How much do agents deviate from their principals' instructions? A quantitative assessment of trilogue negotiations

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—— *this is a draft paper, please do not quote* ——

1. Introduction

Trilogues are currently the major forum for legislative negotiations in the European Union. They are informal tripartite meetings between representatives of the co-legislators (the Council and the European Parliament) and the Commission. Through trilogue negotiations, the co-legislators aim to reach an informal interinstitutional compromise that can be adopted as early as possible in the formal legislative procedure. Such 'early agreements', i.e. files concluded in the first reading stage of the ordinary legislative procedure and based on an informal compromise negotiated between the co-legislators, represent now the vast majority of the EU legislative procedure (85% in the 7th EP) (European Parliament 2014).

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In the context of trilogues, both the Council and the EP delegate the task to negotiate an interinstitutional compromise to an agent. For the Council, the representative is the rotating Presidency. The EP's representative was previously the rapporteur, but nowadays the EP is represented by a 'negotiating team' led by the rapporteur and including shadow rapporteurs and the chair of the responsible committee. Given that trilogue negotiators are *representing* their institutions, the dynamics of trilogue negotiations can be conceptualized as a two parallel principal-agent relationships in which the two legislative institutions as principals delegate the authority to negotiate an informal interinstitutional deal to the negotiators as agents. The Council Presidency and the EP negotiating team thus occupy a central position in the legislative policy-making process not only because of function they have within their institution but also because their key role in securing an interinstitutional deal. Importantly, the deal that these agents reach in the secluded and restricted trilogue setting must be approved by their respective institutions before it can be formally adopted as a legislative act. This situation raises questions on the extent to which these agents deviate from the instructions of their principals and on the conditions that affect deviation by agents from the principals' initial mandate. This paper empirically assesses the extent to which agents deviate from the positions of their respective institutions in trilogues and examines the patterns in the degree of agent deviation.

Studying agent deviation in the context of trilogues makes an important contribution to the debate on who actually decides in the EU and on the democratic legitimacy of the EU's legislative decision-making. Indeed this legitimacy is, inter-alia, rooted in the public control of the procedure and the accountability of the legislators to their constituents (Lord 2013). However, this accountability chain may be undermined when only a handful of individuals take the final decision in secluded trilogues and the entire group of legislators becomes more and more sidelined. Indeed, the role of those who have the formal powers to legislate, the Council and the EP, risks to become limited to formulating a position before the trilogues and to assessing, on a take it or leave it basis, whether their agent has netted a deal that sufficiently corresponds to their wishes. This seclusion does not allow for public debates justifying the decision taken and reduce the range of opinion that can be heard within the institutions (Reh 2014, Jensen and Martinsen 2015). Therefore, studying

deviation of the trilogue negotiators vis-à-vis their institutions is important for a better assessment of the accountability chain in EU legislative policy-making.

This paper proposes a methodological tool – a deviation index – to measure agent deviation in a quantitative and standardized way, allowing for a large-N study on the topic. The deviation index measures how much the agent deviates from the instructions of the principals. Deviation is considered as the distance between the initially expressed position of the principals and the interinstitutional deal the agent commits to. The paper then applies the index to the entire set of trilogue decision-making processes in the period 2012-2016. Finally, it explains the observed cross-case variation in agent deviation by examining factors related to both the principal side and the agent side of the principal-agent dyad. Importantly, the deviation index and the quantitative analysis do not allow to explain the sources of deviation in a particular policy-making process. Questions as 'why does the agent commit to an interinstitutional deal that deviates from the instructions received by the principals?' or 'why do the principals ultimately accept and interinstitutional deal that includes considerable deviation from their initial position?' cannot be answered with this method. Yet the main advantage of the method is that it allows us to discover patterns of varying deviation.

The paper is structured as follows. Section 2 provides an overview of the state of the art on early agreements and trilogues in EU legislative decision-making. It particularly focuses on the literature that deals with the relationship between trilogue negotiators and their respective institutions. Section 3 outlines the expected pattern of negotiators' deviations by focusing on factors at both sides of the principal-agent dyad. Section 4 presents our deviation index and the data. Section 5 then presents the descriptive results and gives a first evaluation of these expected patterns by means of descriptive statistics. Finally, Section 6 presents the conclusions.

2. The relationship between trilogue negotiators and their legislative institutions

In the early 2000s, the first studies on early agreements and trilogue negotiations examined the empowerment of the trilogue negotiators vis-à-vis their respective institution. According to the 'relais actors thesis' (Farrell and Héritier 2004) the informalization of the legislative process empowers the agents and increased their

influence on the legislative outcomes. The restricted and secluded nature of trilogues allows these 'relais actors' (or 'agents' in our terminology) 'to control the flow of information from their own organization to the other and vice versa' (Farrell and Héritier 2004: 1188) and to act as gatekeeper 'using this brokerage position to their advantage by emphasizing [...] opposition to policy initiatives they would prefer to block, and by de-emphasizing [...] opposition to policy initiatives they would prefer to promote' (Costello and Thomson 2010: 223). Also more recent literature confirmed that the representatives of the EP and the Council are to be considered as the major actors in interinstitutional negotiations (Jensen and Winzen 2012, Burns 2013, Finke and Han 2014, Kurzer and Cooper 2013, Smeets and Vennix 2014, Brandsma 2015, Delreux and Laloux 2016). They remain the central players in reconciling differences between and within institutions (Dyrhauge 2014). Yet studies on trilogues also emphasized that the two co-legislators responded differently to these shifts in the internal power balance (Naurin and Rasmussen 2011). More than in the Council, it is particularly in the EP that the agent was identified to be the winners of the informalization of legislative decision-making (Benedetto 2005, Rasmussen and Shackleton 2005, Costello and Thomson 2010).

However, the strengthening of the relais actors has been nuanced in the literature, both for the EP and the Council. Several studies did not find empirical evidence for the claim that early agreements are beneficial for the rapporteur nor for the rotating Presidency (Judge and Earnshaw 2011, Häge and Naurin 2013, Rasmussen and Reh 2013). Moreover, the EP reacted to the initial empowerment of the rapporteur by redesigning its rules of procedure on how the EP should conduct trilogue negotiations. The spread of trilogues led to several reforms of the EP's rules procedure with the aim of to increase the control on the rapporteur and to reduce the information asymmetry (Héritier and Reh 2012). These reforms have progressively increased the control of the MEPs over their trilogue negotiators. The rapporteur is no longer the sole EP representative in trilogue, as the EP's agent has been extended and now also includes of the committee chair and the shadow rapporteurs – together forming the 'EP negotiating team'. The responsible committee has to issue an authorization and a mandate before the trilogues start and must be informed by the EP's negotiators on the progress in the interinstitutional negotiations (Reh 2014, Roederer-Rynning and Greenwood 2015).

In sum, the literature on early agreements provides a contradictory picture regarding the balance of power between agents and principals in trilogues. By systematically measuring and ultimately comparing agent deviation in a large-N design, this paper aims to shed light on this debate and to unveil the patterns in the actual empowerment of agents. It also addresses two other shortcomings in the existing literature. First, the existing literature mainly compares early agreements with legislation concluded in second reading or in conciliation. Yet, such non-early agreements have become increasingly rare as in the 7th EP 85% of the EU legislative files are adopted as an early agreement (European Parliament 2014). The deviation index allows to compare within the group of first reading agreements.

Second, the existing literature primarily focuses on the most salient and controversial files. Most studies are indeed limited to conflictual case studies, where deviation is unlikely and/or strongly contested, which may bias our understanding of deviation in EU legislative policy-making in general. Again, the deviation index helps us to overcome that bias as it allows for studying the entire population of salient and non-salient cases in a large-N design. The only large-N study that empirically tests the relais actors thesis uses the DEUII dataset, which only includes salient files (Rasmussen and Reh 2013).[1] Moreover, the preference of the rapporteur is measured in that study by means of the preference of his political group, which is an assumption that is difficult to hold when studying deviation. The rapporteur's preference does not necessarily equal the median preference of its political group, as the former can also be motivated by for instance national interests (Costello and Thomson 2010).

3. Expected patterns in agent deviation

The relationship between the legislative institutions and their representatives in trilogues is modeled here as two parallel principal agent relationships in which institutions delegate the task to negotiate an informal agreement with their counterpart, while keeping the final word on the adoption of the legislation. A key assumption of the principal-agent model is that agents do not always follow the preferences of the principals and that, in other words, it is possible that agents

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[1]   However, the empirical scope of this study is still rather limited as it only analyses 13 legislative policy-making processes for the EP.

deviate from the principals' mandate. Moreover, in the very likely case that the mandate of the Council and the EP differ, deviation by at least one agent is necessary to achieve an interinstitutional agreement.

How much an agent deviates from the positions expressed by the principals depends on the discretion the agent enjoys in the execution of the task on the one hand and on the agent's incentives to deviate more than the principals initially foresaw on the other hand. Discretion is 'the range of potential independent action available to an agent, after the principals have established mechanisms of control' (Hawkins, Lake et al. 2008). A crucial point in the principal-agent model is that the discretion enjoyed by an agent depends on the control mechanisms activated by the principals. As controlling the agent comes with benefits (the reduction of the chances of agency slack) as well as with costs for the principals (the investment of resources and the risk that the benefits of the initial delegation are undone), the level of control activated by the principals is assumed to be based on a cost-benefit analysis which varies from one legislative policy-making process to another.

The agent's incentive to deviate can be interest-induced or structure-induced (Delreux and Adriaensen 2017). Interest-induced deviation occurs when the agent accepts an interinstitutional deal that deviates from the instructions of the principals because the deal maximizes the agent's interests at the expense of those of the principals. The agent and the principals can have heterogeneous interests not only regarding the content of the legislative file, but also regarding the attractiveness of reaching an early agreement or not. The fact that the failure of trilogue negotiations comes with considerable prestige and reputation costs for the agents makes that agents have a stronger incentive to 'conclude early' than their principals. This encourages the agent to deviate from the principals' instructions, albeit within certain limits as the principals still have to accept the deal afterwards. Deviation can also be induced by 'the institutional structure in which the agents perform the delegated task' (Delreux and Adriaensen 2017). For instance, deviation may be inspired by a pressure to compromise or by calls from other trilogue participants 'to take responsibility'.

Both the discretion and the incentive to deviate are supposed to vary between legislative policy-making processes, leading to different levels of agent's deviation in

trilogue negotiations. On this theoretical basis, we develop three sets of potential expected patterns of agent's deviation in trilogues: variations caused by the characteristics of the agents, by characteristics of the principals, and by the difference between the Council and the EP.

3.1. Patterns related to agent characteristics

The first set of expected patterns of deviation relates to variation in characteristics of the agents: the agent's capabilities and the proximity of both agents in terms of party affiliation and nationality.

<u>Agent capabilities</u>

As the agent is a simultaneously member of the collective principal on whose behalf the former is negotiating, the extent to which the agent can deviate without being sanctioned by the principals is likely to be related to the agent's capabilities inside the principal. We distinguish between two kind of capabilities: the agent's voting power and administrative resources. Agents with strong voting power within their institution are hypothesized to deviate more because they can secure more easily an intra-institutional coalition that supports their interinstitutional deal. In other words, intra-institutional voting power enables the agent to get the trilogue deal accepted, avoiding ex-post sanctioning, even if it deviates from the mandate. Conversely, agents with low voting power must satisfy more actors within their principal and are thus less likely to deviate. Similarly, having more administrative resources (such as staff, budget and expertise) might also allow agents to deviate more. It enables them to increase the information asymmetry in their favor, not only regarding the content of the file but also regarding the preferences of the other actors.

The voting and the administrative capabilities depend on the size of the agent's political group (for the EP's rapporteur) or the size of the member state (for the Council Presidency). Both the early agreements literature and the Council literature have already argued that big political groups and big member states enjoy an advantage in trilogue decision-making. It has been suggested that rapporteurs from big political groups (Farrell and Héritier 2004, Bressanelli et al., 2016) as well as big

member states holding the rotating Presidency (Rasmussen and Reh 2013) are more able to deviate in trilogues. Hence the first expected pattern is the following:

H1a: *The more power and administrative capabilities the agent has, the more the agent will deviate.*

However, stronger agent capabilities are also likely to have the opposite effect on deviation if one considers that the agent, being a subset of the principal, also participates in the intra-institutional negotiations that result in his mandate. Stronger voting and administrative capabilities may strengthen the agent to shape the principals' position and to align it closer to his preferences. In such a case, the agent has less incentives to deviate from that mandate subsequently. Therefore, and contrasting H1a, we could also hypothesize that

H1b: *The more power and administrative capabilities the agent has, the less the agent will deviate.*

Proximity of the agents

We presume that the level of deviation will depend on the proximity between both agents. If the agents have proximate preferences they are likely to collude during trilogues at the expense of their respective principals, increasing the deviation from their mandates. Because of their central position in the intra-institutional coalition building, the agents have a good view on the red lines of their principals. If they stay within these boundaries, they can negotiate an interinstitutional deal that maximizes their common preferences instead of fully defending the positions of their institution as stipulated in the principals' instruction. Moreover, they are likely to coordinate the way they can defend the interinstitutional deal in their respective intra-institutional forum in order to overcome possible opposition by their principals. The effect of the coherence between agents' preferences has already been identified as an enabling factor for reaching an early agreement (Rasmussen 2011, Rasmussen and Reh 2013, Reh, Héritier et al. 2013, Dyrhauge 2014, Farrell and Héritier 2004, Bressanelli et al. 2016), but we hypothesize that it is also likely to have an effect on agent deviation.

We consider two dimensions of proximity between agents. Agents can collude on an ideological dimension when they have the same party affiliation or they can share nationally defined positions when they belong to the same member state. Agents in

the Council and in the Parliament are incentivized to defend both ideologically and territorially determined interests as they experience pressures, rewards or sanctions from their party and their member state (Costello and Thomson 2010, Roederer-Rynning and Greenwood 2015, Mühlböck 2017). Consequently, we expect two patterns concerning the proximity between the agents:

> H2: *If the party affiliation of the agents corresponds, the agents will deviate more.*
> H3: *If the nationality of the agents corresponds, the agents will deviate more.*

3.2. Patterns related to principal characteristics

Deviation is not only likely to be affected by characteristics of the agent side of the principal-agent dyad, but by characteristics of the principals' side too: the principals' support for the mandate, the specificities of their institutional forum and the formal rules of procedure they have to follow.

<u>Principals' support for the mandate</u>

The principals' instructions take the form of a mandate: a committee report in the EP, a COREPER mandate in the Council. As both the EP and the Council are collective principals, the adoption of the mandate requires the support of majorities of their members: a simple majority in the EP and a qualified majority in the Council. The simple or qualified majority voting rules only determines the minimum support a mandate must have within the collective principal. Consequently, majorities can be broader too – and they mostly are. The broader the majority, the stronger the support of the principals for the mandate. The expression of this support can affect the negotiation behaviour of the agent, who needs to preserve a sufficiently large support among the principals to avoid ex-post rejection of the trilogue deal.

When the expressed support for the mandate is low, it is more risky for agents to deviate. Loosing a coalition member might jeopardize the intra-institutional adoption of the interinstitutional deal. Moreover, in cases of low expressed support, agents can convincingly play a tied-hands strategy and refer to the precarious coalition among their principals as a reason why they cannot deviate to reconcile with their counterpart in trilogues. Conversely, when the expressed support is broad, agent can permit themselves to lose some members of the initial coalition, as long as they

maintain sufficient support for the compromise. Deviation is less costly – and thus more likely – in this scenario. Hence, the third expected pattern is

H4: *The broader the expressed support by the principal, the more the agent will deviate.*

The institutional forum of the collective principal in the EP

Whereas the Council, particularly through the central role of COREPER, has established rather uniform and centralized practices in the context of trilogues, the different EP committees have developed different *modi operandi* to conduct trilogues negotiations. Despite the fact the committees operate under the same rules of procedure, they have developed 'their own compass in inter-institutional negotiations' (Roederer-Rynning and Greenwood 2015: 1158). Roederer-Rynning and Greenwood (2016) distinguish diverse 'patterns of trilogues' among EP committees, depending on, inter alia, the role played by the committee chair and secretariat during the negotiations. As that typology is neither based on the variation in the availability of control mechanisms for the committees nor on the incentives for the agent to deviate, we do not necessarily expect different patterns of deviation according to the lines of that typology. However, following Roederer-Rynning and Greenwood's observation that EP committees organize themselves differently to conduct and to scrutinize trilogue negotiations, it cannot be excluded that we will notice different levels of agent deviation between committees. Hence, we expect that:

H5: *Deviation by the EP agent varies between committees.*

EP principals' formal rules of procedure

The third expected pattern related to principal characteristics is limited to deviation in the EP's principal-agent relation. Whereas the Council did not change its internal rules of procedure on how to conduct trilogues, the EP amended its rules of procedure several times, the last time in 2012. The purpose of the 2012 reform was, inter alia, to reduce the room for manoeuver of the agents in trilogues and to establish a more uniform way to prepare and to scrutinize trilogues within the EP. As the reform strengthened the control opportunities of the EP's principal, it is likely to diminish the agent's incentives to deviate. Yet it is also likely that, starting from very different practices (see above), committees have only progressively adapted to these new rules. In order to take into account this potential learning effect, and

assuming that the new rules of procedure are intended to increase the control of the principals, we expect the following pattern to be present:

H6: *The more recent the trilogue negotiations, the less the EP agent will deviate.*

3.3. Pattern related to the co-legislative institutions

Two opposite patterns can be expected regarding the question whether the EP's agent will deviate more than the Council's agent or vice-versa. On the one hand, there is a twofold reason to hypothesize that the Presidency will deviate less than the EP negotiating team. First, several studies have demonstrated that the Council is more powerful than the EP in legislative policy-making because of their internal voting rules (Widgrén 2009, Costello and Thomson 2013). As the threshold to reach a majority in the Council is higher than in the EP, i.e. a qualified versus simple majority, the Council's position will be closer to the status quo than the EP's. This gives the Council a bargaining advantage vis-à-vis the EP, which logically results in less expected deviation by the Council's agent. To put it simply, the Presidency does not need to deviate as much as the EP negotiating team because the former is in a stronger position than the latter. Second, as the Council mostly adopts its mandate after the EP, the former enjoys an information advantage when the trilogue negotiations start. The principals in the Council can take into account the EP's position when formulating the Council mandate and include more precise instructions on what the agent can and cannot accept, which makes deviation more difficult. Hence, we expect that

H7a: *The Council agent is less likely to deviate than the EP agent.*

On the other hand, the principals in the EP have more control mechanisms at their disposal than their counterparts in the Council. Whereas the Presidency is the only Council actor in trilogues and the other member states are excluded from access to this interinstitutional negotiation forum, the EP negotiating team is usually composed of multiple MEPs, i.e. members of the collective principal, accompanying the rapporteur. The presence of shadow rapporteurs in trilogues implies is likely to reduce the discretion of the rapporteur, resulting in less deviation compared to the Presidency. This leads to the following expected pattern:

H7b: *The EP agent is less likely to deviate than the Council agent.*

3.4. Summary

Table 1 summarizes the hypotheses on the variation in the patterns of deviation we expect to find.

	expected pattern	effect on deviation of Council agent	effect on deviation of EP agent
agent capabilities	H1a: more capacity → more deviation	X	X
	H1b: more capacity → less deviation		
agent-agent party proximity	H2: same party affiliation → more deviation	X	X
agent-agent national proximity	H3: same nationality → more deviation	X	X
principals' support for mandate	H4: more expressed support → less deviation	X	X
principals' institutional forum (EP)	H5: EP committee → effect on deviation		X
principals' rules of procedure (EP)	H6: more recent → less deviation		X
EP or Council	H7a: more deviation in EP than in Council	X	X
	H7b: more deviation in Council than in EP		

Table 1: expected patterns on agent deviation

4. Data and methods

The extent to which an agent deviates from the principal's mandate in trilogues is measured through an originally developed 'deviation index'. Comparing the principals' mandate with the compromise negotiated by the agent, the index computes the difference between texts. The index is calculated for each agent separately per legislative policy-making process resulting in an early agreement. Importantly, the deviation index does not allow to test the source of deviation (why does the agent accept something else than the principals want?), but it has the main advantage that it enables us to standardize and *systematically measure* deviation in different negotiation settings. This way, we will also be able to explain the variation agent deviation by testing the expected explanatory patterns.

To calculate the difference between the mandate and the compromise we use a text-mining technique. The 'DocuToads algorithm' was developed by Hermansson and Cross (2016) to detect changes between two versions of a legislative text. DocuToads is a specific 'minimum-edit distance algorithm' which aims to quantify how (dis)similar two texts are. These algorithms calculate the 'minimum number of editing operations required to change one [text] into another' (Hermansson and Cross 2016: 10). The DocuToads algorithm takes into account four kinds of editing operations: the deletion, insertion, substitution and transposition of words. The minimum number of editing operations needed to turn one text into the other indicates the 'substantive amount of amendments made between version of texts' (Hermansson and Cross 2016: 1).[2] The deviation index is then calculated by dividing the minimum number of editing operations modifying the content of text (i.e. deletion, insertion, substitution) by the total number of words in the mandate. Weighting the number of editing operations for each file is necessary to compare the agent's deviation on early agreements of different length.[3] The higher the resulting deviation score, more the agent deviates from the principals' instructions. The minimum value of the deviation score is 0, indicating that the agent did not deviate at all.[4]

Text-mining techniques require that the texts are pre-processed before being compared (Sumathy and Chidambaram 2013, Katariya et al. 2015). Aiming to 'reduce complexity without any severe loss of information' (Meyer and al. 2008), pre-processing reduces as much as possible the risk that the deviation index is contaminated by spelling errors or noise without analytic meanings. We processed four modifications using the 'tm package' in the R software. First, all punctuation was removed. Second, the text was converted to lowercase. Third, all 'stopwords', i.e. 'words that are so common in a language that their information value is almost zero'

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[2] In order to test the reliability of the algorithm in capturing differences between texts, its results were compared with other, mainly hand-coded measures. As a strong correlation was found between these measures, the algorithm quantifies the difference between the principal's instruction and the agent's deal in an internally valid way.

[3] We divide by the total number of words in the mandate because the entire mandate has to be considered as the principals' preference and not only the amendments to the Commission proposal. If a principal does not modify a sentence in the Commission proposal, it means that this sentence corresponds to its preference. Consequently, if the agent accepts a modification on this sentence in the trilogue negotiations, the agent deviates from the principals' preferences. Limiting our counts to amendments only would not take into consideration such deviations.

[4] The deviation index does not have a maximum value as the number of editing operations can be larger than the number of words in the mandate. Consequently, a deviation value of 1 does not necessarily indicate a maximum level of deviation.

(Meyer and al. 2008: 25), such as 'the' or 'and' – were deleted. Fourth, the remaining words were stemmed, which means that they were reduced to their root form (e.g. 'conformed' and 'conformation' are transformed into 'conform').

Three kinds of documents were employed to calculate the deviation index for both agents: the mandate of the EP principal, the mandate of the Council principal, and the final trilogue compromise. First, the EP mandate is the report adopted by the responsible committee (Art 74 of the EP rules of procedure). Committee reports are publicly available via the EP Legislative Observatory website.[5] If several reports were issued on a single file, we used the first one, which reveals the original instruction of the principals.[6] Second, the Council mandate is the COREPER position adopted before the first trilogue meeting.[7] Most Council mandates are publicly available via the public register of Council documents.[8] When they were not, we obtained them though access to documents procedures. Third, for the trilogue compromise we use the formal first reading position of the EP, which is by definition the trilogue compromise for first reading agreements and which is also publicly available via the EP Legislative Observatory website. The data used to construct the index and the relationships between them are summarized in Figure 1.
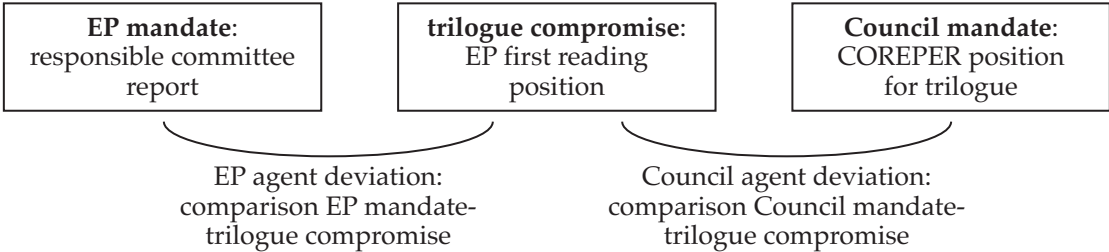

Figure 1: data used for the calculation of the deviation index

The following data are used to assess the expected patterns. To assess the agent's capabilities (H1), we use the size of the political group (percentage of seats in the EP) of the rapporteur and the size of the member state holding the Presidency

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5   http://www.europarl.europa.eu/oeil/home/home.do

6   However, only in cases when a new report was adopted following the 2014 European election, we used that new report, which is more adequately measures the instructions of the principals to whom the agent has to defend the final trilogue deal.

7   Council mandates can take different forms. To identify the COREPER position adopted before the first trilogue meeting, we consulted various Council documents, such as the COREPER analysis of the final compromise, which give a brief overview of the negotiations and where the reference or date of adoption of the mandate for the first trilogue is mentioned. In the few cases where there is no reference to a COREPER position, we use the general approach adopted by the Council before the first trilogue.

8   http://www.consilium.europa.eu/en/documents-publications/public-register/

(population). The data on the agent's party (H2) and national (H3) affiliation was collected in the EP Legislative Observatory and two dichotomous variables were constructed: 'same national affiliation' (yes-no) and 'same political party affiliation' (yes-no). The principals' expressed support for the mandate (H4) was measured differently for the EP and for the Council. The percentage of votes supporting the adoption of the report is the measurement for the expressed support of the EP principal.[9] As there is no formal vote on the COREPER mandate in the Council, we measure the principal's support of this institution by counting the number of comments from member states that contest points of the mandate. We assume that the number of comments is inversely related to the support for the mandate among the member states. Although the content of such comments is not always publicly available, the number of comments can be retrieved in the public register of Council documents. The responsible committee (H5) is identified in the Legislative Observatory. For the effect of the EP's rules of procedure (H6), we calculated the number of days between 10 December 2012, i.e. the moment when the amended rules of procedure entered into force, and the day the trilogue deal was reached. Finally, the dichotomous variable 'EP or Council agent' (H7) is used to assess whether the agent of one of the two co-legislators deviates systematically more than the other agent.

We conducted the analysis for the policy-making process on 107 early agreements negotiated and adopted in first reading between December 2012 and 2016.[10] As the current EP rules of procedure on trilogues entered into force in December 2012, the selected temporal scope allows us to control for changes in the intra-institutional rules. To distinguish early agreements from 'trivial' adoption, i.e. when the early adoption results from the lack of controversy rather than from informal negotiations (Hage and Naurin 2013), we only include policy-making processes in our analysis for which trilogues or informal negotiations are mentioned in official documents. Moreover, we exclude cases where trilogues were organized but no mandate was adopted by at least one institution.[11]

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9   In a limited number of cases (N=9) where the EP plenary also voted on the mandate, we use the percentage of votes in plenary.
10 As 2 access to documents requests are still pending, this does not yet correspond to the entire population (which will ultimately cover 109 early agreement negotiations).
11 This concerns 9 legislative files (2 for the EP and 7 for the Council).

5. Analysis and discussion

This section first presents the results of the deviation index, i.e. the agent's 'deviation score', followed by the discussion on the expected patterns and a test of the hypotheses. Figure 2 shows the distribution of the deviation score for the EP and the Council. Table 2 includes the descriptive statistics for the deviation of the agent of both institutions. The data confirm that the extent to which the trilogue negotiators deviate from the instructions of their institutions varies between different policy-making processes. The data also indicate that are no cases where the agent did not deviate at all (i.e. cases with a deviation score of 0). This means that in every early agreement policy-making process both the Presidency and the EP negotiating team accepted an interinstitutional deal that was not entirely covered by the intra-institutional mandate. Moreover, as the mean of the deviation score is higher than 0.5 for both institutions, deviation is not only occurring, it is also rather considerable. The distribution of the deviation score neither in the EP nor in the Council is particularly skewed. Most deviations scores are between 0 and 1 and are centered round 0.4-0.6.[12] Both distributions have one outlier, which has a value of 2.24 for the EP and 1.4 for the Council.[13]
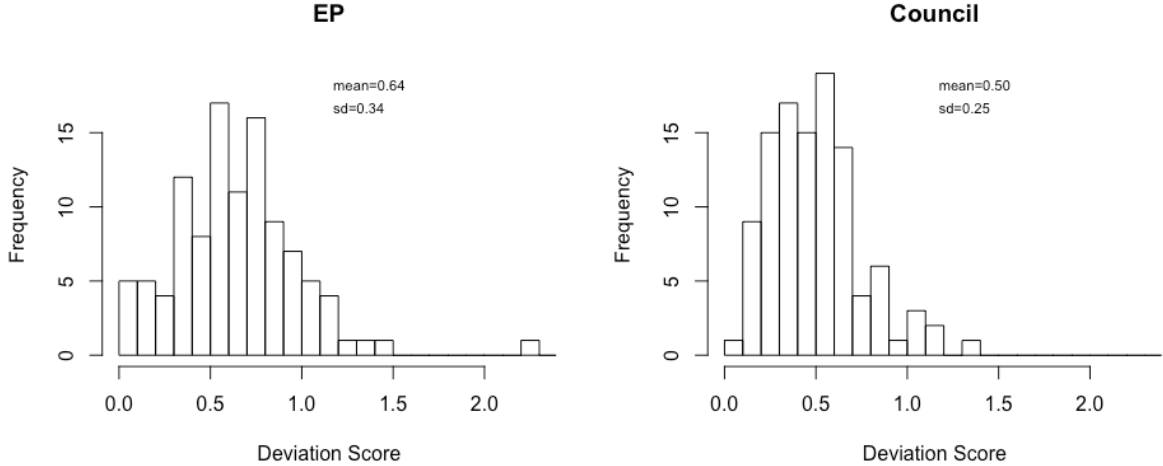

Figure 2: distribution of the deviation score for the agents of both institutions

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[12] Furthermore, the deviation scores are not related to the size of the mandates, which mean that our weighting procedure does not bias the data.

[13] The outlier is the same case for both institutions: the negotiations on the Regulation on the European small claims procedure and European order for payment procedure (2013/0403 COD). For the sake of clarity, the EP extreme outlier (with JURI as the lead committee, a Polish rapporteur from S&D, a 0.92 support for the mandate, and with the last trilogue being held 925 days after December 2012) is excluded in the figures used in this paper.

Institution	Mean	SD	Median	Max	Min
EP	0.64	0.34	0.63	2.24	0.012
Council	0.50	0.25	0.49	1.40	0.07

Table 2: descriptive statistics of the deviation score for the agents of both institutions

The remainder of this section presents the findings on the patterns in agent deviation and tests the hypotheses.

5.1. Agent capabilities

Capabilities of the rapporteur's political group

We expected to find a pattern in the deviation score depending on the capabilities – and thus the size – of the agent. Figure 3 presents the distribution of the deviation score of the EP agent per political group to which the rapporteur belongs. It shows that while rapporteurs from the EPP Group, S&D and ALDE have a rather similar distribution of deviation, the distribution of the deviation score of rapporteurs from other groups is more restricted. Regarding the direction, rapporteurs from the Greens/EFA and the GUE/NGL tend to deviate more than rapporteurs from the other groups.

Figure 4 compares the distribution of the deviation score of rapporteurs from of the big political groups to rapporteurs from small political groups. The EPP Group, S&D and ALDE are considered as big political groups, the other groups as 'small'.[14] Rapporteurs from the biggest political groups deviate less than the others. Likewise, deviation is more broadly distributed in the big political groups. This finding tends to confirm our hypothesis H1b, which conjectured that agents with more capabilities have a strong impact on the intra-institutional negotiation process on the principals' mandate, minimizing their incentive to deviate from the instructions. It is further confirmed by the descriptive statistics presented in Table 3, which shows that the average deviation score of agents from smaller political groups is higher and the standard deviation lower. However, the difference between rapporteurs from big and small groups is not significant, as a Wilcoxon tests cannot reject the null hypothesis of no difference between means at the 0.05 threshold (p-value=0.5). In other words, there is no significant link between deviation and the size of the

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[14] When we consider ALDE as a 'small' group – and, consequently, limit our category of 'big' groups to the EPP Group and S&D – we do not obtain significantly different results.

rapporteur's political group, as a result of which neither H1a nor H1b can be confirmed for the EP.
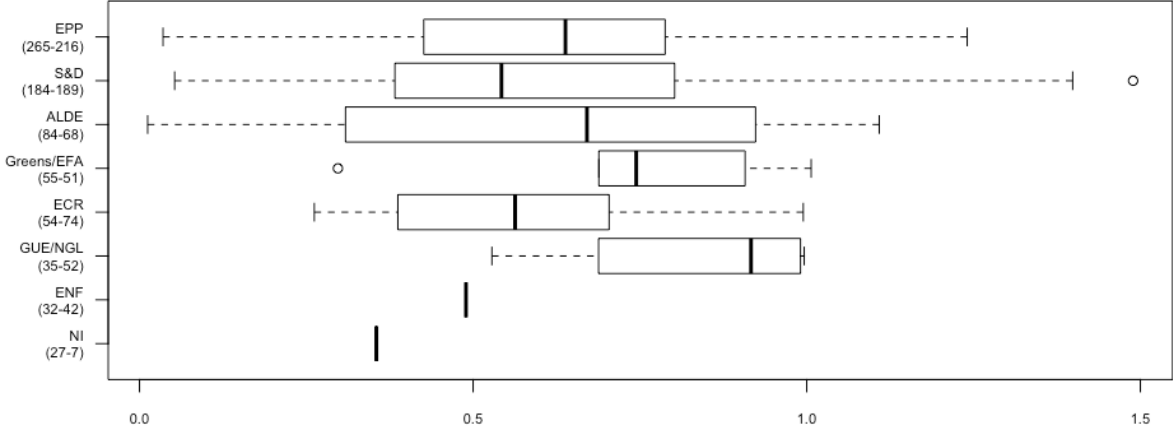

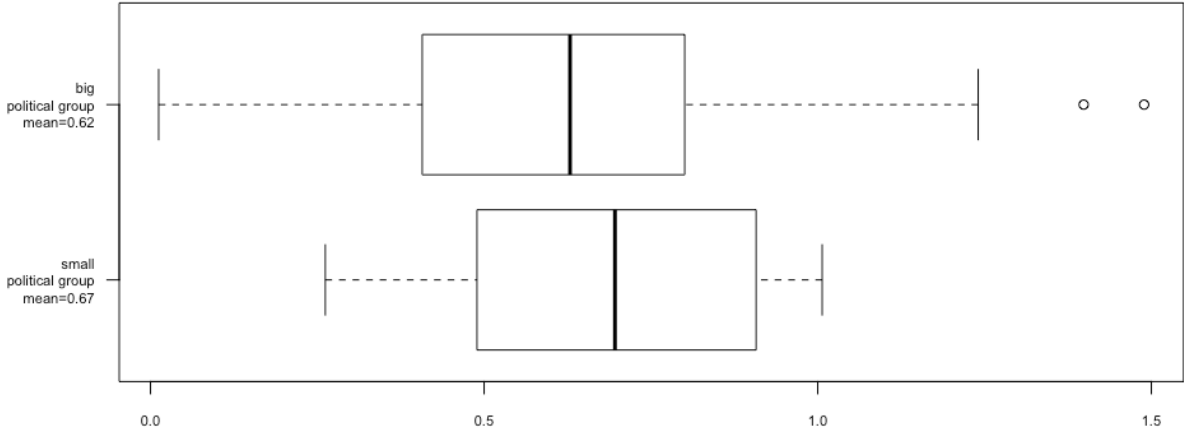Figure 3: effect of the EP agent's capabilities on deviation (per political group)

Figure 4: effect of the EP agent's capabilities on deviation (per size category)

Size political group	N	Mean	SD
Big political group	88	0.620	0.314
Small political group	18	0.670	0.2523

Table 3: descriptive statistics on EP agent's capabilities

Capabilities of the Presidency

Our findings on the effect of the EP agent's capabilities on deviation are similar to our results for the Presidency in the Council. Although there is variation in the extent to which different Council Presidencies deviate, that variation is not linked to their size. In Figure 5, Presidencies are ordered by size (population). To assess the effect of

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size, Figure 6 presents the same data per group of member states, following Thorhallsson's (2006) population based categorization of small-micro, small and medium-big member states.[15] Table 5 shows that, on average, Presidencies from smaller member states deviate more than Presidencies from bigger member states. The standard deviation is also higher for big-medium member states than for small and small-micro ones. However, these differences between the member states are not statistically significant (ANOVA p-value=0.9). Consequently, the size of the rotating Presidency does not significantly affect the extent to which it deviates from the Council's instructions in trilogues, as a result of which H1a and H1b cannot be accepted for the Council.
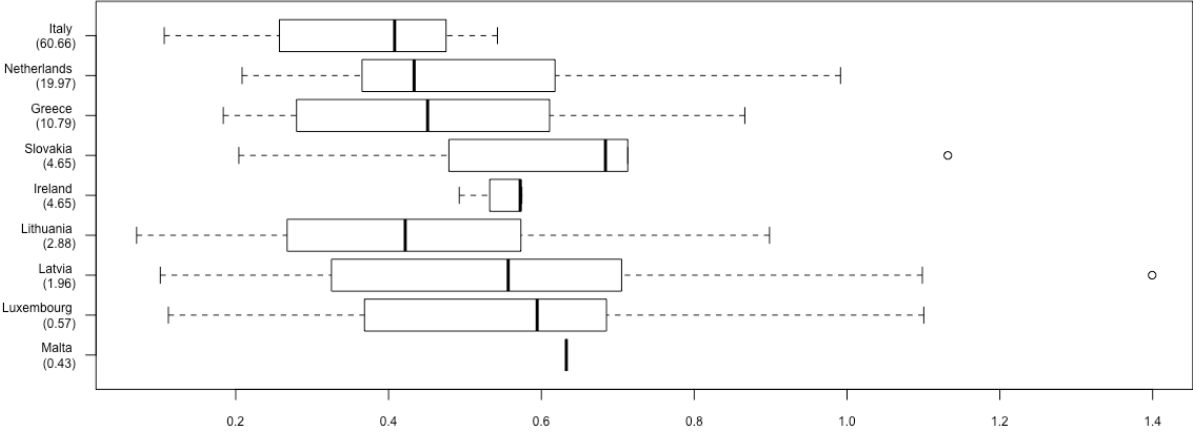

Figure 5: effect of the Council agent's capabilities on deviation (per Presidency)
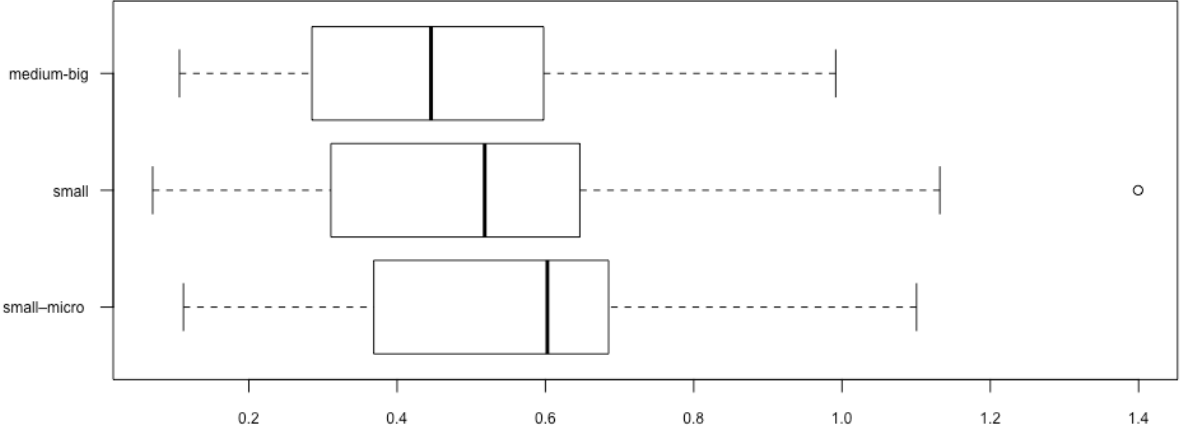

Figure 6: effect of the Council agent's capabilities on deviation (per size category)

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[15] Luxembourg and Malta are categorized as 'small-micro'; Ireland, Latvia, Lithuania and Slovakia as 'small'; and Greece, the Netherlands and Italy as 'medium-big'.

Size Presidency	N	Mean	Sd
Medium-big	53	0.468	0.339
Small	40	0.5267	0.291
Small–micro	14	0.575	0.296

Table 4: descriptive statistics on Council agent's capabilities

5.2. Proximity of the agents

As a second pattern, we expected that the closer the preferences of the agents are from each other, the higher the agents' deviation score would be. However, we do not find support for this expected pattern. Neither ideological nor national proximity between agents have an effect on deviation.

Figure 7 compares the distributions of agent deviation between cases in which the Presidency and the rapporteur have the same political party affiliation and cases in which they have not. Neither in the Council nor in the EP, there is a clear difference between the two distributions. This is further confirmed by the descriptive statistics (Table 5) which do not show a clear pattern either. While in the Council the mean is slightly higher when agents are ideologically proximate, this is not the case in the EP. However, these differences in means are not significant (t-test p-value for the EP=0.14; for the Council= 0.57). Hence, hypothesis H2 is not confirmed.
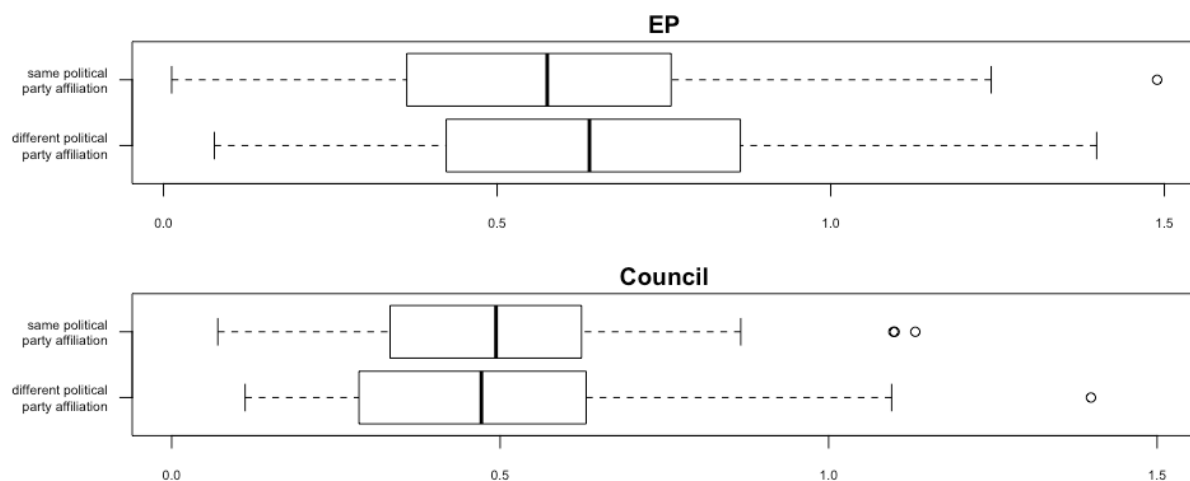

Figure 7: effect of agents' ideological proximity on deviation

	N	Mean (EP)	SD (EP)	Mean (Council)	SD (Council)
same political party affiliation	49	0.592	0.322	0.510	0.248
different political party affiliation	58	0.687	0.352	0.507	0.261

Table 5: descriptive statistics on agents' ideological proximity

Concerning the national proximity of the agents, our data does not allow us to test the hypothesis on the effect of agents having the same nationality on their deviation. Our dataset only has two cases where the rapporteur and the Council Presidency had the same nationality, which is not enough to make any statistical interpretation. Hence, hypothesis H3 is neither confirmed nor rejected.

5.3. Principals' support for the mandate

We hypothesized that the broader the expressed support by the principal, the more the agent will deviate. Figure 8 presents a scatter plot for the EP and for the Council showing the agent's deviation according to the expressed support by the principals (measured respectively by the percentages of votes supporting the EP mandate and the number of public comments from member states on the Council mandate). It shows that in the EP the deviation score is negatively related to the support for the mandate, and in the Council the deviation score is positively related to the number of comments. However, neither the votes in the EP nor the number of comments in the Council are significantly correlated with the agent's deviation at the 0.05 threshold (correlation for the EP: -0.08 (p-value: 0.40); for the Council: 0,17 (p-value: 0.07)). In other words, whether the agent enjoys a broad intra-institutional support from his principals or not does not significantly affect the former's deviation in the interinstitutional negotiations. Hence, hypothesis H4 is refuted.
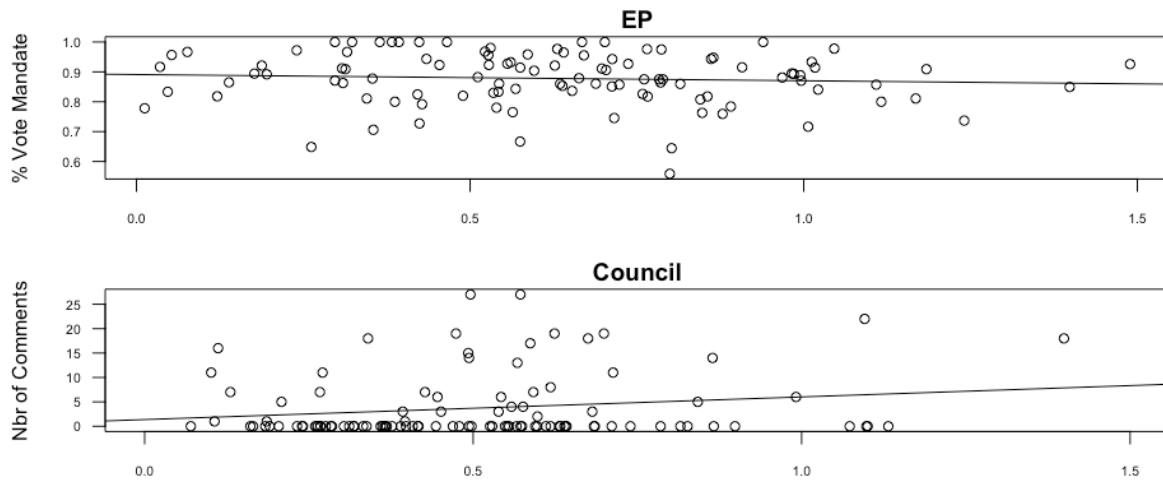
Figure 8: effect of principals' support for the mandate on deviation

5.4. *The institutional forum of the collective principal in the EP*

Our data confirm the hypothesis that the extent to which the EP's agent deviates varies between the institutional forum in which the EP principals adopt the mandate and the interinstitutional outcome of the trilogue negotiations. As shown in Figure 9, the distribution of deviation differs between EP committees. This variation is also confirmed by descriptive statistics as presented in the Table 6. The average deviation of the EP agent varies from 0.393 in CONT to 1.033 in ITRE. Moreover, the distribution of deviation strongly varies (the standard deviations going from 0.818 in JURI to 0.047 in REGI). These results support our hypothesis H5, indicating that the existence of different *modi operandi* to conduct trilogues between EP committees affect the extent to which the EP agent deviates from the committee's mandate.
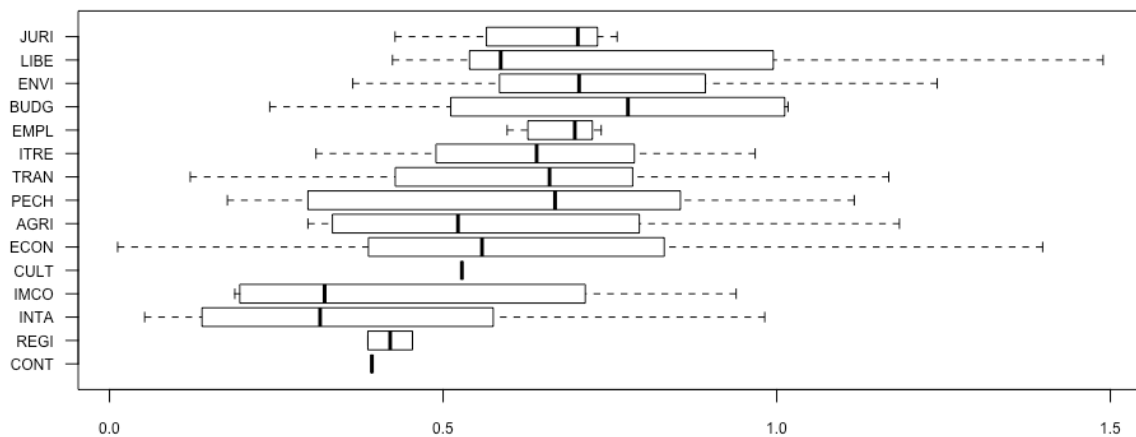

Figure 9: effect of EP committee on EP agent's deviation

EP Committee	N	Mean	SD
JURI	4	1,033	0,818
LIBE	13	0,749	0,32
ENVI	15	0,742	0,24
BUDG	6	0,722	0,31
EMPL	5	0,676	0,062
ITRE	9	0,645	0,226
TRAN	8	0,629	0,318
PECH	5	0,623	0,389
AGRI	7	0,609	0,33
ECON	16	0,602	0,383
CULT	1	0,528	NA
IMCO	6	0,447	0,31
INTA	9	0,431	0,338
REGI	2	0,421	0,047
CONT	1	0,393	NA

Table 6: descriptive statistics on EP committees

5.5. EP principals' formal rules of procedure

To assess whether EP agents deviate less in more recent trilogues than they did when the EP's rules of procedure had just entered into force, Figure 10 portrays deviation by the EP agent over time. Contrary to our expectation, the deviation score of the EP agent remains rather constant over time and the learning effect of the new rules of procedure is limited. The correlation between the recentness and the deviation is also low (0.07). Hence, our expected pattern H6 is refuted.
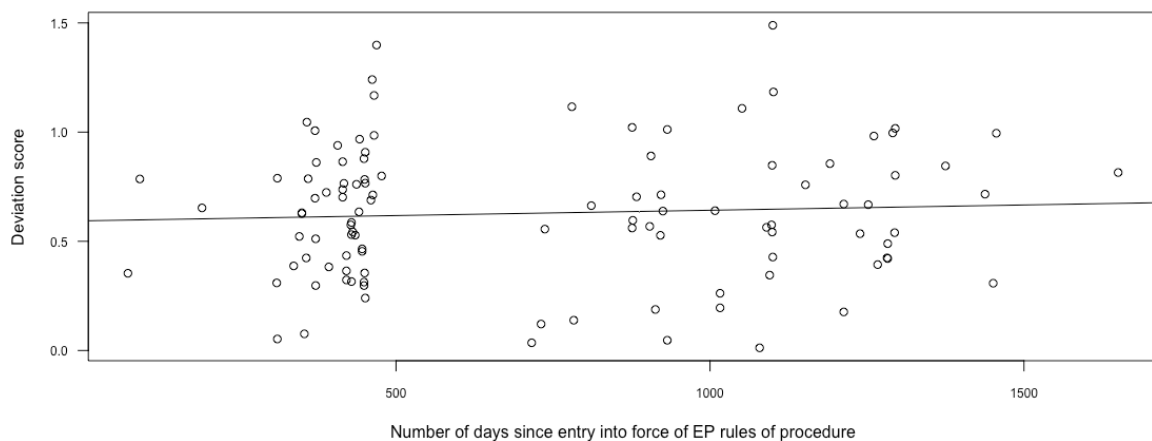

Figure 10: effect of time on EP agent's deviation

5.6. Pattern related to the co-legislative institutions

Lastly, we developed the two competing hypotheses on expected differences between deviation by the EP negotiating team and deviation by the Council Presidency. Figure 11 compares the distribution of the deviation scores between both institutions. It shows that, on average, the EP agent deviates more than the Council agent. The means confirm this finding as the mean of the EP agent (0.644) is higher than the mean of the Council agent (0.523). This difference in means is significant at the 0.01 threshold (t-test p-value= 0.0008)[16], as a result of which the hypothesis H7a that the EP negotiating team deviates more than the Council Presidency is confirmed.
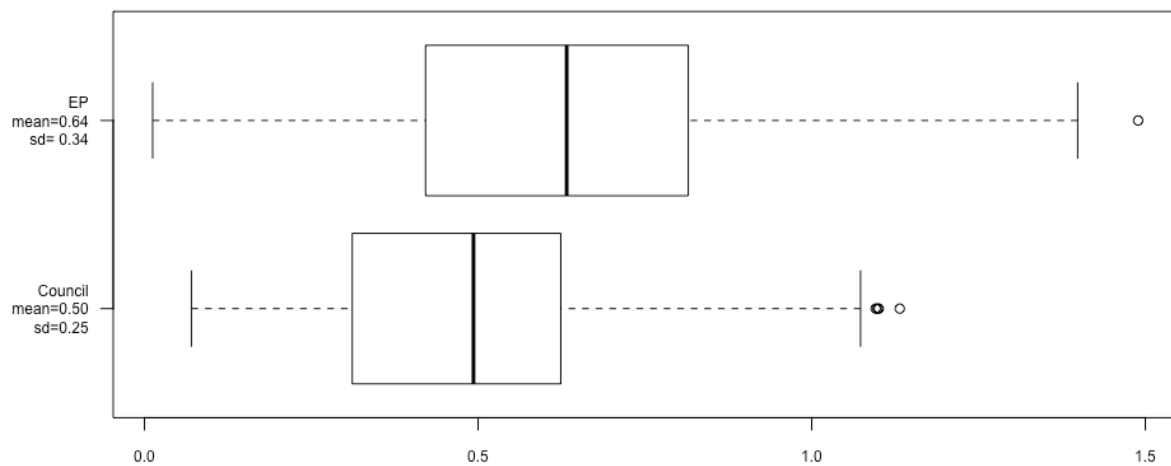

Figure 11: difference between deviation of EP agent and Council agent

6. Conclusion

This paper aimed to make a twofold contribution to the literature on legislative policy-making in the EU. Methodologically, we presented a new tool to measure the extent to which agents (in this case trilogue negotiators) deviate from the instructions of their principals (in this case the co-legislative institutions of the EU). By means of text mining techniques, the deviation index is the result of a comparison between the mandate adopted by the principals and the final compromise negotiated by the agent. The deviation index is likely to be applicable in large-N principal-agent analyses beyond trilogues (under the condition that the mandate of the principals and the result of the agent's delegated tasks are available in text format). In that regard, the index can contribute to the development of principal-agent scholarship,

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[16] The significance is also confirmed by a Wilcoxon test (p-value = 0.0005).

where large-N studies have been scarce until now, particularly because of the lack of a standardized and comparable measurement of what the agent achieves on behalf of the principals (Adriaensen and Delreux 2017).

Empirically, we applied the index to early agreement policy-making processes between 2012 and 2016 in order to explore the patterns in the degree of agent deviation. The empirical findings provide limited support for the expected patterns. They confirm that, first, deviation by the EP negotiating team varies with the political forum of the collective principal (i.e. the EP committee) (H5). Second, on average EP agents deviate significantly more than Council agents do (H7a), confirming previous research on the differences between the two co-legislators in the ordinary legislative procedure.

The analysis of agent deviation in trilogues reveals how the intra-institutional principal-agent relationship between the co-legislator and its representative in interinstitutional negotiations affects the outcome of the trilogue negotiations. It demonstrates how principals' and agents' characteristics influence the extent to which co-legislators can see their collective preferences realized within the adopted legislative act. As trilogue negotiations are today the main forum for legislative policy-making in the EU, the interaction between intra- and interinstitutional politics is crucial to understand the dynamics and outcomes of EU legislative policy-making and, ultimately, which actors have more influence than others on the content of EU legislation.

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