How negotiators in EU trilogues use 'constraint' to gain concessions

Much of the legislation that is passed in the EU is agreed during informal negotiations between the European Commission, European Parliament, and Council of the European Union. But how are these negotiations conducted and what strategies do negotiators use to secure concessions? Drawing on a new study, **Maximilian Haag** *explains the importance of internal institutional 'constraint' to bargaining outcomes.*

In recent years, 'trilogues' – informal meetings between the European Commission, European Parliament, and Council of the EU – have become the main forum for legislative negotiations under the EU's ordinary legislative procedure. The majority of legislative procedures are now negotiated and decided upon before they even reach the first formal reading stage. In face-to-face trilogue negotiations, representatives of the three institutions negotiate legislative compromises outside the constraints of the formal procedure. Once compromise is found, the law is subsequently 'rubberstamped' by the Parliamentary plenary and Council members at the first reading.

While many stress the benefits of this approach – underlined by a rule change facilitating 'early' agreements in the Treaty of Amsterdam – others have raised concerns about the "disconnection between the EU's transparency policy and citizens' expectations". Whereas formal law-making in the EU is accessible to outside observers, e.g. through the Parliament's Legislative Observatory, informal trilogues escape the procedural sequence of readings between the decisive institutions, the European Parliament and the Council. Researchers and citizens alike need to request a variety of documents from the respective institutions to gain insights, which can often be a lengthy process. As a consequence, we lack systematic knowledge about the dynamics of decision-making and bargaining in trilogues.

Yet, given the increasingly far-reaching influence of EU law on member states and the important role of trilogue negotiations in its formation, the politics of trilogues are central to an understanding of decision-making and public policy at the EU level. In a recent study, I attempt to shed some light on the process by analysing and comparing publicly accessible documents on the institutions' bargaining positions and negotiated outcomes. More specifically, I am interested in the relationship between an institution's internal division of preferences and their negotiators' ability to leverage this institutional distribution of preferences to attain legislative concessions from their bargaining opponents.

Constraint as a bargaining tool

I suggest that negotiators in trilogues can use constraint imposed on them by their parent institution as an asset to obtain a better deal. The phenomenon can often be observed in international negotiations where negotiators might point to their inability to get a certain provision approved 'at home', i.e. in their national parliament or government coalition. Applied to trilogue negotiations, I argue that negotiators should be more successful when the distribution of preferences in their parent institutions allows them to portray their legislative text as provisions without any alternative.

The Parliament and Council negotiate their institutional positions internally and adopt negotiating mandates before entering into the trilogue negotiations. If the parent institution's members' preferences in an issue area are close, the negotiators can claim that they cannot get an alternative set of provisions approved internally due to the strong support for their particular version of the legal text.

At the same time, if the preferences in the ratifying institution are highly diverse, the common institutional mandate may be a fragile compromise among the members, which would then again allow negotiators to stress the difficulty of finding common ground and the need for their particular version to be passed. I thus propose that an institution is more successful in inter-institutional bargaining when its members' preferences either strongly converge or diverge compared to when they are located in between.

Testing the theory

In order to obtain a suitable measure for my phenomenon of interest, the bargaining success of each institution, I rely on the fact that both institutions issue mandates representing their 'ideal law' to their negotiation delegations. This allows me to compare an institution's bargaining position with the legislative outcome of the procedure, i.e. the final law. To do so, I use a minimum edit distance algorithm, which calculates the editing steps (addition, deletion, substitution and transposition of words) necessary to transform the institution's ideal law into the final law. Here, I assume that fewer editing steps imply that the final law is closer to the ideal law in terms of content – i.e. negotiators have been more successful – and vice versa.

To measure the internal division between Members of the European Parliament (MEPs) and among Council members, i.e. the national governments, I rely on pre-coded data on party manifestos to calculate the national party preferences of MEPs and Council members by policy area and subsequently use the standard deviation of preferences in each institution. Additionally, I control for a range of other factors such as the length and type of the policy proposal and the legislative period. Figure 1 below displays the main results of a regression of an institution's bargaining success on its preference heterogeneity for both institutions in the 111 legislative procedures that were negotiated in trilgoues and concluded at first reading between late 2012 and early 2017.

Figure 1: Expected bargaining success over institutional preference heterogeneity for the European Parliament (left) and the Council (right)
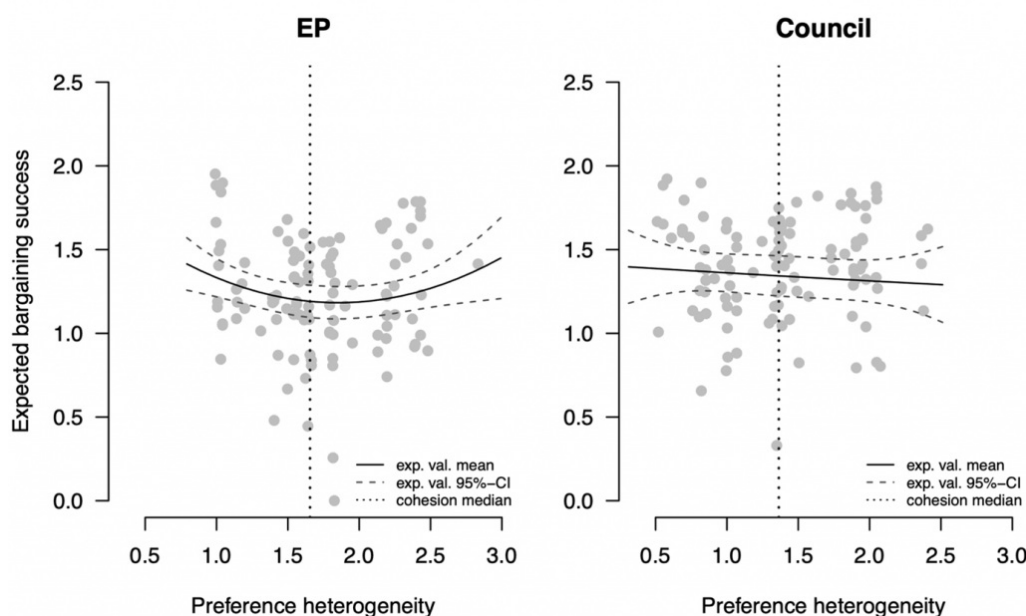
Note: **Dots represent actual observations. Higher values indicate more bargaining success, i.e. less distance between the institutional mandate and the final outcome.**

We can observe a U-shaped relationship between internal institutional preference heterogeneity and expected bargaining success for the EP, but not for the Council. The EP's success in a given procedure is indeed higher when its plenary is either divided or in agreement in an issue area compared to when it is neither, whereas the Council's success appears to vary irrespective of its internal preference heterogeneity.

How can we explain this difference? It may well be that the Council's negotiation delegation does not emphasise its internal constraint due to diverging preferences because it knows that it is not as credible as its counterpart. The Council is, on average, more cohesive than the EP and known for its consensual mode of decision-making. Additionally, the Council, unlike the EP, in general seems to be less keen to 'play the game'. One Council insider, cited in a previous study, described the process as "a game involving the 'adult' solution orientated Council and the teenage Parliament", noting that the Parliament's representatives do "get something from the noise they make."

While my study is not able to provide a fully-fledged explanation of success in trilogue bargaining, it provides a foray into a scarcely touched topic. Previous research suggests that informal trilogues are different to formal co-decision bargaining in many aspects. Given the continued rise of the trilogue format in EU decision-making, it is ever more important for scholars and citizens alike to be able evaluate and analyse legislative outcomes in an accessible manner.

For more information, see the author's accompanying paper in [European Union Politics](#)

Note: This article gives the views of the author, not the position of EUROPP – European Politics and Policy or the London School of Economics. Featured image credit: [European Council](#)