Agenda-setting, concession-trading or problem-solving?

The institutional origins of EU legislation

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1. INTRODUCTION

In legislative policy-making several institutions need to agree upon the same text in order to adopt legislation. This means that these institutions must find a way to reconcile their initial disagreements. In the EU, the Council and the European Parliament (EP) are the co-legislators, which must find a compromise based on a proposal by the Commission. That compromise is thus composed of text initially proposed by the Commission, amendments that are put forward by the Council and/or the EP, and potentially language that is drafted during the actual interinstitutional negotiations in trilogues. There are, however, different ways by which these elements are integrated into a common text. The co-legislators can follow the proposed text by the agenda-setter, they can trade positions that were established

intra-institutionally, or they can develop new solutions during interinstitutional negotiations. Despite the extensive literature on the EU's legislative policy-making process and on the relative strength of each institution in these negotiations, we do not know which proportion of the text of EU legislative acts originates in which institution.

Against this background, this paper aims at identifying the routes through which the positions of the co-legislators are integrated into a single legislative compromise. We identify three non-exclusive routes that lead to a legislative compromise: (1) anticipating of the co-legislators' positions by the agenda setter; (2) exchanging concessions between the co-legislators; and (3) creatively searching for new solutions in the interinstitutional negotiations. We then examine the extent to which each route is used in the EU legislative decision-making, whether variation exists across legislative files and whether patterns can be identified.

We address the question of how legislative compromises are comprised by examining the contribution of each institution to the final content of an EU legislative act, i.e. the institutional origins of EU legislation. The proportion of each institutional origin depends indeed on the routes taken by the co-legislators. If the co-legislators follow the text proposed by the agenda-setter, the institutional origins of the legislation are mainly in the Commission proposal. If the co-legislators mainly exchange concessions between their positions, most of the words of the legislation should find their origins in the EP and the Council positions. Conversely, if the co-legislators mainly find new solutions during trilogue negotiations, most of the worlds should appear at this stage and could not be traced back to the intra-institutionally developed positions.

We develop a text-mining technique which computes in which institutional positions each word of an adopted legislative act originally appears. The results of the analysis indicate which percentage of a legislative act emanates from, respectively, the

Commission's proposal, the EP's position, the Council's position, or was added during trilogue negotiations. We apply our technique to identify the institutional origin of all legislative acts negotiated in trilogues between 2012 and 2018 (n=278). Subsequently, we examine whether we can identify certain patterns across legislative files in the results.

The paper intends to make several contributions to the existing literature on EU legislative decision-making. First, whereas existing studies examine the capacity of the institutions to defend their preferences (e.g. Franchino and Mariotto (2013), Kreppel (2018)), they do not unravel how these positions are integrated at the end of the day. Our study on the institutional origins of legislation improves our knowledge on the contributions of each institution to the final legislative act. By identifying in which stage of the policy-making process – agenda-setting, intra-institutional deliberations or interinstitutional deal-making – the content of the legislation originally appears, the paper also contributes to assess the importance of each step of the EU procedure for its final outcomes.

Second, the paper sheds light on how legislative compromises are reached in the EU. So far, literature on EU legislative compromise-making is mostly based on – salient – case studies. These cases studies mostly focus on the process of compromise-finding between and within the institutions (Delreux and Laloux 2018, Dyrhauge 2014) rather than on how the different positions were actually integrated into a single text. There thus is gap in this regard that this paper contributes to fill. Doing so also enables to qualify the importance of trilogues for the final outcomes of EU legislation. Existing studies have shown that they are the main forum for legislative negotiations in the EU (Kluger Dionigi and Koop 2017, Roederer-Rynning and Greenwood 2015). However, they did not examine the extent to which new content is developed in trilogues. Therefore, by examining the original contribution of trilogues to the content of EU

legislation, this paper contributes to better qualify the importance of trilogues for the final outcome of the negotiations.

Third, looking beyond the specific context of the EU, this paper this paper also contributes to the study of legislative policy-making more generally. Indeed, compromises are "omnipresent in legislative policy" (Bellamy et al. 2012). The paper not only develops a theoretical framework regarding the routes leading to legislative compromises that can be applied to (bi-cameral) legislative decision-making in other political systems, but it also presents and applies an innovative method to compute the institutional origins of legislative compromises. This method can then be applied also to other legislative systems, thereby improving our understanding of how legislative compromises are made more broadly.

The paper is structured as follows. Section 2 provides an overview of the state of the art on legislative policy-making in the EU. It particularly focuses on the literature that deals with the role and impact of the legislative institutions. Section 3 discusses the three routes leading to legislative compromise in the EU. Section 4 describes our method and the data we used to identify the institutional origins of legislative acts. Section 5 then presents the results and assess three potential patterns for the routes, namely whether the routes used differ across (1) the responsible EP committee; (2) the type of legislative act; and (3) the time pressure on the co-legislators. Section 6 provides the conclusions.

2. INSTITUTIONS IN EU LEGISLATIVE POLICY-MAKING

The main procedure to adopt legislation in the EU is the ordinary legislative procedure (formerly codecision procedure). This procedure formally consists of two sequential readings during which the Council and the European Parliament formulate amendments on the initial Commission proposal and on each other's positions. A

legislative act is adopted once the EP and the Council have agreed on the same text. If no agreement is found after the second reading, the formal procedure foresees that direct contacts take place in the so-called conciliation and that the resulting interinstitutional deal is then adopted in a third reading in both the EP and the Council. This practice of direct interinstitutional negotiations is however informally used in first and second reading, when the Commission, Council and EP meet in trilogues.

A first topic addressed by the literature on EU legislative negotiations is the legislative negotiation process process itself. As the co-legislators now directly negotiate first reading compromises, trilogues have become the main forum where legislative compromises are made. Trilogues are informal and secluded meetings which gather representatives of the Commission, the EP and the Council. Although informal, trilogues negotiations are highly institutionalized (Kluger Dionigi and Koop 2017, Roederer-Rynning and Greenwood 2015, 2017). Legislative institutions have also progressively adopted norms and practices on how the they adopt their mandates before and who represent them in trilogue negotiations (Héritier and Reh 2012), (Kluger Dionigi and Koop 2017, Laloux 2017, Reh 2014). However, it should be noted that this has not led to uniform practices, as the way negotiations are conducted still largely varies across legislative files (Brandsma 2018, Curtin and Leino 2017).

The negotiators who represent their institutions in trilogues are thus the central actors in the negotiation of compromises. The Council is represented by the rotating Presidency, the EP by a negotiation team comprising several MEPs of different political groups. Case studies showed that whether an act is important for the negotiators as well as the proximity between them are important drivers of compromise-making in trilogues (de Ruiter and Neuhold 2012, Dyrhauge 2014). The interactions between the intra- and interinstitutional dynamics are also crucial to understand how negotiators are able to reach compromises. Delreux & Laloux (2018)

argued that it is by combining intra- and inter-institutional dynamics that negotiators can reach a deal acceptable by their respective institutions. This link between intra- and interinstitutional forums is also observed by Brandsma (2015), who found that the level of intra-institutional politicization was determinant for the number of trilogue meetings necessary to reach interinstitutional compromises.

A second major topic in the literature on EU legislative policy-making relates to capacity of the institutions to influence the compromise and the extent to which they succeed in incorporating their position in the outcome of the negotiations. This strand of research aims at determining the relative bargaining power each institution in the negotiations. Most studies measure bargaining power and influence by examining the relative distance between the preference of each institution and the final compromise. Overall, the conclusion of these studies is twofold. On the one hand, they show that the Council mostly dominates the EU decision-making process and that legislative compromises are generally closer to the preferences of the Council than to the preferences of the EP or the Commission (Costello and Thomson 2013, Kreppel 2018, Laloux and Delreux 2018). On the other hand, they also acknowledge that the Commission and the EP, although less powerful, retain a significant ability to shape legislative outcome (Franchino and Mariotto 2013, Thomson 2011). Several factors have also been put forward to explain the success of one institutions in negotiations, such as the closeness of an institution's preference to the status quo (Konig et al. 2007, Kreppel 2018) and its internal cohesiveness (Costello and Thomson 2013, Franchino and Mariotto 2013).

3. THE DYNAMICS OF COMPROMISE MAKING

A legislative compromise is understood as an agreement between institutions – here the Commission, the EP and the Council – upon a legislative texts in which all sides

make concessions from their preferred outcomes and in which the concessions are motivated by the presence of disagreement (Gutmann and Thompson 2014). In other words, compromises entail that the negotiators are prepared to revise their position in order to reach a text they can all accept. It is in the negotiation process that these disagreements are solved and that mutual concessions on the original positions are made (Bellamy et al. 2012, Rostbøll 2017). For compromising, negotiators must modify their positions and sacrifice something for the sake of reaching a common ground that both can agree on.

There are multiple routes that can lead to legislative compromises. Which routes are followed depend, inter-alia, on the relationships between institutions and on the political dynamic that drives the making of concessions. In the remainder of this section, we identify three routes that lead to legislative compromises, based upon different decision-making dynamics by which the institutions reconcile their positions to agree on a compromise text. These routes are not mutually exclusive, as legislative compromises are reached through the combination of multiple political dynamics. The three routes that lead to a compromise are: reproducing the initial version of the policy proposal ('agenda-setting'), giving-and-taking positions between the co-legislators ('concession-trading'), and creatively searching for new solutions in the interinstitutional negotiations ('problem-solving').

1. The agenda-setting route

Agenda-setting is a concept that has two distinct meanings in the literature. First, it refers to the process through which issues receive political attention from decision-makers and are considered by them (Baumgartner and Jones 1993, Princen 2011). Second, agenda-setting is the formal right to initiate and draft policy proposals, which serve as the basis for the subsequent policy-making process. This paper uses that second, procedural, definition. Agenda-setting thus refers to the first mover

advantage or to the 'power of the pen' (Nugent and Rhinard 2016: 1206; Kreppel and Oztas 2017).

The agenda-setting power in the early stages of the policy-making process is an important determinant for the ultimate policy outcome in the legislative compromise (Hartlapp et al. 2013, Larsson and Trondal 2006). In the EU's legislative policy-making process, the European Commission is the exclusive agenda-setter as it has the monopoly to formulate and to introduce policy proposals. The Commission's proposal restricts the scope of the legislative compromise and determines to a large extent the foundations for the subsequent steps in the policy-making process, including the deliberations in the EP and the Council, as well as the interinstitutional negotiations in the trilogues. The first route is thus the agenda-setting route, implying that the legislative compromise reflects the policy proposed by the formal agenda-setter. In such case, the concession made by the legislative institutions is that they accept the proposal, even when it is not their most favored option.

The literature on the Commission's powers suggests that there are three reasons why the legislative act will find its institutional origins in the Commission proposal – and, hence, why agenda-setting is potentially an important route to the legislative compromise. First, the Commission's policy proposals often anticipate the preferences of the co-legislators (Häge and Toshkov 2011). The Commission mostly behaves as a strategic actor, positioning its policy proposals within the anticipated win-sets of the co-legislators in an attempt to get its proposals accepted and to avoid failure (Hodson 2013). Second, the Commission has impact on the legislative compromise because the co-legislators rely on the Commission's expertise and knowledge (Nugent and Rhinard 2016, Thomson and Hosli 2006). The agenda-setter has indeed important resources, including consultations with stakeholders, that allow the Commission to base its proposal on relevant information that upholds the policy choices. The Commission is therefore able to propose compromise solutions that are suitable for

both co-legislators. Third, when the policy proposal has been put on the table, the Commission acts strategically to maximize the chances that the co-legislators adopt the proposal, such as playing a divide-and-conquer game or threatening with an even worse alternative in its relations with the EP and the Council (Schmidt 2000). It may therefore make it more difficult for co-legislators to find another compromise, forcing them to return to its proposal if they want to deliver legislation. Taken together, *the agenda-setting route thus suggest the legislative compromise will be based on the policy proposed by the formal agenda-setter*.

2. The concession-trading route

Assuming that legislative negotiations are multi-issue negotiations, the concession-trading route implies that one negotiating party makes a concession on an issue in exchange for a concession by the other party on another issue (Sebenius 1983). Inspired by an economic presumption of exchange, the co-legislators reach a legislative compromise by 'trading' concessions from each other's initial position (Lax and Sebenius 1987) (Lax and Sebenius 1986). In this route, the content of the compromise is developed in the intra-institutional deliberations on the position of each co-legislator. Negotiations are thus a give-and-take process in which concessions are traded back and forth. Consequently, the legislative compromise is a composite of the co-legislators internal positions, resulting of a reciprocal concession pattern between the co-legislators (Menkel-Meadow 1983).

Concession-trading is likely to follow the negotiation dynamic of 'distributive bargaining' where negotiators are mainly motivated by a wish to 'claim value' (Lewicki et al. 2016). The underlying logic is thus that issues are distributed between the negotiating parties and that each party gains – or 'claims value' – on an issue, but also loses on another issue, which is claimed by the other party. Hence, *the concession-*

trading route suggests that the legislative compromise will consist of an aggregate of original

EP positions and original Council positions, which are traded in the negotiation process.

3. The problem-solving route

Problem-solving is a negotiation mode requiring creativity of the negotiators and aiming to achieve new solutions addressing the interests of all parties. The problem-solving route is thus about inventing, in the course of the interinstitutional negotiations, solutions that were not present beforehand, instead of aggregating the pre-determined positions of the negotiators (Lewicki et al 2016). Such new solutions bridge the interest of the negotiators rather than maximizing their individual gains (Menkel-Meadow 1984). Problem-solving requires that the co-legislators do not stick to their initial positions but are open to create new ones that accommodate their underlying interests. That joint search for creative solutions can only occur through direct contacts among the institutions, i.e. within the institutional setting of trilogues.

Whereas concessions-trading corresponds to distributive bargaining, problem-solving is the equivalent of integrative bargaining (Hopmann 1995, Odell 2010). The aim of integrative bargaining is to achieve a compromise that integrates the goals of the negotiators into a common solution, which is not initially present in their positions. The negotiators are thus driven by a motivation to 'create value', rather than to 'claim value' across issues (Lewicki et al 2016). Several studies have demonstrated that the EU is well-suited for problem-solving dynamics because of its highly institutionalized negotiation machinery (Elgström and Jönsson 2000). The secluded, discrete negotiation settings that occupy a central place in EU policy-making indeed facilitate and promote problem-solving dynamics, because they create a shadow of future cooperation and the institutional norm of diffuse reciprocity (Lewis 2010, Quaglia et al. 2008). As the setting of trilogues is equally secluded as the negotiation forums where problem-solving has already been identified, we expect the search for

new solutions to occur in trilogues, which could thus not be reduced to a forum for exchanging concessions between the co-legislators. Consequently, *the problem-solving route suggests that the legislative compromise will comprise bridge solutions that are conceived in the interinstitutional interactions in trilogues.*

4. DATA AND METHOD

To assess the relative strength of each route, we measure the institutional origins of legislative acts. We do so by examining which proportion of words of the final compromise originally appears in the Commission proposal, the EP position or the Council position, or in none of these documents. As we assume that the routes are not mutually exclusive, we also expect to identify the four possible institutional origins in legislative act, albeit in different proportions. The proportions of each institutional origin in a legislative act thus indicate the proportion to which each route was used to reach a compromise. Accordingly, we consider that (1) the larger the proportion of the legislative compromise that comes from the Commission proposal, the more important the agenda-setting route is; (2) the larger the proportion of the legislative compromise that is identical to the EP or the Council position, the more important the concession-trading route is; and (3) the larger the proportion of the legislative compromise that is not present in these documents and that thus comes from trilogues, the more important the problem-solving route is.

In order to trace the institutional origins of EU legislation we use a text-mining technique allowing us to identify in which document (Commission proposal, EP position or Council position) each word of the final compromise originally appears. Our method follows three sequential steps. The result of each step forms the basis for the next one. In the first step, we count all the words that are present in both the Commission proposal and the final compromise. These words are then removed from

the compromise. In the second step, we count all the words that are present in the position of both co-legislators and in the text resulting from the first step, i.e. the compromise minus the words from the Commission's proposal. Importantly, we also created a specific category for the words that are present in both mandates, as we cannot assume in which documents they appeared first. Again, we remove those words afterwards. In the third step, we count all the remaining words, that is, the words that are present in none of the documents and were therefore added during trilogue negotiations. Figure 1 display the different steps followed by our method as well as the final results obtained.
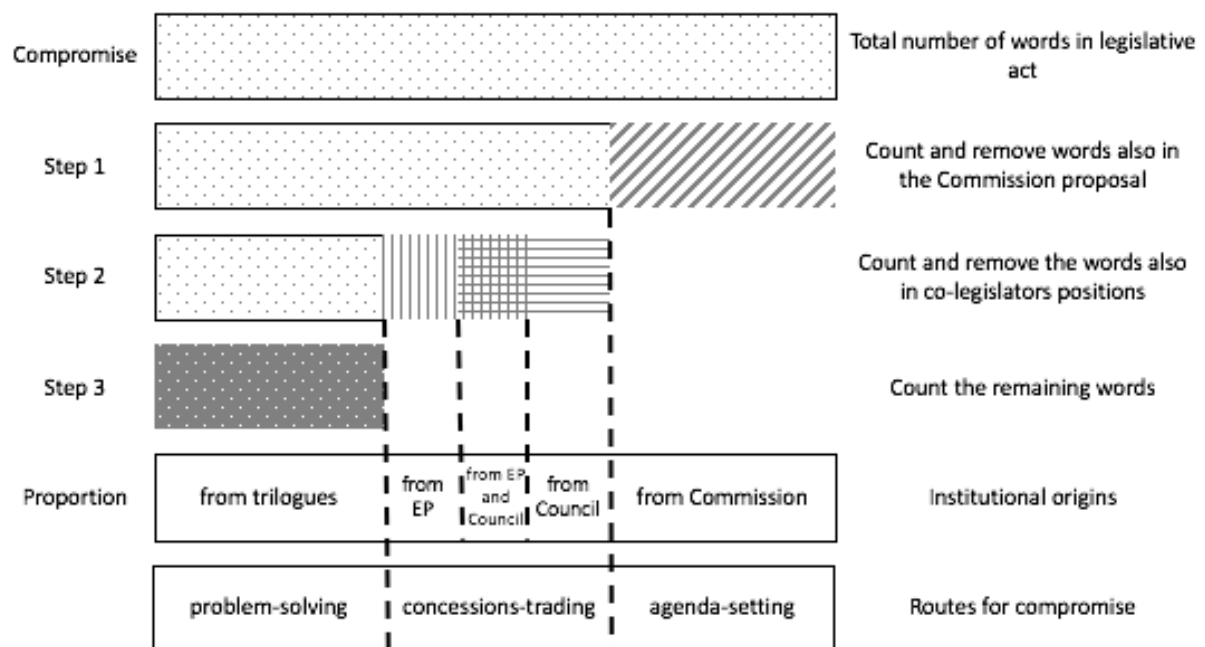

Figure 1: steps in method to calculate institutional origins of legislative acts

As a result, for each legislative compromise we obtain the number of words that comes from the Commission proposal, the EP position, the Council position, or that were added in the trialogue negotiations. Eventually, to compare across texts of different length, we divided these number of words by the total number of words in the compromise. The final result is thus a percentage, indicating the proportion of the

words in a legislative act that emanates from each institution, i.e. the institutional origins, and the proportion that emanates from trilogue negotiations.

Importantly, we used pre-processed texts for the analysis. Pre-processing aims at reducing the complexity of a text without any severe loss of information' (Meyer and al. 2008), to avoid as much as possible the risk that our measurement is contaminated by spelling errors or noise without analytic meanings. Following the recommendations by Kobayashi et al. (2017), we processed four modifications. 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' (Meyer and al. 2008: 25), such as 'the' or 'from' – 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').

Four kinds of documents are used for the analysis. First, the *Commission proposal* is available via Eurlex. Second, the *EP position* 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. Alternatively, when the plenary was asked to adopt a text before the beginning of the inter-institutional negotiations, we use that text. Third, the *Council position* is adopted by COREPER before the first trilogue meeting[1]. Most Council positions are publicly available via the public register of Council documents. When they were not, we obtained them though access to documents procedures. Fourth, for the *legislative compromise* we use the adopted legislative act as published in Eurlex.

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[1] Council positions 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 Council position 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.

We conducted the analysis for the policy-making process on the 278 legislative acts adopted in the EU between December 2012 and December 2018. Following our definition of legislative compromise, we only included files for which interinstitutional negotiations were needed in order to resolve disagreements. Therefore, our set of cases only include legislative files that were negotiated in trilogues. To identify the presence of a disagreement in a file, we verified whether trialogues or inter-institutional negotiations were mentioned in the official documents and selected the files for which this was the case.

5. RESULTS

This section first reveals the extent to which each route is used in the EU's legislative policy-making process. It then focuses on the institutional origins, examining the proportion of each institution's contribution to the final compromise. Finally, it examines three factors that may explaining our findings on the relative importance of the three routes leading to legislative compromises. More precisely, we analyze whether the distribution between each route varies according to the competent EP committee, the type of legislative act and the time pressure on the negotiators.

Figure 2 presents the mean contribution of each route to legislative compromises in the EU. It shows that, overall, the the agenda-setting route is the most important one. On average, 62% of the words of the legislative compromises are already present in the Commission proposal. The second most important route is concessions-trading, as 33% of the words of EU legislation finds its origins in the position of the EP and/or the Council. The contribution of the problem-solving route is limited to, on average, only 4%. That means that only a small portion of the words of legislative compromises are not present in the positions of legislative institutions established before trilogue negotiation begin.
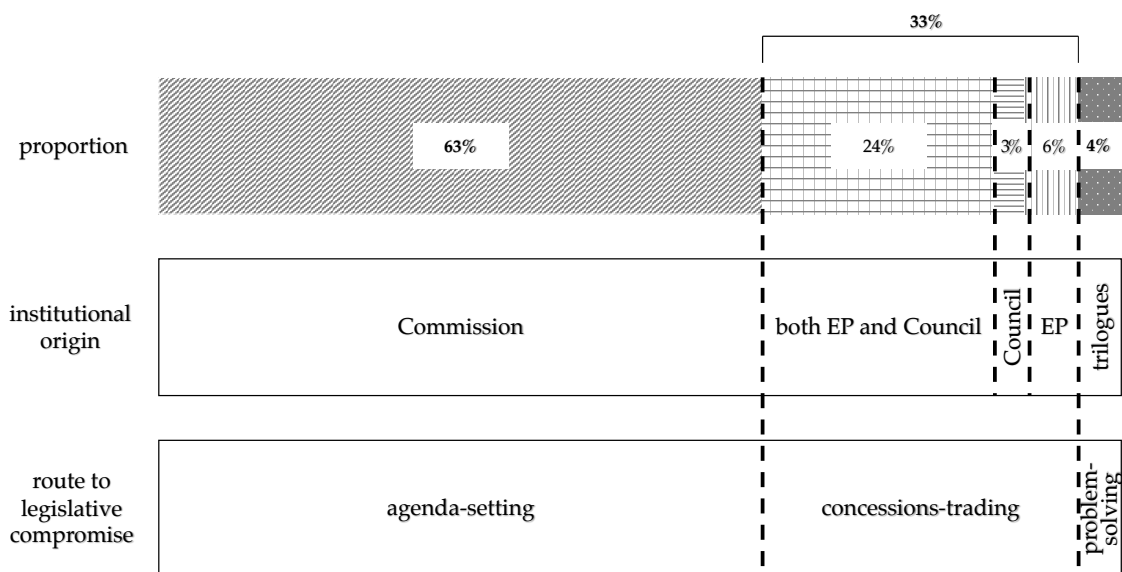
Figure 2: mean contribution of each route to legislative compromises

These results show that most of the content of legislative compromises in the EU originates in the legislative institutions and is established before trilogue negotiations. Compromises are mainly reached by combining intra-institutionally developed positions rather than by finding new solutions during the interinstitutional negotiations. This means that trilogue negotiations principally serve at aggregating the existing positions into a single compromise and that the original contribution of trilogues is rather limited.

Figure 2 also shows the proportion of the contribution of each institution to the legislative compromise. A large part of the adopted legislation is already present at the start of the legislative policy-making process, namely in the Commission proposal. Yet the EP and the Council, as co-legislators, also have in impact. Our results show that the largest part of the co-legislators' contributions come from the words that are present in both positions (24% of the words in the compromise). Only a small proportion of words appears in only one co-legislator's position (3% for the Council,

6% for the EP). Intuitively, as both co-legislators must agree upon a compromise text, it is not surprising that most of their contributions come from the points that are similar in their positions. However, the relatively small percentages for the institutional origins of the Council and the EP may come as a surprise, as EU legislative policy-making is often described as a tug-of-war between the co-legislators (Andlovic and Lehmann 2014, Roederer-Rynning and Greenwood 2015). What is more, whereas the literature suggests the final compromises are generally closer to the Council's positions than to the EP's (Costello and Thomson 2013, Kreppel 2018, Laloux and Delreux 2018), our results suggest that the Council does not contribute more than the EP to EU legislation.

We propose two complementary explanations for these counterintuitive results. First, the Council probably incorporates the amendments to the EP into its position, which increases the proportion of the final legislation that finds it origins in the positions of both the EP and the Council. The Council indeed usually adopts its position after the EP. Second, it may be the case that the Council does not contribute more than the EP but is nevertheless more influential than the EP because the Council's position is closer to the status quo. Indeed, because of its more stringent voting rules, the Council is usually closer to the status quo than the EP (Widgrén 2009). As a result, in contrast with the EP, the Council is likely to refuse some parts of Commission proposals rather than to propose additional text. This could explain that the compromises are generally closer to the Council's position even if the number of words of the compromise that can be exclusively traced to the Council position is limited.

5.1 Differences between EP committees

There are two reasons to expect that the routes to a legislative compromise will vary between EP committees responsible for the negotiated file . First, the lead committee in the EP is a proxy for the policy field that the legislative compromise deals with

(Ripoll Servent 2018). These different policies vary regarding their complexity, saliency and distributive implications (Franchino and Mariotto 2013, Yordanova 2013). As a result, the most likely route to compromises may also vary. For instance, it might be harder to trade concessions on files that are not distributive and that have limited budgetary implications. Similarly, the EP might be less willing to accept the Commission proposal in areas that are salient for it. Second, despite the fact the committees operate under the same formal rules of procedure, they have developed 'their own compass in inter-institutional negotiations' (Roederer-Rynning and Greenwood 2015: 1158). Roederer-Rynning and Greenwood (2017) distinguish diverse 'patterns of trilogues' among EP committees, depending on, inter alia, the role played by the committee chair and secretariat during the negotiations. Other scholars observed alike that the conduct of negotiations considerably varies across committees (Curtin and Leino 2017, Brandsma 2018, (Curtin and Leino 2017)). In sum, we expect the proportion to which each route is used to reach compromise to vary across EP committees.

Figure 3 presents the average proportion of each route according to the EP committee responsible for a file. It shows that, as expected, the contribution of each route differs across committees. The average proportion reached through the problem-solving route varies from 81% (REGI) to 53% (EMPL). REGI is also the committee that uses the other two routes the least (18% and 0.2%). The importance of the agenda-setting route in the REGI committee might be due to the intensive pre-legislative coordination between the three institutions on files related to the cohesion fund due to their distributive nature (Becker 2019, Hübner 2016).

The committees that have the largest proportions of words coming from the concession-trading and the problem-solving routes are, respectively, ENVI (39%) and EMPL (9%). The saliency of the policy areas these committees deal with might in part explain these result. According to the Eurobarometer, unemployment and climate

change are among the main concern of the Europeans. This high level of public attention might lead to the co-legislators being less likely to simply accept the proposal by the agenda-setter. Furthermore, on environmental matters, the EP is considered to be more environmentally progressive than the Commission (Andlovic and Lehmann 2014, Dyrhauge 2014), which implies that the EP is likely to engage in concessions-trading and not to follow the agenda-setter's proposal. Overall, these results thus seem to support our expectation that the existence of different modi operandi to conduct inter-institutional negotiations between EP committees affect the proportion to which each route is used to reach compromises.
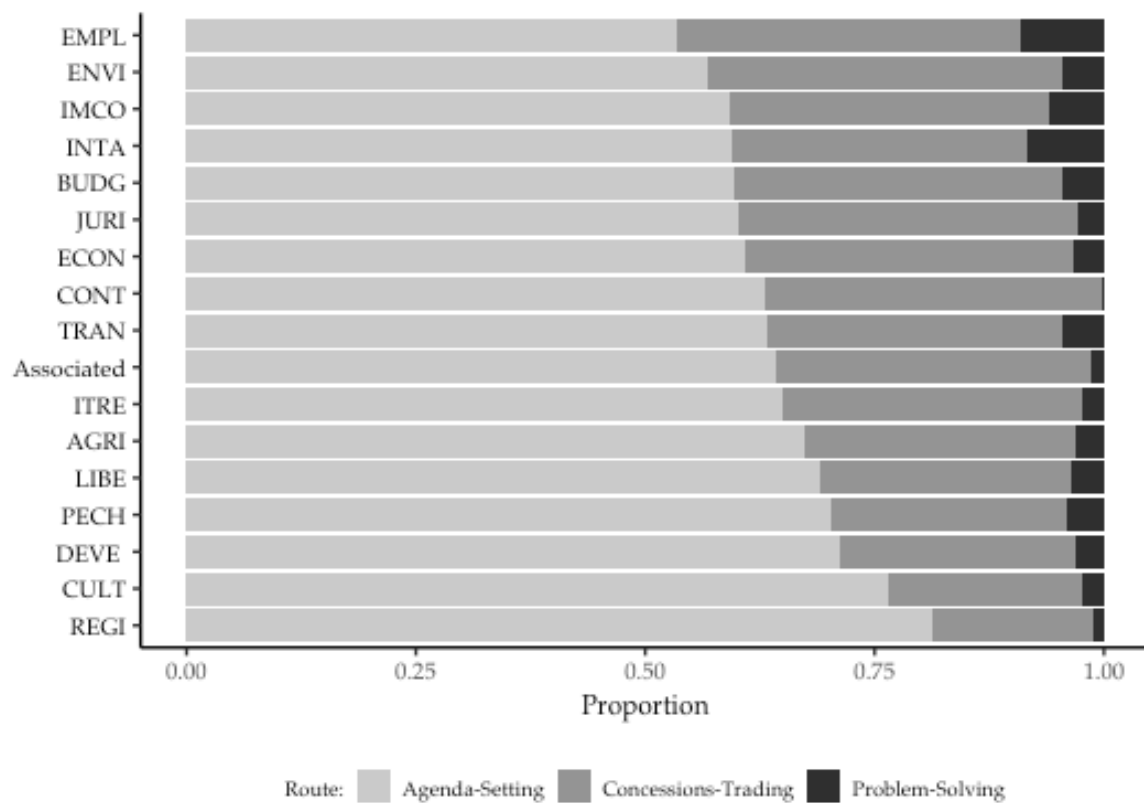

Figure 3: Importance of routes across EP committees

5.2 Differences between types of legislative act

The second factor that is likely to have an impact on the routes leading to a compromise is the type of legislative act that is negotiated. We examine whether there is a difference between legislative negotiations on a directive and negotiations resulting in a regulation or a decision. The type of act under negotiation has been identified as impacting several facets of the EU legislative decision-making, such as the duration of the negotiation (Chalmers 2014, Klüver and Sagarzazu 2013) and the bargaining success of institutions (Cross and Hermansson 2017, Konig et al. 2007).

There are indeed several reasons to expect that the relative importance of the routes leading to a directive will differ from the relative importance of the routes leading to a regulation or a decision. In contrast to regulations, directives require higher domestic adjustment costs because they have to be transposed in national legislation (Franchino and Mariotto 2013, Golub 2008, Kleine and Minaudier 2019). Therefore, several scholars argued that member states are less flexible when negotiating them. Moreover, as national administrations are more involved in implementation of directives than the Commission, MEPs might be less accommodating for directives, because for such acts legislative design is the primary control mechanism at their disposal (Konig et al. 2007). Others emphasized that directives typically deal with more significant and controversial issues than regulations or decisions (Golub 2008, Klüver and Sagarzazu 2013). Taken together, these arguments lead us to expect that the agenda-setting routes will be less prominent in the negotiations leading to directives and that the routes where the co-legislators play a more important role – either through concessions-trading or through problem-solving – will be more important.

Figure 4 compares the proportion of use of each route between directives and other types of acts. As we expected, it shows that the proportion of directives' words coming

from the agenda-setting route is significantly smaller as compared to the other regulations and decisions. The proposition of words from both concessions-trading and problem is also higher for directives. These findings support the argument that co-legislators are less flexible when they negotiate directives and are therefore less likely to follow the agenda-setting route for such files.
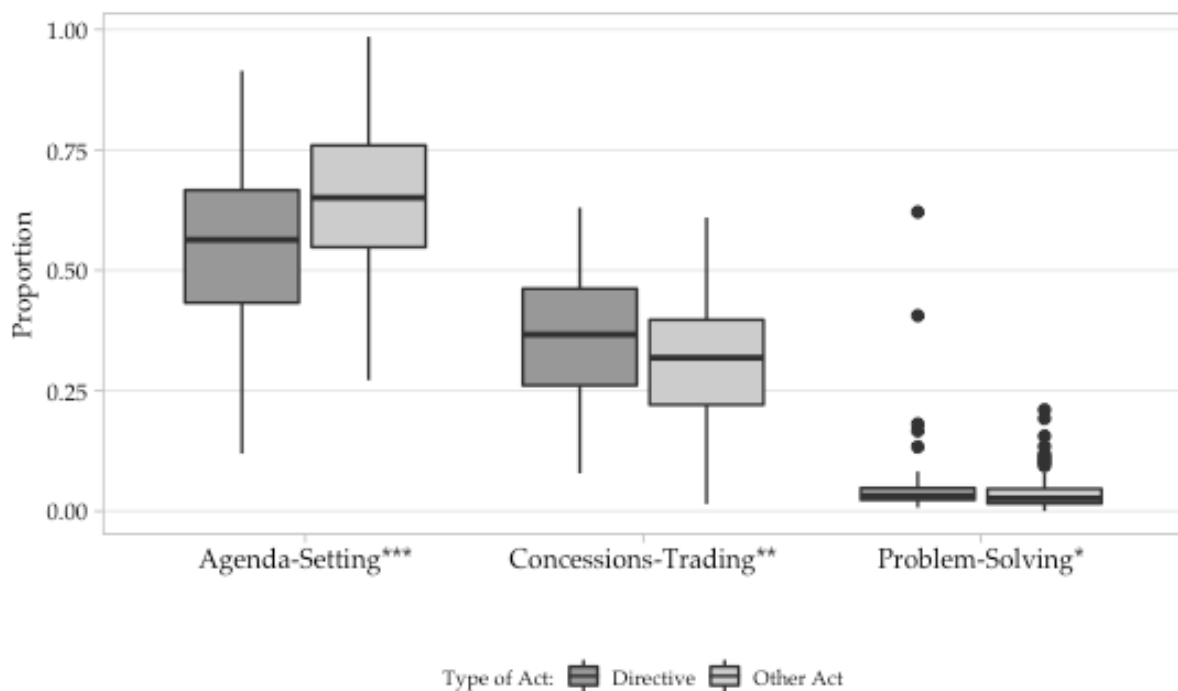

Figure 4: Importance of routes across type of legislative act (significance of t-test by route: * < 0.10; ** < 0.05; *** < 0.01)

5.3. Differences according to time pressure

Eventually we assess whether the time pressure on the negotiators affect the relative importance of the routes. More precisely, we examine whether the time remaining for the MEPs and the rotating Presidency representing respectively the EP and the Council in trilogues to reach an agreement affects the proportion of the routes. As for the EP, the literature has already shown that the proximity of elections affects legislative decision-making (Klüver and Sagarzazu 2013, Kovats 2009). As for the

Council, the success of rotating Presidencies is primarily measured by the number of political agreements reached with the Parliament (Mühlböck and Rittberger 2015, Smeets and Vennix 2014). Moreover, both the negotiators from the EP and from the Council might anticipate that their successors may not have the same preferences. Therefore, they have an incentive to reach an agreement before the term of their role so that they can stay in control, even if the agreement is not as good for them as it could have been (Crombez and Hix 2015, de Ruiter and Neuhold 2012).

Negotiators are thus likely to use the routes which are the quicker when the time pressure increases. The problem-solving route is arguably the slowest in reaching a compromise as it necessitates to find new solutions which were not present beforehand. Moreover, time pressure reduces the ability of negotiators to deviate from their position in order to reach integrative agreements (Carnevale 2006, De Dreu 2003), and thus to follow the problem-solving route. Similarly, as it is easier to follow the Commission proposal than to arbitrate between their positions, the importance of the agenda-setting route is likely to increase when the time pressure rises. Therefore, we expect that the closer a file is from the end of a negotiators' term, the smaller the proportion of words coming from the trilogue negotiations will be.

To assess the effect of time pressure on the EP's negotiators, we examined the effect of the proximity of the European elections. For the Council, we examined the effect of the time remaining to a Presidency. Figure 5 shows the proportion of words coming from each route according to the number of days left in EP term and according to the number of days left for the Council Presidency at the date of the last trilogue. We find that while the proximity of European elections does not seem to affect the proportion of each route, the proximity of the end of a Presidency term matters. However, the direction of the effect is opposite to what we expected: the number of days before the end of the Presidency term decreases the proportion of the agenda-setting route and, in parallel, increases the use of concessions-trading route.
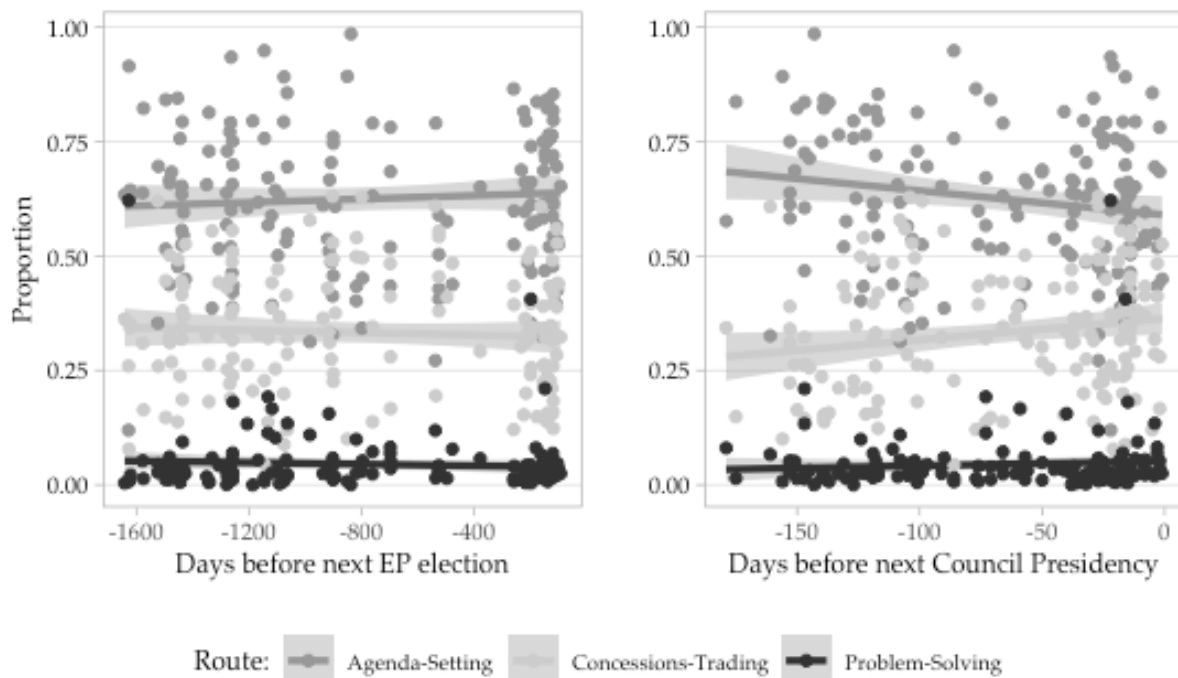
Figure 5: Effect of time pressure on importance of routes

One possible explanation for this result is that Council Presidencies try to conclude as many negotiations as possible before the end of their term, which may result in more difficult interinstitutional negotiations, which are solved through concessions-trading or problem-solving. In such a situation, it is indeed less likely that compromises are principally reached through the agenda-setting route.

6. CONCLUSION

Using a newly developed text-mining technique, this paper examined the institutional origins of EU legislation. The proportions of the legislative text originating in the Commission proposal, the EP and/or Council position, or the trilogue negotiations illuminate the relative importance of the agenda-setting, concessions-trading and problem-solving routes leading to legislative compromises in the EU. We found that,

on average, almost two thirds of the words of EU legislation is already present in the original proposal by the Commission. One third of the text is amended text proposed by either the Council or the EP, or by both co-legislators. Only a fraction of 4% of the legislative acts is drafted during the informal trilogue meetings.

These findings have a number of implications for the understanding of EU legislative policy-making. First, the importance of the agenda-setting route confirms that scholars of EU legislative policy-making should continue paying attention to policy formulation in the European Commission. As the procedural agenda-setter determines to a large extent the content of the legislation, it remains important to study the processes and dynamics of intra-Commission decision-making, including the Commission's consultation with stakeholders (Bunea 2017) and the inter-service coordination in the Commission (Hartlapp et al. 2014). Second, the proportion of newly developed text in the trilogue negotiations in the final legislative act is overall relatively limited. This result suggests that trilogues are rather forums where the positions of the co-legislators are traded than venues where new policy options are invented without having the backing – and the legitimacy – of a majority in the EP and the Council. This suggests that the often-heard concerns about the secluded nature of trilogues and the resulting criticisms on their non-democratic nature (Berthier 2016, Curtin and Leino 2017) need to be nuanced. What is decided in trilogues is principally the aggregation of the co-legislators' positions, which have their own intra-institutional legitimacy sources.

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