-coded dictionaries present the same concerns as hand-coding efforts more generally; they can be time and resource intensive, prone to human error and to disagreements across coders. Reliance on reference texts comes with similar concerns of human error as they can be tricky to identify. *WORDSCORES* specifically adds an additional concern as the algorithm assigns all words in the documents the same weight, so words that occur frequently but provide little political information pull documents to the center, making values incompatible with the reference texts.

WORDFISH improves on these issues by estimating the importance of a given word for discriminating between documents rather than treating all words equally. *WORDFISH* assumes an underlying statistical distribution of word choice, and uses this distribution to estimate how important each word is to distinguish between documents. In doing so, the algorithm does not require reference texts. The result is an estimate of ideology for each document placed on the left-right dimension.

The algorithm is built on a *naive Bayes* assumption, where the probability a word appears in a text is assumed to be independent of the position of other words. While this is clearly a false assumption, *naive Bayes* performs classification well (McCallum, Nigam, et al., 1998).

WORDFISH specifically assumes that the number of times document i mentions word j is drawn from a *Poisson* process, thus making *WORDFISH* essentially a *Poisson naive Bayes* algorithm. Doing so allows the estimation of only one parameter, λ, which is both the models mean and variance. The functional form of the model is as follows:

$$Y_{ij} \sim Poisson(\lambda_{ij})$$

$$\lambda_i j = exp(\alpha_i + \psi_{ij} + B_j \omega_i)$$

Where:

- Y_{ij} is the count of word j in document i
- α_i is document-specific fixed effects
- ψ_j is word-specific fixed effects
- B_j are word-specific weights capturing the importance of j in discriminating between positions
- ω_i is the estimate of document i's position. ω_i is the parameter of interest.

WORDFISH has been used by a number of scholars, both for its original purpose of analyzing party manifestos, as well as other texts. Slapin and Proksch used the algorithm to examine how national parties position themselves in the EP through speeches made by members in parliament. They find that partisan divisions tend to be over EU integration and national divisions rather than the typical left-right policy dimension (Proksch and Slapin, 2010). Their finding stands in contrast with research analyzing roll-call votes, which find that MEPs vote more along transnational party lines than national lines (Hix, 2001; Hix, Noury, and Roland, 2005; Hix, Noury, and Roland, 2007). There are differences, then, between what MEPs say and how they vote. Still, Proksch and Slapin's findings on differences in text adds interesting nuance, and demonstrates the use of *WORDFISH*.

WORDFISH has also been used outside of the European context. In two studies, Catalinac looks at changes in electoral strategies pre and post Japan's electoral reforms. First, she finds that when intraparty competition was eliminated, there was a decline in particularism and an increase in promises of programmatic goods, such as national security (Catalinac, 2016). Second, Catalinac found that candidate positions converged in single-member districts, while they diverged in multi-member districts. In addition, these positions converged with co-partisan positions when candidates were not faced with intraparty competition and diverged when intraparty competition existed (Catalinac, 2018).

WORDFISH has also been used beyond its initial purpose of party manifestos. First, its been

used in analyzing media, to understand the politicization and polarization of news related to climate change (Chinn, Hart, and Soroka, 2020) and in Covid-19 coverage (Hart, Chinn, and Soroka, 2020). *WORDFISH* has also been used in the analysis of legislation to evaluate legislative success. Kluver uses it along with *WORDSCORES* to measure interest groups' influence in EU legislation (Klüver, 2009). Franchino and Mariotto also used the algorithm to determine the bargaining success of the EP versus the Council in Conciliation Committee by comparing the final Committee text with the EP's reading and the Council's common position (Franchino and Mariotto, 2013).

My dependent variable, *Ideological Changes*, is the difference in ideology between the proposed text and the final legislation. There exists a directional component to the change, i.e. does the text move more left or right. This direction matters largely because *WORDFISH* scores range from negative values to positive values, as can be seen in Table 4.1. I am not, however, interested in this directional change; rather I am interested in the amount of change that occurs. Thus, I take the absolute value of that change. This allows me to evaluated what contributes to more or less change, not what contributes to positive or negative changes.

Without the absolute value, the model will treat a move in one direction differently from a change of the same magnitude in the other direction. For example, consider a legislation that starts with a *WORDFISH* score for its proposal at 0.5 and ends with a score for its final text at -0.5 for a total change of 1. Compare that legislation with a different legislation that starts with a score of -0.5 and the final text at 0.5; the resulting change would be a -1 if the absolute value is not used, but would also be 1 if only the absolute value was considered. Since what is important here is the *magnitude* of the change, not the *direction*, the use of absolute values is important. In these examples, what would be of interest is that both had a change of 1, not that one went from a positive value to a negative value, while the other did the opposite.

$$\omega_i = |\omega_{iP} - \omega_{iF}|$$

Ideological Change for legislation i is equal to ω_1 fo that legislation.

Table 4.1 displays descriptive statistics for *WORDFISH* scores for both the proposal and final text, and these statistics for *Ideological Changes*. Figure 4.1 shows distribution of *Ideological Changes*. The distribution is right skewed with most changes under 0.5, but a couple of files have changes going as far as 2.42. I evaluate how my independent variables contribute to these changes using a standard ordinary least squares regression model.

Table 4.1: Descriptive Statistics for WORDFISH scores

	Raw WORDFISH scores		
Descriptive Statistics	Proposal	Final	Ideological Changes
Mean	-0.09	0.08	0.27
Median	-0.31	-0.06	0.16
Max Value	3.35	3.34	2.42
Min Value	-2.26	-2.22	0.00
Standard Deviation	0.99	1.00	0.35

The first independent variable is whether a trilogue was convened. Data on the convening of a trilogue was obtained from Brandsma, as part of data he collected for his 2015 article, *Co-decision after Lisbon: The politics of informal trilogues in European Union lawmaking* (Brandsma, 2015). Brandsma collected the number of informal trilogues for every piece of legislation between the entry into force of the Lisbon Treaty, in December 2009, and the final legislative act adopted before the 2014 EP elections. He obtained the number of trilogues from internal EP reports that are meant to give the EP's Conference of President's an overview of progress in codecision files. These files are drawn up in monthly intervals and list all trilogues taking place for each file (Brandsma, 2015). *Did a Trilogue Occur* will be 1 for files for which a trilogue was convened and 0 otherwise.

For the characteristics of the legislative file, I collected pdf copies of the Commission's proposal for each legislation in my study. The test was collected from their entry into the Official Journal of the EU, accessed through EUR-Lex.

For Hypothesis 4.2, I approach the complexity of legislation through the framework of knowledge acquisition. Knowledge acquisition exists at the intersection of psychology and computer science, and studies the protocols that individuals use to acquire, store and analyze new information. An individual acquires knowledge by absorbing and storing the new information into their memory, and thus retains the ability to remember it later. Complexity is thus understood from the perspective of the hypothetical "user", i.e. the individual citizen who encounters this law and must decide whether or not to comply. Users are less likely to comply with more complex laws, *ceteris paribus*. Complexity imposes a cost to the end user attempting to comply by increasing the difficulty of the knowledge acquisition process (Katz and Bommarito, 2014).

When considering passing legislation, legislators are assumed to be sensitive to user experience

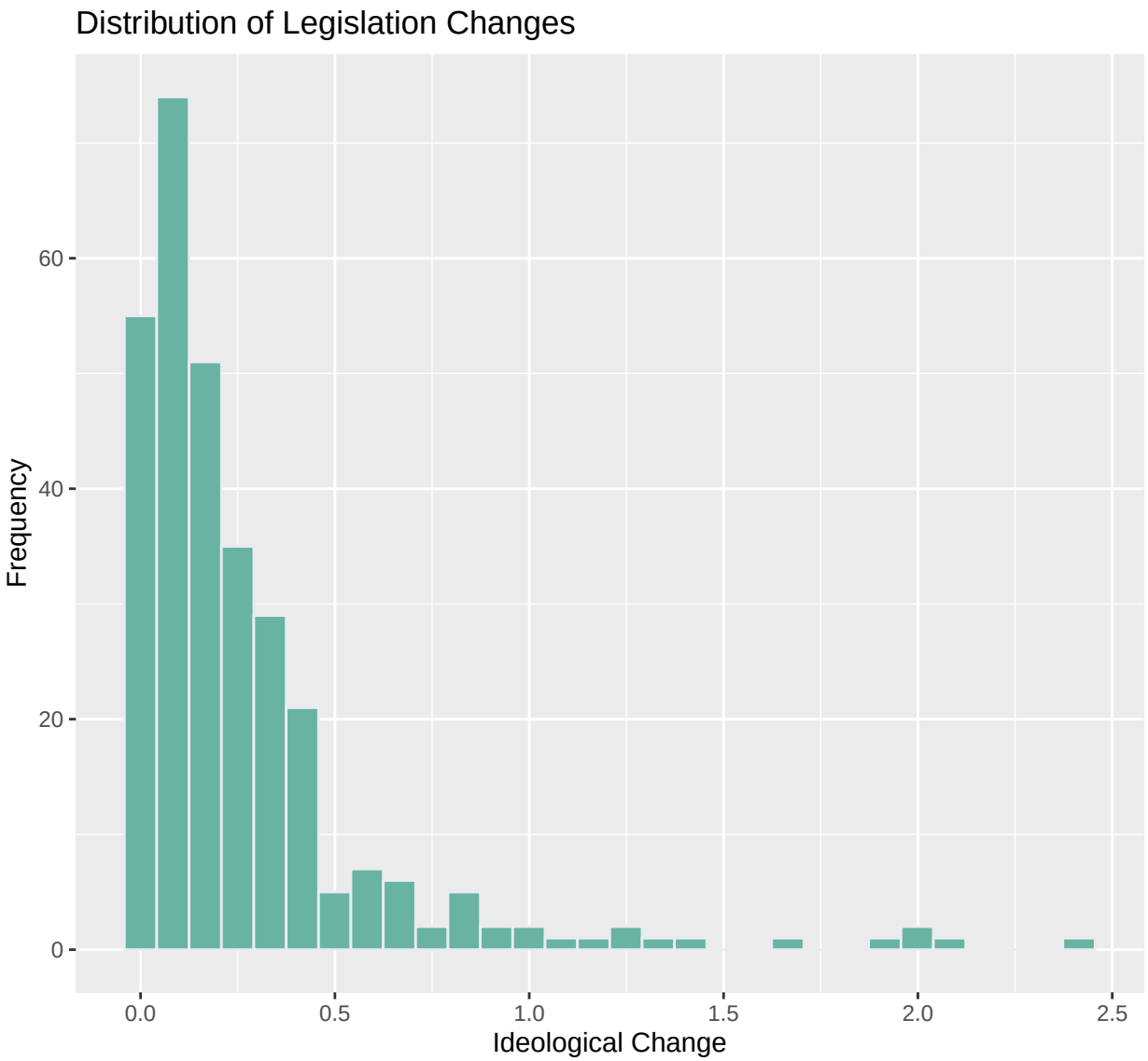


Figure 4.1: Distributions of ideological changes by legislative file

of the law, for the purpose of user compliance. Thus, legislators will prefer legislation that is no more complex than it needs to be. The goal is to decrease the costs of acquiring knowledge and, by doing so, hopefully increase compliance with the law (Katz and Bommarito, 2014).

The first measure of complexity is *Average Section Depth*, which measures the legislative file's structure. A proposal's structure is indicative of its complexity. Proposals covering more complex topics, or that require more complex solutions, will require deeply hierarchical documents with many nested sections and sub-sections. The deeper in the hierarchy the sub-section, the more specific the sub-section will be. The deeper and more specific the average section, the more complex the whole proposal will be. To measure average level of depth, I assigned each element a value depending on its distance from the root. These values are the number of "steps" needed to reach that element when starting from the root element.

The second measure of complexity is word entropy, which measures the complexity of a proposal's language. Word entropy is a measure of the variability of words used in a text. The language used to describe the provisions in a legislative proposal is how the end user encounters and interfaces with the legislation. The word choice of the proposal's writers can increase the costs of knowledge acquisition required when reading the document. This is particularly true when there is substantial variability in the language used, as variability makes predicting what comes next harder. Proposals covering more complex topics or that require more complex solutions, in turn, requires language that is more varied, necessitating words that are more specific and thus used less frequently. *Ceteris paribus*, a proposal with high concept and word variance will be more difficult to assimilate information than one with more homogeneous material. *Entropy* measures this variability.

Katz and Bommarito used average section depth and word entropy to rank the legislative files in their data set to create a *Weighted Complexity Rank* variable. In this article, the *Weighted Complexity Rank* was reached by first ranking the files based on *Average Section Depth* and *Entropy* individually. The legislation with the largest *Average Section Depth* was ranked first while the legislation with the smallest depth was ranked last, with the same being true for *Entropy*. These ranks were then averaged to get their weighted rank. The weighted rank was ranked in ascending order, i.e. the least complex file received *rank 1*. This was done for ease of interpreting the regression coefficients, which will represent change in the dependent variable when moving from lower complexity legislation to higher complexity legislation.

Weighted Complexity Rank improves upon the inclusion of either *Average Section Depth* or *Entropy* on its own. *Average Section Depth* and *Entropy* both measure different elements of the complexity of legislation. *Average Section Depth* measures a language's hierarchical

structure and finds complexity that is embedded in nested topics and sub-topics. However, a legislation without a deep hierarchical and nested structure might still have a complex word environment that itself increases costs for user knowledge acquisition. *Entropy* measures that word environment and the complexity embedded within it. Entropy alone is not enough, as a less complex word environment might have a high level of complexity embedded within its structure. Thus, *Average Section Depth* and *Entropy* work together to measure the complexity of a file.

Salience of legislation is measured through the recitals in the legislative proposal. Recitals are incorporated into the Commission's initial proposal. They are reasons listed by the Commission arguing for why a particular piece of legislation should be adopted. They have been shown to be positively correlated with the importance of a piece of legislation (Häge, 2007; Häge and Naurin, 2013; Wøien Hansen, 2014). Legislation that is more important will be more difficult to agree on than legislation that is less salient, and thus may require more changes for it to pass. *Recitals* is the number of recitals in the Commission's proposal. These proposals contain the recitals the Commission included, typically at the beginning of the proposal, usually introduced with "Whereas".

The length of a file is measured by the number of articles in the Commission's proposal, *Articles*. Files with more articles will have more provisions and cover more topics. These will result in more divergences and nuances in opinions, further resulting in ideological changes.

For Hypothesis 4.5 I use NOMINATE scores to measure the policy preferences of MEPs. I calculated NOMINATE scores for all Members of the European Parliament who served the full 7th EP term (2009-2014). I collected vote data from itsyourparliament.eu, which offers roll call data on each vote for the 7th EP. I used this data to calculate NOMINATE score for these MEPs with the wnominate and pscl packages in R using the first dimension estimated. Next, I identified the median NOMINATE scores for each EP Committee and for the EP as a whole. I look at the distance between the median member of the responsible Committee and the median member of the EP with the variable *Committee-EP Distance*.

As a control variable I included the legislative instrument used. Cross and Hermansson found this variable to be a significant predictor of the number of changes made to a file between when it was introduced to when it passed (Cross and Hermansson, 2017). However, Chapter 3 found this not to be the case. Still, certain legislative instruments might encourage more contestation and ideological changes. The legislative instrument for each file was obtained from EUR-Lex. The legislative instruments included are Decisions, Directives, and Regulations. Decisions is the reference category.

Table 4.2: Predicted effect of independent varaible on dependent variable

Variables	Prediction	Hypothesis
Did a Trilogue Occur?	Decrease	4.1
Average Section Depth	Increase	4.2
Entropy	Increase	4.2
WCR	Increase	4.2
Recitals	Increase	4.3
Pages	Increase	4.4
Committee-EP Distance	Increase	4.5
Directives (vs Decisions)	Increase	Control
Regulations (vs Decisions)	Increase	Control

4.5 Results

Differences in changes to the ideological content was evaluated with a standard ordinary least squares regression model. Table 4.2 shows the expected direction of change in the dependent variable predicted by the hypothesis in Section 4.3. Table 4.3 displays the results of the three OLS models evaluating changes in the ideology of legislation.

Each model differs in the measure of complexity used. Model 1 uses *Average Section Depth* to measure complexity, Model 2 uses *Entropy*, and Model 3 uses *WCR*. This was done to make sure that WCR and its components were not included in the same model, to avoid concerns of multicollinearity as all three variables measure an element of complexity. *WCR*, specifically, is best to not include in a model with *Average Section Depth* or *Entropy* as the latter two variables are used to construct *WCR*

In Model 1, *Did a Trilogue Occur?* is negative, as expected in Hypothesis 4.1, and is statistically significant. This supports the prediction in that hypothesis that it is harder to change the ideological content of trilogue legislation.

Average Section Depth, the measure of complexity in Model 1 is negative, against the predictions in Hypothesis 4.2. However, it is not significant. *Recitals* is positive in Model 1, as expected by Hypothesis 4.3. Once again, though, it is not statistically significant. *Articles* is negative, contradicting Hypothesis 4.4, but as with both *Average Section Depth* and *Recitals*, it is not significant.

Hypothesis 4.5 is evaluated with *Committee-EP Distance*. In Model 1, *Committee-EP Distance* is positive and is statistically significant. This supports the expectation that disagreements between key actors results in more ideological changes.

Table 4.3: How many ideological changes do files receive?

	Dependent variable:		
	Ideological Changes		
	Model 1	Model 2	Model 3
Did a Trilogue Occur?(-)	-0.116^{*}	-0.201^{***}	-0.189^{***}
	(0.052)	(0.054)	(0.054)
Average Section Depth(+)	-0.044		
	(0.048)		
Entropy(+)		0.164^{***}	
		(0.037)	
WCR(+)			0.002^{***}
			(0.0004)
Recitals(+)	0.002	-0.003	-0.002
	(0.003)	(0.003)	(0.003)
Articles(+)	-0.003	-0.004^{*}	-0.005^{*}
	(0.002)	(0.002)	(0.002)
Committee-EP Distance (+)	2.391^{**}	2.223^{**}	2.231^{**}
	(0.835)	(0.808)	(0.813)
Directives (vs Decisions) (+)	0.044	0.084	0.081
	(0.079)	(0.077)	(0.077)
Regulations (vs Decisions) (+)	0.112	0.139^{*}	0.131
	(0.069)	(0.067)	(0.067)
Constant	0.363^{***}	-0.951^{**}	0.239^{**}
	(0.087)	(0.300)	(0.080)
Observations	287	287	287
Log Likelihood	-96.595	-87.394	-89.329
Akaike Inf. Crit.	209.191	190.788	194.659
Note:			*p<0.05; **p<0.01; ***p<0.001

Finally, both *Directives (vs Decisions)* and *Regulations (vs Decisions)* are positive as expected, but neither are statistically significant.

Model 2 uses *Entropy* to measure complexity rather than *Average Section Depth*. *Did a Trilogue Occur?* remains negative and statistically significant. Hypothesis 4.1 remains supported in Model 2.

Entropy is positive as predicted by Hypothesis 4.2. It is also statistically significant with a large effect size. These results suggest that complexity from the file's word environment does relate to increased ideological changes.

Recitals is negative in this model, against the expectations of Hypothesis 4.3. It is still not statistically significant. *Articles* once again is negative, but in this model it is statistically significant. This model thus adds evidence that contradicts with Hypothesis 4.4.

Committee-EP Distance is positive and significant again, adding more evidence for Hypothesis 4.5. *Directives (vs Decisions)* is again positive and not significant. *Regulations (vs Decisions)* remains positive as well. However, it is statistically significant in this case.

Lastly, Model 3 uses *WCR* as the measure of complexity. *WCR* is positive and statistically significant. However, its effect size is only barely above zero. Regulations is no longer significant. All other variables remain the same.

These models provide support for three of the hypotheses presented in Section 4.3. *Did a Trilogue Occur* is negative and significant in all three models. We can say, therefore, that trilogues help prevent changes being made to the ideological content of a legislative files.

Hypothesis 4.2 is more mixed. *Average Section Depth* is negative in Model 1, against the predictions of Hypothesis 4.2. However, it is not significant. Both *Entropy* and *WCR* are positive and significant in Models 2 and 3 respectively. There is a large difference in effect size, with *Entropy* over 1.6 and *WCR* barely above zero. Together, these results suggest that *Entropy* captures variance associated with complexity, while *Average Section Depth* does not. The largest changes across these models occur when *Average Section Depth* is replaced with *Entropy*, either when *Entropy* is on its own or is combined with *Average Section Depth* in *WCR*.

Interestingly, *Average Section Depth* is negative, suggesting that it captures something different from complexity. *Entropy* capturing the variation associated with complexity more than *Average Section Depth* could also explain the difference in effect size between *Entropy* on its own and *WCR*. When *Entropy* is combined with *Average Section Depth*, the effect is

smaller than when *Entropy* is alone.

Similarly, Hypothesis 4.5 is also supported. *Committee-EP Distance* is positive and significant. Thus, when the responsible committee is an outlier from the rest of the EP the ideological content of a legislative file changes more from proposal to passing.

These results provide evidence that contradicts Hypothesis 4.4. *Articles* was negative in all three models, and was significant in Models 2 and 3. Rather than encouraging more ideological changes, the length of a file seems to relate to *less* changes. More work needs to be done to understand why more articles relates to fewer changes. One possible explanation is that the number of articles is capturing something other than just its length. What is interesting is the only model *Articles* is not significant in is Model 1 where *Average Section Depth* was included. This suggests that there is something in the hierarchical structure of legislation that *Articles* and *Average Section Depth* both partially capture.

Lastly, Hypothesis 4.3 does not receive support. *Recitals* is positive in one model, negative in the other two, and insignificant in all three. Thus, the salience of the file does not seem to be related to ideological changes.

4.6 Conclusion

This chapter identifies factors of legislation that influence how many changes are made to a legislative file. It specifically focuses on one type of change, changes made to the ideological content of legislation. These changes result from contestation over legislation. More contestation leads to more negotiations, agreements, and ultimately changes made. Three broad factors are identified as relating to contestation and change: the legislative process itself; specific characteristics of legislation and its content; and disagreements between actors and preferences.

The first factor related to ideological change is the legislative system used, specifically the use of trilogues. A trilogue being convened for a given legislation decreases the number of ideological changes made to the legislation.

That trilogues decrease changes in ideology supports the role trilogues play in preventing gridlock. Trilogues are a form of unorthodox lawmaking, as first described in the US by Sinclair. Unorthodox lawmaking was a response to increased in inter-party ideological differences in the 1980's and 1990's along with increased intra-party cohesion. The increase in contestation encouraged a move from one legislative processes to many (Sinclair, 1997).

Trilogues play a similar role in EU legislation, acting as a form of unorthodox legislation to decrease contestation created by structural problems in the OLP.

Trilogues are designed to have actors reach agreements on legislation. Once these agreements are put in place, further changes are discouraged. Trilogues thus limit ideological changes to only those that need to made, if any need to made at all. As Chapter 1 argues this is done to correct structural problems in the OLP.

However, in trying to correct for these structural problems, trilogues risk the legitimacy of the EU and EU law. Trilogues have been regularly criticized for their lack of transparency (Reh et al., 2013; Roederer-Rynning, 2019; Reh, 2014; Brandsma, 2019; Curtin and Leino, 2017; Leino, 2017). If this nontransparent legislative process reduces debate by democratically elected lawmakers to a narrow group it can harm the legitimacy of the EU.

Trilogues rely on a small number of legislators to make an agreement, and then restrict the ability of the rest of the legislators to alter that agreement. Restricting input of democratically elected lawmakers makes the process less democratic and can make EU law less responsive to EU citizens. This risk to legitimacy is still theoretical in the sense that there are still many unknowns about the trilogue process. While this chapter demonstrates that contestation is limited in official channels of EU law, there is still the potential that lawmakers excluded from the trilogue process impact legislation through other channels. This provides an avenue for future research.

Trilogues' role as demonstrated in this chapter has important implications for the study of trilogues, the EU, and comparative legislatures overall. For trilogues, this chapter demonstrates a clear effect of the trilogue system: it limits ideological change. This, in turn, has implications for the EU as a whole.

First, as mentioned above, limiting the ability of democratic lawmakers to impact legislation imposes costs on the democratic legitimacy of the EU. Second, if ideological changes are limited for trilogues, it means that the Commission may have gained in influence with the change to the trilogue system. If the legislation the Commission proposes doesn't change in ideology, the Commission might be able to propose legislation that is more favorable to it. Whether the Commission does or is even able to do this is a different question, one that needs to be explored further.

Trilogues decreasing the number of ideological changes made also has important implications for the comparative legislatures literature more broadly. Trilogues are a workaround to a bicameral system, and the results in this chapter show it has a demonstrable effect. This

further exemplifies the importance of gridlock and structural problems in legislative systems, as trilogues are used to account for these problems. These results also speak to unorthodox lawmaking in legislative systems. Trilogues' effects on law are a noted effect of unorthodox lawmaking in a legislative system.

This chapter also emphasized the importance of complexity on legislation. Complexity in legislation and law imposes knowledge acquisition costs on both citizens and legislators. Since knowledge acquisition costs will result in lower compliance with the law, lawmakers play close attention to the complexity in legislation. Complexity in legislation thus has effects on legislation and legislation-making. Chapter 3 showed that complexity related to more changes overall. This chapter furthers this finding by demonstrating that complexity also increases the ideological changes made.

This finding has implications for the EU literature. Specifically, these findings further explain the relationship between complexity and trilogues. The contestation created by complex legislation threatens to push files to later stages of the OLP where agreements become more difficult. Instead, the EU uses trilogues.

For the EU and comparative legislatures literature more broadly, this chapter further reinforces that complexity has consequences for legislation. However, what these consequences are may change depending on the context. In the EU, it has fueled the turn to trilogues as a way to ensure complex legislation passes on time. Whether other legislatures turn to similar unorthodox lawmaking for complex legislatures is important to explore. Different contexts may respond differently though, and understanding the approach taken by different contexts can expand our understanding of the functioning of legislative systems.

Finally, these results highlight the impact of Committee outliers. When the responsible Committee is an ideological outlier from the rest of the EP there is greater contestation over the legislative files. The result is more agreements that need to be made and ultimately more changes to the ideological content of legislation.

It is interesting that Committee outliers lead to more ideological changes while also leading to less overall changes in Chapter 3. So while differences between key actors will limit changes, the situation does require there being more ideological changes. The differences in opinions between the Committee and the EP needs to be reconciled. So changes that are made are made to its ideology. The EU places emphasis on consensus, and this finding supports that notion. When the Committee and the full EP disagree, they will make compromises and move the ideology of legislation, while limiting the number of changes made overall.

This finding has important implications for both the EU and the comparative legislatures literature. Most important is whether handling ideological differences this way, limiting total changes but encouraging more changes to ideology, is specific to the EU. There are some characteristics of the EU that would make sense with the EU being unique in this regard.

First, the EU is a consensus-driven system. The institutions might reach more compromises than in other systems. These compromises come primarily in the form of ideological change. Second, few legislative files fail to pass in the EU. As with an emphasis on consensus, an emphasis on bills passing may fuel compromise. Lastly, the Committee's power in the amendment process may force them to walk a narrow tight rope. While Committees have significant power over amendments, they must still reach consensus with the plenary. This seems to mean reigning in their preferences when they are outliers from the EP.

How ideological disputes such as between a Committee and the full legislative body get resolved is important for our understanding of how legislatures function. For the EU, it is important that Committees and the EP reach agreements by making ideological change. For the study of legislatures comparatively, it is important to determine what factors lead to this behavior. Doing so can help develop our understanding of how legislatures function, especially when a case like the EU is compared with a legislature where these types of disagreements result in a different outcome.

Chapter 5

Conclusion

The European legislative system has experienced numerous changes over its lifespan. Its most recent iteration, the Ordinary Legislative Procedure (OLP), brought along perhaps the system's biggest change to date. The size of this change comes from the increased role of the European Parliament (EP), which in the OLP is now a co-legislator with the Council of the European Union (the Council). Because the EP is now a co-legislator with the Council, many observers have argued that the OLP is a bicameral legislative system. Scholars of the EU have increasingly come to analyze the European legislative process as such (Tsebelis and Money, 1997; Kreppel, 2011; Finke, 2017; Hagemann and Hoyland, 2010; Rasmussen and Toshkov, 2011; Yordanova, 2011; Häge, 2011). The OLP shares many similarities with "strong bicameral" systems such as the US, Germany, and Switzerland (Costello, 2011). Like the US and Germany, the EU has an upper house, the Council, where representation is based on sub-units or states. Selection of Council members is even similar to the pre-1913 US Senate, and to the modern-day German Bundesrat (Kreppel, 2011). Procedurally, the OLP has two common features of bicameral decision-making: a navette system and conference committees. The EU's navette system, its multiple readings, sends legislation back and forth between institutions, allowing each institution to influence legislation. The OLP's conference committee system, called Conciliation Committees, works as a back stop to ensure that each institution must agree to the legislative file in order for it to pass.

Because an agreement is required, behaviors *within* each institution are structured, in part, by interactions *among* the institutions. Recognizing the bicameral structure of the EU helps to explain why each of these institutions has an impact on the internal organization and behavior of the other (Kreppel, 2011). This inter-relationship is why understanding the EU as a bicameral system is crucial to understanding trilogues. Without an equal EP and Council

the EU would not need trilogues. It is because an agreement between institutions is required, and because the structural problems within the OLP make these agreements more difficult, that trilogues are necessary.

Trilogues include representatives from the all three legislative institutions. Generally, the names of participants are not made public. The position of actors attending trilogues is determined by intra-institutional rules and practices and varies between the two major types of trilogues, "political" and "technical" trilogues.

Political trilogues involve the main delegations and are the meetings where negotiations take place and compromises are struck. The EP's delegation is by far the largest, with as much as twenty-five members. It always includes the rapporteur, while all shadow rapporteurs are also invited. The relevant Committee Chair's attendance varies by Committee. For some Committees, the Chair always attends and chairs the trilogue; for other Committees, the Chair almost never attends. These political actors will often bring their assistants and Party Group policy advisers. Lastly, the EP team is supported by the relevant Committee's Secretariat, the legal service, and the Conciliation and Codecision Unit.

The delegation for both the Council and the Commission are smaller. The representatives for the Council includes officials from the Council Presidency at the level of the working party. Officials from the Committee of Permanent Representatives (COREPER) who are the civil servants who support the Council, and officials from the Council's General Secretariat, including the legal service. Lastly, the Commission's delegation includes the relevant head of unit of the directorate general in charge of the file, and by the desk office responsible for the proposal. Neither Ministers nor Commissioners generally represent their institution in political trilogues.

Technical trilogues meet to brainstorm solutions and informally exchange ideas. The EP's technical trilogue team includes representatives from the responsible Committee Secretariat, the legal services, the Conciliation and Codecision Unit, officials from the Party Groups, and assistants of the rapporteur and the shadows. The MEPs themselves only rarely attend. For the Council, the delegation includes the chair of the relevant working party, officials from the Council Secretariat, and members of the Council's legal service. Lastly, the Commission's representatives include its legal services, the relevant desk officer, and sometimes the head of unit of the responsible directorate general. In all, political and technical trilogues both can have up to 50 attendees (Dionigi and Koop, 2017).

Trilogues take place after the Commission proposes legislation, but prior to the first stage of

the OLP. The proposed legislation is seen by the institutions prior to the inter-institution meetings. In the EP this comes in the form of the rapporteur's draft report; MEPs not only see this report, but can propose amendments to it. If these negotiations are successful, the EP rubber stamps the amendments for the Council to vote on (Reh et al., 2013; Héritier and Reh, 2012).

A meeting between the institutions prior to the official readings allows for a consensus on amendments that both the Council and the EP's representatives can agree on. This agreement needs to be able to pass in the Council, given QMV voting, and needs to be acceptable to enough of the EP's Party Groups, who then must be able to maintain loyalty from their members. The institutions use trilogues to exploit a provision in the Amsterdam treaty that allows for legislation to pass before the Council issues its position. Trilogues are used to reach an agreement that can be passed by the EP and agreed on by the Council at this stage.

The EU has relied on trilogues because of structural problems in the OLP that make agreements difficult specifically at the start of the OLP's second stage. Both the Council and the EP have limited resources that become strained the longer legislation takes to pass. In addition, the rules in the EP for amending legislation changes during the second stage, adding a super-majority equivalent. With the Council always having a super-majority requirement, agreeing on legislation becomes difficult after the first stage. Trilogues encourage agreements at this stage.

Trilogues are a novel form of dispute resolution mechanism in a bicameral system. They were developed and have become normalized because they resolve structural problems in the OLP. However, they present some unique puzzles to our understanding of dispute resolution mechanisms. First, they are extra-constitutional and thus are an informal system. They are different from the most commonly studied mechanisms, such as the navette system and conference committees. In that sense they are more akin to the "unorthodox lawmaking" first identified by Sinclair.

Second, trilogues are unique because they occur *before* the houses have had a chance to amend legislation. This contrasts with navettes which occur *while* the houses are amending legislation and conference committees which are *after* the legislatures have been amended. Trilogues are thus a preventative dispute-resolution mechanism, occurring before the houses have formally disagreed over legislation. Their rules and features have important implications for legislation. Trilogues unique timing creates a unique structure with a unique impact on legislation.

Key events in the early life of the OLP created conflict trilogues help solve. When the OLP was first introduced, the two institutions had different views as to their comparative power within the system: the Council thought the EP would still serve a consultative role, while the EP thought of themselves as an equal legislator. Not long after the Maastricht treaty, the EP was able to threaten to block legislation to win concessions, to force the Council to recognize the EP's power, and ultimately to influence later treaty changes (Farrell and Héritier, 2003). The EP was able to do so through uses of its third reading veto. The EP first used this power in July of 1994, rejecting the Council's position after the two institutions failed to agree to a joint text in a Conciliation Committee (Garman and Hilditch, 1998). The EP exercised this veto again in March of 1995, this time *after* the institutions had agreed to a joint text in the Conciliation Committee (Rittberger, 2000).

Conflicts between houses is typical of bicameralism. What makes the OLP different and requires trilogues are specific structural problems. First, trilogues solve problems with increased workload for both institutions that came with the OLP, as well as the expansion of the EU (Shackleton and Raunio, 2003). The workload is particularly problematic for the Council, because they have limited time and personnel resources, which especially hurts them in the OLP's Conciliation Committee system (Häge and Kaeding, 2007).

In addition, the Council is always required to make decisions by a super-majority, either in the form of QMV, as in most cases in the OLP, or by unanimity. Thus, as the EP and Council have reached, or at least come close to, parity in the legislative process, agreements on legislation have become more difficult. The structural problems in the OLP play a large role in increasing the difficulty of agreements. These disadvantages in the OLP biased the Council towards concluding at earlier stages of the OLP (Häge and Kaeding, 2007).

The EP is also encouraged to agree early, particularly before the OLP's second stage. During the second stage, the OLP adds an absolute majority requirement to EP decision making (Brandsma, 2015). In the EP's first reading, the EP can amend, accept, or reject legislation by a simple majority of present members. But in the second stage, while the EP can still accept by a simple majority, to amend or reject the legislative proposal the EP requires an absolute majority of *all* members. This requirement is the same as the requirement in the first stage if and only if all members are present. But as the attendance during the second stage decreases towards 50%, the requirement moves toward a unanimity requirement (Hagemann and Hoyland, 2010). This is particularly difficult in the EP, as it has always had trouble with absenteeism due to its two locations (Brussels and Strasbourg) and with many MEPs having multiple occupations. This requirement is stringent enough to be considered an equivalent of

a super-majority requirement (Tsebelis, 2000).

Thus during the second stage both institutions have a super-majority or equivalent requirement. These requirements, coupled with the limited resources of the two institutions, makes reaching agreements difficult. In the face of this potential gridlock the EU has turned to trilogues as a legislative work-around. This type of work-around has been observed in other legislative contexts in cases of gridlock. Most notable is in the US where Congress has turned to "unorthodox lawmaking" as a means to pass legislation in an environment of high gridlock (Sinclair, 1997).

I contribute to the study of trilogues, EU legislation, and comparative legislatures more broadly with three chapters on trilogues and their role in EU legislation. In Chapter 2 I identified legislative characteristics that correlate with increasing the probability a trilogue is convened for a given file. Chapter 3 looks at legislative amendments and whether trilogue legislation receives more or less changes. Finally, Chapter 4 looks at the impact of trilogues on the ideological changes made to legislation.

Chapter 2 addressed when trilogues are used. The literature has struggled with addressing this question, resulting in conflicting and sometimes contradictory results. In this chapter I argue that the complexity of a legislative file is an important and previously unidentified factor in determining if a trilogues is convened. Complexity is understood to impose costs on the end user, i.e. the individual citizens. Variables related to complexity, the number of recitals, pages, and articles in the Commission's proposal, the number of amendments in the rapporteur's draft report, and files which were B-points on the Council's agenda, all correlated with trilogue use. However, correlation between these variables suggested a latent variable. In this chapter I used a factor analysis to identify that these variables do, in fact, correlate with a latent variable. I argue this variable is the complexity of legislation, and the factor scores were shown to relate to the use of trilogues. I then use weighted complexity rank and its two components, average section depth and entropy, to more directly measure complexity. These direct measures of complexity were associated with the use of trilogues.

Chapters 3 and 4 addressed effects of trilogues on EU legislation. Both specifically look at changes made to trilogue legislation when compared with non-trilogue legislation. They differed in regards to the types of changes made, with Chapter 3 looking at any type of change, while Chapter 4 looked specifically at ideological changes.

Chapter 3 looked at any changes made to a legislative file. I use a minimum edit distance algorithm named DocuToads to measure the edits made between the Commission's proposal

and the final legislative text. I find that trilogue files do not relate to more or fewer changes in legislation. Both the complexity of the legislation and the number of pages in the file related with more legislative changes. Lastly, the ideological distance between the median member of the Committee and the median member of the EP related with fewer changes made.

Chapter 4 looks at a specific type of change, changes to the ideological content of legislation. To measure ideological changes, I used the scaling algorithm WORDFISH. Trilogue legislation received less ideological changes than non-trilogue files. The file's complexity and the ideological distance between the median member of the Committee and the median member of the EP related with more ideological changes.

Chapter 2 demonstrates that trilogues are used to pass complex legislation. Trilogues are needed because complex legislation presents difficulties for the system. Some of these difficulties are shown in Chapters 3 and 4. Complex legislation sees more overall changes and more changes to ideology. Both of these types of changes increase the likelihood of gridlock in the OLP, which the EU solves with the use of trilogues.

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Trilogues themselves do not seem to relate to more or less amendments to legislation. Chapter 3's finding in this regard is puzzling considering the hypothesized function of trilogues; trilogues promote agreements on legislation, and then discourage all other changes. Trilogues not decreasing changes does not contradict this claim *per se*. It might simply be the case that legislation that require trilogues need the same number of changes made as any legislation, but that all of these changes result from trilogues. Thus, the system might still discourage changes made *except for* the ones made in trilogues.

Future research can explore whether or not this is the case by looking at *when* these changes are made using a method similar to the one in Chapter 3. To do so would require identifying a document that could serve as the result of the trilogue negotiation. Laloux and Delreux used the EP's first reading position when determining how much agents deviated (Delreux and Laloux, 2018). One could then use DocuToads to measure changes made between the Commission proposal and the EP's first reading to see if legislation remains the same in the

number of changes after they come out of a trilogue. Similarly, they could compare the first reading document to the final text to see the difference between trilogue files there. The expectation would be that trilogues relate to no difference in the former case, while relating to difference in the latter.

However, trilogues *do* relate to less of a specific type of change, ideological changes. Chapter 4 shows that the ideology of a file changes less when a trilogue meets for that file than when a trilogue does not. This finding does support the notion that the trilogue system limits changes, it is just contained to one type of change. That ideological change is the type of change that is limited makes sense. Ideology is the most likely component of a bill to spark contestation, disagreements, and increase the probability of gridlock.

I thus contribute to the study of European Union politics through the development of the EU institutional and political context. This context is important as it is necessary to understand the institution's context in order to understand their behavior. Scholars have argued that institutions cannot be effectively studied in isolation from both the other institutions and the broader political environment (Kreppel, 2011). This has been shown most clearly in the US, where the House sets different internal rules depending on their relationship to the Senate and President (Sin, 2015). The importance of trilogues in the EU's legislative system requires scholars now more than ever to study the institutions in the inter-institutional context with which they operate. Trilogues, and their increased use will, thus change how the EP and the Council behave.

Thus, through the study of trilogues, I hope to further develop the understanding of how legislation is made in Europe, and whose interests are represented. Trilogues are a change to the institutional process that can impact all twenty-seven member states of the EU.

Through developing our understanding of trilogues I also contribute to the comparative legislatures literature more broadly. First, trilogues are a unique form of dispute-resolution mechanism in a bicameral system. Trilogues occur before formal disputes have emerged, making them different from navettes, which occur while houses are debating on legislation, or conference committees, which occur after. Thus, trilogues have a unique impact on the structures of legislation that will develop our understanding of bicameral legislatures more broadly. Because trilogues are unique among other bicameral legislative institutions, studying its effects on EU legislation will contribute to our understanding of other legislative processes, specifically dispute resolution between houses in a bicameral legislature.

I also contribute by highlighting the importance of the complexity of legislation. Complexity in

legislation increases the costs associated with knowledge acquisition, the ability of individuals to absorb, store, and analyze new information. Complexity increases these costs for both the end user, i.e. citizens, but also for legislators themselves. Citizens will be less likely to comply with law that has high knowledge acquisition costs. Legislators must also acquire knowledge on legislation as it passes through the system, and when those costs are high, it is more difficult to do so. For both of these reasons, legislators will want to reduce their costs.

I show that complexity relates to the increased used of trilogues, with more amendments to a legislation, and with more ideological changes. Complexity thus has important ramifications for EU legislation. Legislative files with high levels of complexity introduces challenges to legislators and legislative systems. These legislation present high costs to knowledge acquisition for both the legislators themselves and to citizens. That they also contribute to more ideological changes suggests that they also come with diverging preferences.

Complexity has important implications for legislation and legislative systems and should be incorporated into the study of the EU and of comparative legislatures more broadly. For the comparative legislatures literature, its important to note that the consequences of complexity may change depending on the context. In the EU, it has fueled the turn to trilogues as a way to ensure complex legislation passes on time. Whether other legislatures turn to similar unorthodox lawmaking for complex legislation is important to explore. Different contexts may respond differently though, and understanding the approach taken by different contexts can expand our understanding of the functioning of legislative systems.

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Appendix A

Factor Analysis Assumptions

A.1 Preparatory Steps

An exploratory factor analysis requires some preparatory steps. First is reporting descriptive statistics. These are displayed in Table A.1.

Next, it is important to look at the correlations between variables to determine if factor analysis is appropriate. Particularly, we are looking for correlations about 0.3 or greater. Figure A.1 shows slight less than half of our bivariate correlations display this. This is potentially a set of low correlations. However, tests for factorability, shown in Section 2.4.2 were promising and thus I continued with these variables for the factor analysis.

A.2 Assumptions

The assumptions of factor analysis are similar to that of most multivariate linear models. The assumptions that will be tested here are the linear relationship between variables, no or a low number of outliers, no or a low number of missing data, and normality of the data.

First is the linear relationship between the correlation of the variables. Non-linearity can result in a mis-specified model. Figure A.2 demonstrates linearity between the key variables.

Next, I checked for the presences of outliers in the data. Outliers can bias correlation estimates, and thus the results of a factor analysis. Figure A.3 checks for multivariate outliers.

The plot shows one case of an extreme outlier and a handful of others that likely qualify. I identify the outliers using Mahalanobis distance. Mahalanobis distance is a measure of the

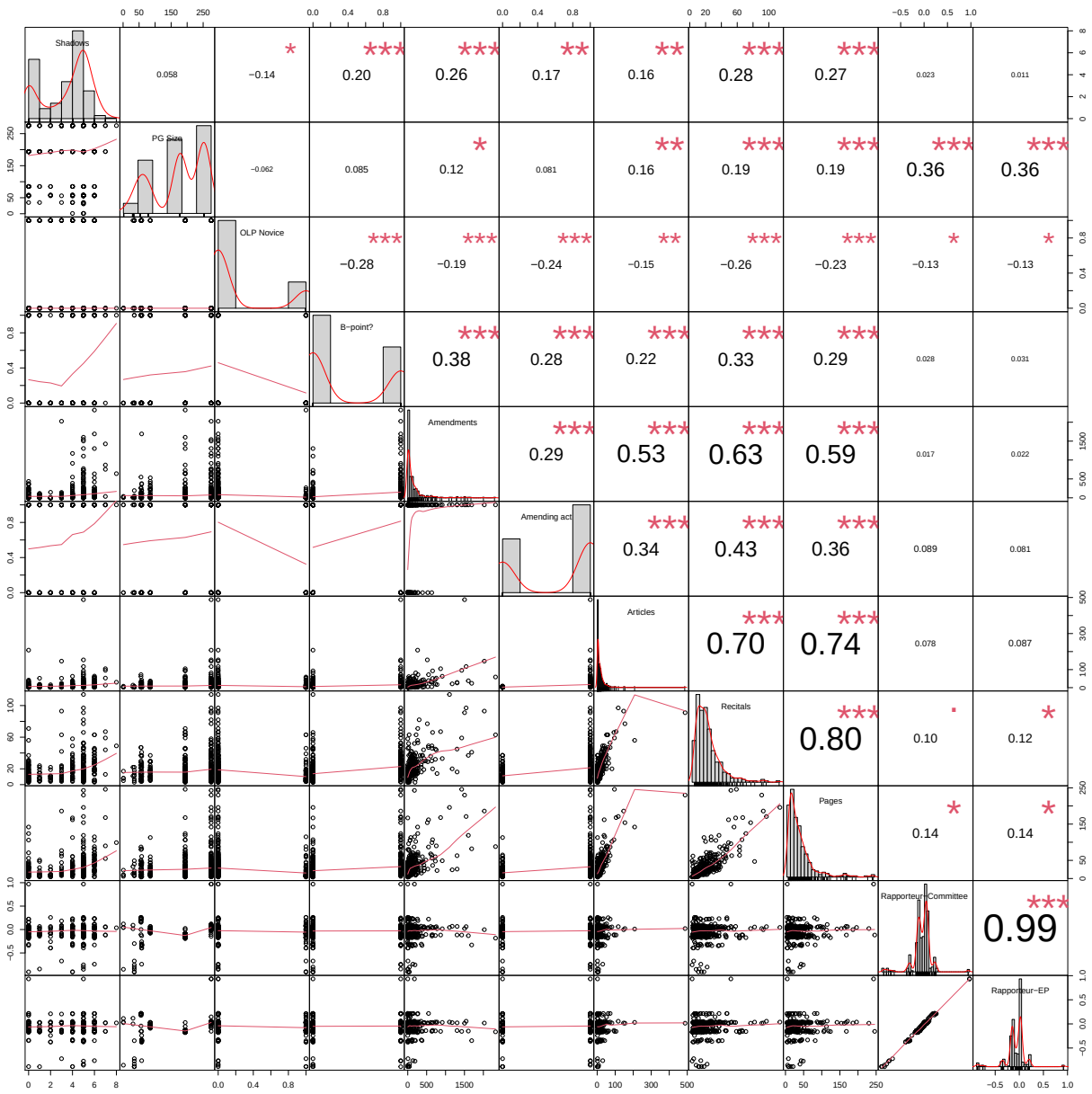

Figure A.1: Correlation among EFA variables

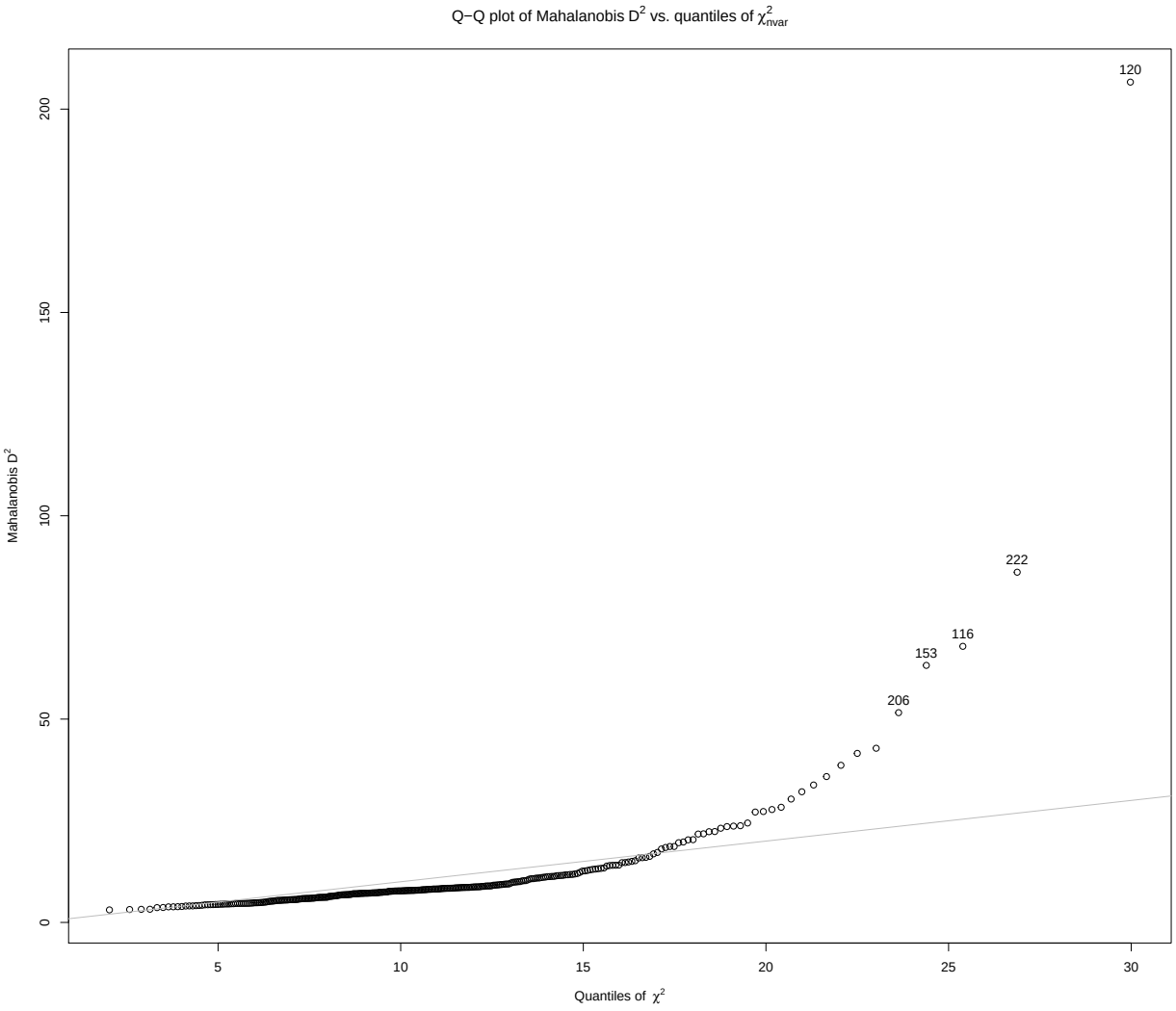

Figure A.2: Q-Q plot of outliers

Table A.1: Descriptive statistics

	n	mean	sd	median	min	max	skew	kurtosis
Shadows	313	3.6	2.1	4.0	0.0	8.0	-0.6	-1.0
PG Size	313	188.7	86.8	194.0	1.0	275.0	-0.6	-1.1
OLP Novice	313	0.2	0.4	0.0	0.0	1.0	1.3	-0.4
B-point?	313	0.4	0.5	0.0	0.0	1.0	0.4	-1.8
Amendments	310	166.5	318.9	52.5	0.0	2322.0	3.6	15.5
Amending act	295	0.6	0.5	1.0	0.0	1.0	-0.5	-1.8
Articles	298	18.2	36.3	9.0	1.0	488.0	8.3	95.3
Recitals	310	21.0	16.8	17.0	3.0	114.0	2.1	6.1
Pages	310	35.9	38.3	24.5	4.0	246.0	2.8	9.5
Rapporteur-Committee	313	0.0	0.2	0.0	-0.9	1.0	-0.8	8.7
Rapporteur-EP	313	-0.1	0.2	0.0	-0.9	0.9	-0.8	8.5

distance between a point or a vector of points and the center of a data set. It specifically measures how many standard deviations away the point(s) are from the mean of the data in a multi-dimensional space, while factoring into account the correlation structure of the data. The formula is as follows:

$$MD = \sqrt{(x - \mu)^\intercal C^{-1} (x - \bar{\mu})}$$

Where:

- MD is the Mahalanobis Distance
- x is the data point or vector of data points
- μ is the mean of the data
- C^{-1} is the inverse of the covariance matrix

Data points are considered outliers when they have a Mahalanobis Distance above the threshold of 33. Results in Table A.2 show that there are eleven cases higher than the critical value. With this low amount of outliers, I determined it was best to leave them in the analysis.

Similarly, a large amount of missing data can bias results. As a rule of thumb, imputation methods should be considered if more than 10% of the data is missing. In my data set 1.12% is missing, well below this threshold, so imputation was not necessary.

Lastly, certain factor extraction methods, specifically maximum likelihood, assumes normality

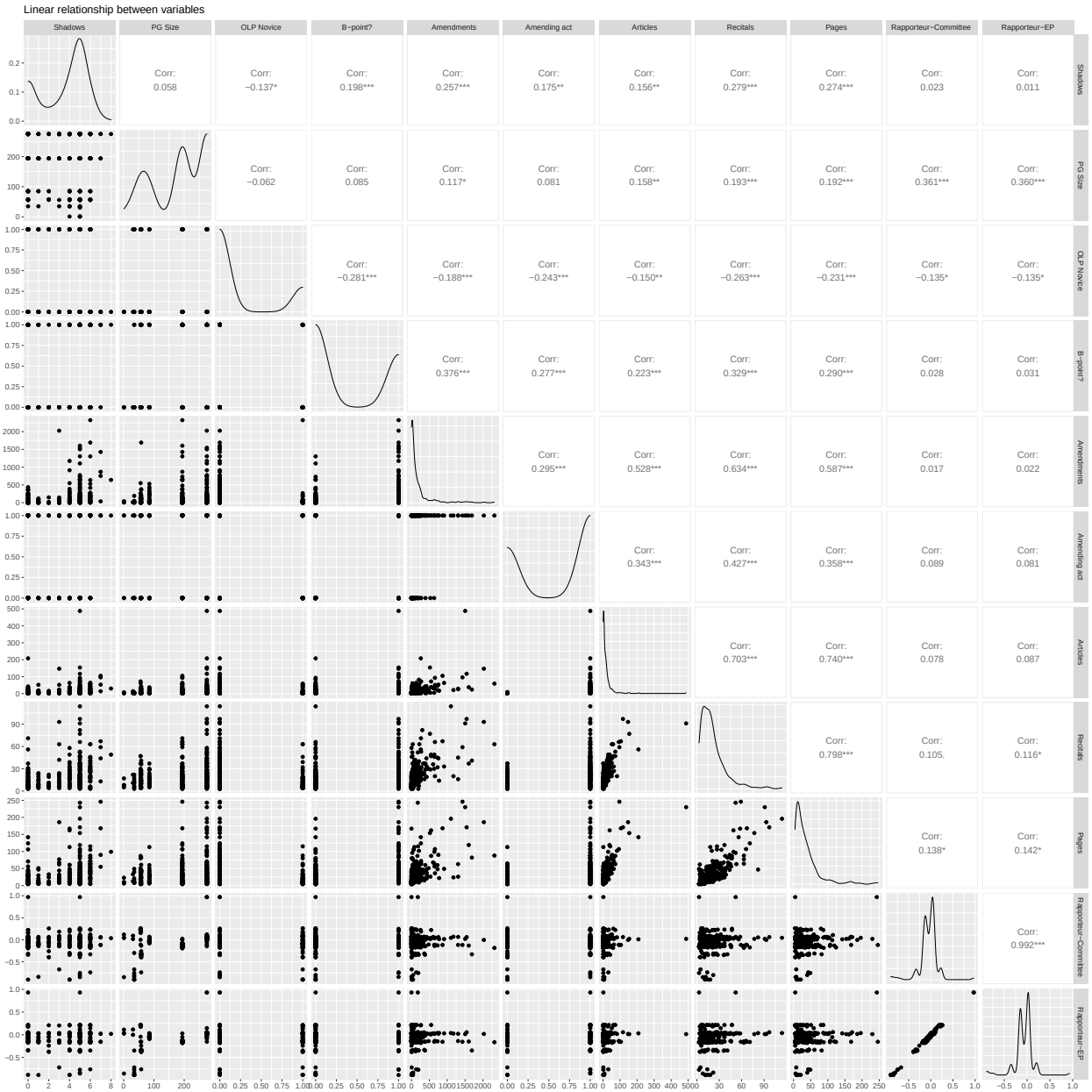

Figure A.3: Linear relationship between variables

Table A.2: Outliers

Mahalnobis Distance	Legislation ID
206.6	COD(2011)0202
86.1	COD(2012)0027
67.9	COD(2011)0195
63.2	COD(2011)0298
51.6	COD(2011)0438
42.8	COD(2010)0395
41.6	COD(2011)0276
38.6	COD(2011)0187
35.9	COD(2011)0172
33.8	COD(2013)0104

of the data. If we were to choose maximum likelihood it would be best to have normally distributed data. To test for normality, I used the Shapiro-Wilk normality test. The Shapiro-Wilk test determines if a data set is drawn from a normal distribution. The formula for the test is:

$$W = \frac{(\sum_{i=1}^{n} a_i x_{(i)})^2}{\sum_{i=1}^{n}(x_i - \bar{x})^2}$$

Where:

- W is the test statistics
- n is the sample size
- a_i are constants that depend on the sample size and are used to calculate the expected value of the order statistics used under the assumptions of normality
- $x_{(i)}$ is the i^{th} value of the ordered values of the data set, after sorting in ascending order
- x is the i^{th} data point of the data set.

Shapiro-Wilk tests the null that data are not normally distributed. Thus, a significant result suggests non-normally distributed data. The Shapiro-Wilk p-value was marginally above 0, and thus was statistically significant. I thus must treat my data as non-normal and will not use maximum likelihood as an extraction method, instead using principle axis extraction as discussed in Section 2.4.3.