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Research Article

Must the Democratic Deficit of the European Union Go on - Remarks Based on Practice of EU Institutions, as Expressed in Official Statements

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Abstract

Since its beginnings, the European Union strives for more democracy. One Treaty reform after another tries to make this supranational organization more democratic. Politicians, legal scholars and judges argue, how. Relevant discussions take place since tens of years and one has to wonder, why. The legal matter is, what could be the reason that one reform after another fails. Member States are either unable to create a supranational democratic organization or they do not want to. A closer look at the practice of EU institutions may provide an answer or at least it can offer some indications in this regard. Due to the fact, that citizens connect the democracy with a parliament, one started to design a European Parliament as their democratic representation. Until 1979, members of national parliaments were also members of the European Parliament, designated by the first. They enjoyed a double mandate. An aspiration for more democracy opened the way for a direct election to the Parliament 1979 that was supposed to solve the problem of democratic deficit of the EU. In fact, it did not. One decided to give more and more competences to the directly elected Parliament that - at the beginnings - was only supposed to be consulted on legislative drafts. Over the years, the Parliament became a co-legislator. Its opinion is as important as the one of the Council. So that the institutional context is considered to be sufficiently democratic. However, a further question arose. The question is if the legislative proceedings are democratic. Some may doubt since 85 - 95% of legal acts are being issued in the procedure of trilogues, the informal part of the EU legislative process.

Keywords

Ordinary Legislative Procedure, Informal Trilogues, Informalization, Early Reading Agreement, Democratic Deficit

1. Introduction

The qualified majority voting following Single European Act 1957 influenced the duration, which means the efficiency of the EU legislative process. This was an institutional response to the transfer of more competencies on the EU and the participation of the EP in legislative procedures.

In the early 2000s the EU institutions conducted more informal negotiations during first reading in order to work fast and avoid conciliation, before the Council issued its position or before Parliament adopted an opinion on Commission's proposal. The research focuses on the legal implications of this practice.

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Indeed, the principle of democracy thus suffers from the fast-track adoption of EU legislation. On one hand, there is the democracy, which requires transparency. On the other hand, there is the efficiency, the other good, subject of the "trade-off". However, neither the Treaty nor national constitutions mention "efficiency" as a characteristic or a factor of a law-making process. Could one argue, that the "functioning" or "effectiveness" would be a constitutional principle? First, one needs to balance the two principles: the effectiveness and the democracy in case of fast-track conclusion of legislative dossiers. The Treaty does not mention "efficiency" as a principle. It could be a factor. But as a real reason it may not preclude formal requirements, set up in formal legal acts, such as the TFEU.

First the author presents and discusses the inquiry of the European Ombudsman on informal practices. Subsequently the author explains the development of the practice of informal trilogues, underling their meaning for legislative procedures.

2. Inquiry of the Ombudsman into Trilogue Transparency in May 2015

On 26 May 2015, the European Ombudsman started an inquiry on the transparency of trilogues. The Ombudsman was hoping to learn about: what stage of the process certain documents could be released, if at all; whether increased transparency would be harmful and only help well-financed lobbyists; whether it could bring a halt to the process; whether it is possible to give useful advice because it is an ad hoc process; whether the lack of transparency is more apparent than real because documents are separately published, and perhaps a single online portal would be better to access documents; the difference that technology can make, such as application recently launched by the European Data Protection Supervisor [1].

All the three institutions, the Parliament [2], Council [3] and Commission [4] have submitted opinions to the Ombudsman on the transparency of trilogues in the context of the inquiry. The Ombudsman has also inspected two closed trilogue files. The subject of the inquiry was not the way in which the institutions organize trilogues or any issue concerning any specific legislative proposal [1]. The aim of the inquiry was solely an examination of the transparency of trilogues (for instance the availability of documents tabled by the institutions during and after trilogue negotiations). Year later, on 12th July 2016 [5] the Ombudsman made decision in this respect and suggested the institutions measures that are supposed to increase the transparency during legislative procedures.

2.1. The Institution of Informal Trilogues

Trilogues are informal negotiations between the EU Institutions: the European Parliament, the Council of the European Union and the European Commission. Representatives of both legislators are involved, with the assistance of the Commission. Trilogues are aimed at reaching an agreement on legislative proposal [6]. They thus occur during law making process.

One can differ between formal and informal trilogues. Formal trilogues are foreseen in the Treaty on the Functioning of the European Union. They constitute a part of the legislative procedure and are applied during the conciliation negotiations. They thus constitute a constitutional mechanism.

It is different with informal trilogues. The Treaty does not foresee this kind of negotiations [7]. Nevertheless, the institutions apply it in most cases of their activity. They are considered to be the place, where "the deals are done" [8]. At the same time, any legal rule regarding informal trilogues is missing. The only source of information in this respect constitutes a study of the practice of EU institutions.

The EU institutions created the process in order to reduce costs and speed up legislative proceedings. Thanks to informal trilogues, they can avoid second and third reading, since they can take place already in an early stage of law making process, at the end of the first reading [9]. The need for this efficient work of institutions arose due to the extension of competences 2009 [9].

2.2. Opinions of the Institutions

The EU institutions, before they gave their respected statements belated, coordinated their answers. In general, they expressed that the Ombudsman would not be entitled to conduct inquiry this kind. Partially they also issued statements regarding the matter itself.

At the beginning, they all disputed the competence of the Ombudsman. It would be entitled to review solely matters of (mal) administration. However, the case of informal trilogues would refer to law making process and thus legislative activity.

2.2.1. Statement of the Council

The Council was criticizing the extent of the inquiry in the softest way.[1] It was also trying to design a legal framework in which the enquiry could occur. In this regard it suggested to differ between „administration" and „legislation". Worth noticing is, that the Council referred the common understanding of those terms before the understanding based on the Treaties [3].

At the point of view of the Council, the "check and balances" between transparency and efficiency of law making procedures constitutes part of legislative activity and thus cannot be

[1] Worth noticing is that this institutions criticized in 10 points the scope of the inquiry, while it dealt with the matter itself in 6 points.

part of examination by the Ombudsman, which may review maladministration.

The Council also referred past practice of the Ombudsman in order to prove that Ombudsman applied a policy of self-restraint [3]. In the past, the office would not have reviewed complaints dealing with the activity of the Parliament, since it was legislative activity.

2.2.2. Statement of the Parliament

The statement of the Parliament started with an interpretation of the inquiry [2]. In so far it was similar with the approach of the Council. Thanks to this interpretation, the Parliament could determine that the inquiry could deal solely with administrative issues. The statement is accompanied by a letter of the President of this institution, who assured that the transparency of legislative proceedings is as important for this institution as the assurance that all political groups could follow and influence negotiations. However, he warned that an "undue formalisation of the trilogue process might have the opposite result, as the real negotiations might then take place at other occasions, without having all political groups in the room and without text proposals being exchanged in an orderly way between the Institutions. This would put the internal transparency and accountability of the decision-making process at risk [2]."

The implication here is a further democratic deficit once the legislative process would be more transparent. In case of an "undue formalisation" (having in mind it is about the legislative process), the transparency and "accountability of the decision-making" would be endangered. With this opinion he describes that involved parties will find ways and solutions in order to continue with informal negotiations during legislative procedures. Can it mean that any legislative process of European Union will suffer from the lack of transparency?

At the beginning of the statement in the matter, the Parliament criticized the extent of the inquiry and did it in a more concrete way than the Council. He stated that "the inquiry does not fall entirely within the Ombudsman's mandate."

In the course of its statement, the Parliament defended informal trilogues and stated in the matter that their use would have "significantly strengthened the transparency and accountability of the decision-making process … and improved the quality of the negotiations and thus of the legislation adopted at EU level" [2].

First, this was not a part of the inquiry. Second, since the Ombudsman pointed out the lack of transparency, how could the Parliament underline the strengthening of the transparency? A statement that the trilogues would strengthen transparency without giving detailed reasons constitutes in this context a simple assertion.

In course of its statement, the Parliament referred to facts. It admitted that trilogues would be convened on a short notice and that is why an official or comprehensive list of all trilogues negotiations could not be made [2].

One could not imagine a national parliament saying that a list of all legislative procedures could not be prepared since they needed to be discussed urgently. Why should the urgency of law making procedures constitute a justification for the lack of transparency?

2.2.3. Statement of the Commission

The statement of the Commission starts with general remarks. It confirmed its attachment to transparency. The Commission confirmed that in its proposal for a new Inter-institutional Agreement on Better Regulation, it suggests that the institutions should ensure an appropriate degree of transparency of the legislative process, including of trilateral negotiations between the three institutions [10]. However, an "appropriate" degree of transparency does not (have to) mean a full transparency.

The Commission does not interpret the inquiry (like the Parliament) or defines its scope (like the Council). It simply speaks about the "admissibility" of the inquiry. This statement constitutes thus the strongest wording among the institutions. In the same tone, the Commission expressed a general reservation on certain aspects of the own-initiative inquiry and on the admissibility of possible future recommendations if they were to impinge on the co-legislators' prerogatives to organize the legislative work as they see fit [4].

A general reservation is well known from negotiations during trilogues itself. If a representative of the Commission or a Member States cannot make a detailed statement on a given idea, he expresses a general reservation or a reservation. It is often used at the beginning of negotiations, when the proposal is new and detailed study by national experts is still pending. However, the inquiry of the Ombudsman was not a part of negotiations. It thus has to wonder why the Commission has chosen this particular expression.

In addition, the general reservation on the admissibility of possible future recommendations must astonish. The Commission completes this reservation: possible recommendations could not impinge on the co-legislators' prerogatives to organize the legislative work. But why does the Commission express a reservation regarding recommendations for co-legislators? The Commission proposes a draft; it is not a co-legislator. Either the Parliament or the Council should have expressed this reservation. The Commission did not present a proxy allowing it to issue reservation for co-legislator.

The fact that the Commission did it may have meaning and point out its role and interests in the legislative process. After issuing a proposal for a legal act, during (informal) trilogues, the Commission conveys between the co-legislators. The given statement shows that it does not only have conciliatory role. Moreover, it needs to guide the co-legislators through the

negotiations, so that the proposal will keep its intended meaning [11].[2]

It shows that the Commission may not be the suitable mediator in this stage of the procedure. It does have its own interests during the trilogues negotiations. There is barely a legal act that would not contain delegated or implementing acts, according to articles 290 and 291 TFEU. The participation of the Commission during trilogues helps her keep an eye on the developments. It is also a further actor, next to the two co-legislators, that needs to be involved. The Commission - in comparison with the co-legislators - seems to have too much power and influence during trilogues.

2.2.4. Results

Overall, the statements show that the institutions could not overcome their distrust towards the inquiry.

They also show that the institutions work together and coordinate their answers seeking a common approach. Not only formal structure of their respected opinions but also their reasoning is similar. The coordination was worth it. The three institutions spoke almost the same word in this case.

3. Review: In the Matter of Informal Trilogues

One may argue with the view of institutions. An early first reading agreement that is being made at the end of the informal trilogues constitutes an inter-institutional agreement [12]. The Treaty on the Functioning of the European Union foresees it - during the legislative procedure - only in case of formal trilogues, between second and third reading. Since informal trilogues end with a first reading, one may doubt that this practice is admissible under the Treaty. It serves bypassing of deadlines that the Treaty foresees for formal trilogues [12]. That is why the institutions may handle without a competence, a legal base and violate the principle of conferral, when they conduct informal trilogues.

But even if one wants to affirm the legal base for making inter-institutional agreements and conducting the negotiations in case of informal trilogues, one needs to ask about the meaning of the practice of EU institutions in this regard. They did take the same view in case of this inquiry and they do conduct informal trilogues since years.

Since their practice of conducting informal trilogies [13] is not foreseen in the Treaties, one needs to argue if it can and may violate the Treaty? Through the instrument of inter-institutional agreements in conjunction with the practice of EU institutions, they may defy the provision of the Treaties.

The question is if the practice of EU institutions could enjoy similar importance as practice of states. An affirmative answer would mean that EU institutions could continue with their practice, without caring for the wording of the Treaties.

There are only a few institutions and a big amount of states, subjects of international law. The few EU institutions could easily create new forms of practice and decide on their own what is right, independent from the wording of the Treaties and the (will of) Member States. They could create precedence cases easily. Unless, one decides for strict criteria under which the practice of EU institutions could be established and recognized.

But, even if the practice of EU institutions would enjoy the same meaning as state practice, could it also influence the procedure of law making? The practice of states on international area does not enjoy similar importance for legal orders of countries, as the practice of EU institutions. This - in the light of the democratic deficit of the EU - could constitute a red line. EU law enjoys direct applicability in 27 Member States. Those sovereign countries need to know ahead how far the institutions may and can go. That is why the principle of conferral is settled in the Treaties and needs to constitute a restraint also for the practice of EU institutions.

4. The Meaning of Informal Trilogues for the EU Legislative Process

The legitimacy of a given political system depends on the legitimacy of its legislative procedures [14, 15]. And the democratic legitimacy of any law-making procedure, such as co-decision, requires public control with political equality and individual rights to justification [14]. The promotion of the EP to a second chamber addressed the 'democratic deficit' of the EU [14, 15]. The co-decision was supposed to balance "between efficient policy-making and democratic law-making" [15]. The "more accountable, inclusive and transparent legislative process promised to challenge the 'cartel of elite´s' that had dominated negotiation in and between the Council of Ministers and the European Commission" [15].

4.1. On the Impact of Informal Rules

An effect of informal rules in particular and the informalization in general may be the shift of the "balance of power" away from the Member States [16]. However, they also result in effectiveness, since they help to stabilize the cooperation between the co-legislators and thus decrease or minimize the risk of "opportunistic blockages" during the legislative procedure [16]. The fast track conclusion means speeding up the process.

[2] Please compare in so far its arguments in Case C-409/13 p. 90, supported by the Court of Justice ("As the Commission has rightly submitted, the amendment which the Parliament and the Council were planning to make to Article 7, by substituting, in Article 7 (2), the ordinary legislative procedure for the Commission's implementing power as regards the adoption of each decision granting MFA, would have distorted an essential element of the proposal for a framework regulation in a manner irreconcilable with the objective pursued by that proposal of improving the effectiveness of EU policy concerning MFA.).

With the establishment of informal institutional rules, Member States may be willing to further change the Treaty and thus further advance the process of informalization, "even if these changes further shift the balance of power away from the Council and toward other actors" [16]. There are many reasons for the establishment of informal institutions and rules [12]. This new Treaty changes can run to further changes, that will formalize the informal institutional rules [16].

The "formal institutional change " can be "imbricated with processes of informal institutionalization" [16], since Member States could take advantage of better cooperation possibilities, due to informal cooperation, by introducing new formal institutions and laws [16]. For the sake of improvements in efficiency, Member States could trade power in the decision-making process against [16].

According to scholars, the informalization may have two main effects. It can "modify or even supersede formal procedures" and some important issues may be used in order to establish "informal institutional gains" [16]. Informal modes of cooperation may affect legislative processes through influence on procedures of drafting and amending legal drafts [6]. However, in some cases informal processes could replace the formal ones completely [6]. The creation of new (informal and at the same time practical rules) is thus an aspect of informalization.

Scholars believe that there would exist a "recognition" that 'fast-track agreements' at first reading would be a legitimate element of the legislative procedure. However, they doubt, that the consensus in this regard would not be "as wide as it might appear" [17].

4.2. Possible or Conceivable Balance of Principles Democracy and Effectiveness

The complex co-decision procedure raised the stalling efficient policy-making [15]. The common use of early conclusion since 1999 supported efficient legislative processes as well as co-operative relations between Parliament and Council [18].

The use of early agreements since 1999 enhanced efficiency of legislation. However, it also brought further lack of transparency, reduced access opportunities and empowered a subset of legislators disproportionately [18]. The "routine" use of informal trilogues and early agreements since 1999 bears the danger that the legitimacy of formal Treaty revisions will be undermined [15]. Early conclusion reduces transparency of the process and accountability of EU politics [19, 20]. Informalization challenges traditional democracies and democratic procedures in Europe [21]. The lack of transparency during fast-tracked negotiations and systematic exclusion of "important actors" [20] are terms commonly used by political scholars. However, for lawyers those terms deal with the abstract possibility to control actors who are democratically responsible (transparency in politics). The control of the public is first and main requirement for the democratic legitimacy of any legislative procedure [14]. At the same time "important actors" or "relais actors", who negotiate on legislative files during tripartite meetings, are not known to the wider public, since the composition of negotiating bodies or actors is set up *ad hoc*.

The transfer of competencies to the European Parliament was supposed to support more transparent law-making in the European Union and heal its "democratic deficit". The existing practice on co-decision seem to reach the opposite, since it underlines the effect of procedural secrecy [12]. Scholars have referred to the democratic consequences of concluding at first reading for the control of Parliament as a whole. New relationships are created between "power-brokers" in the European Parliament and representatives of the Council, which may lead, to the short-circuiting of democratic processes of deliberation in committee and plenary discussions. [13, 22]. The parallel rise of informal negotiations between institutions on legislative files caused rather a drawback. This is a clear paradox. Before the European Parliament started as a co-legislator the EU suffered from democratic deficit due to formal rules in the Treaty. Since it joined and can actively shape the legislative environment of the EU, the EU still suffers from democratic deficit due to (informal) practices of its institutions. The European Parliament, as a historically democratic institution, did not help to stop with the deficits of democracy in the EU. Moreover, it even acted - with the Council and maybe also the Commission (since three parties take part in "tripartite meetings") - on multiple informal negotiations on legislative files. It - as a representation of citizens - contributed to the start and the development of informal legislative procedures. The common practice of EU institutions bypasses the rule of law agreed among Member States as expressed in the formal Treaties.

Scholars assume there would be "trade-off" between efficiency and democracy [20, 23]. However, democracy is not "primarily about the speed of the decision-making process" [20, 23]. Scholars criticize informal first reading agreements for their fast track conclusion [24]. This quick conduct makes it impossible for Member States to reach a consensus on a Common Position [20]. Before the representatives of Member States decide to agree on a Common Position decisions are typically taken [20].

Moreover, the negotiating agents do not have enough time to introduce their position towards the national parliaments or to defend their negotiating strategies in front of national parliaments [20]. However, they remain democratically responsible in relation to respective national parliament.

National Parliaments were supposed to be informed during the law-making procedure at European level, also to secure the principle of democracy in the EU. The fast-track negotiations do not support this process. The information of national Parliaments occurs in a late stage of a decision-making process, shortly before a Council meeting. Moreover, the information of national parliaments was established in order to heal the democratic deficit of the European Union. Fulfilling this

duty at a late stage does barely have influence on the legislative process.

Indeed, the principle of democracy thus suffers from the fast-track adoption of EU legislation. On the other hand, there is the efficiency, the other good, subject of the "trade-off". However, neither the Treaty nor national constitutions mention efficiency as a characteristic or a factor of a law-making process. Could one argue, that the "functioning" or "effectiveness" would be a constitutional principle? First, one needs to balance the two principles: the effectiveness and the democracy in case of fast-track conclusion of legislative dossiers. The Treaty does not mention "efficiency" as a principle. It could be a factor. But as a real reason it may not preclude formal requirements, set up in formal legal acts, such as the TFEU.

24.3. The Real Reason for Informalization

One may try to understand what happened in the institutional context. Originally solely the Council dealt with legislative proposals of the European Commission. Since the co-decision (subsequently the ordinary legislative procedure) was introduced, and EP became co-legislator, the process of legislation started to take more time. This change caused a delay of every legislative procedure, since an interaction of two co-legislating bodies was required.

Parallel the European Parliament strived for more competencies, in further areas of policies [13]. This strive for power of a newly established body caused interinstitutional misunderstandings. It thus required a closer cooperation of respected bodies a need for. It is hard to understand why did the Member States transfer more competencies on the European Parliament in such a short time, since they must have known that the legislative procedure with a further legislative body (the EP) will take more time. Should more legislative procedures take more time? The Member States either wanted to deal with the democratic deficit or they agreed with the reduction of the speed of legislation.

An anticipated conciliation in a stage of legislative process, not foreseen by the Treaty, constitutes a bypassing of the Treaty provisions [12], which distorts the institutional balance, as foreseen by the Treaties - legal base for the activity of EU institutions.

Article 194 para 10 Treaty on the Functioning of the European Union (TFEU) [25] foresees a formal trilogue, as formalized practice that must be applied in accordance with the provisions during law-making procedures. This provision names actors, procedures and timelines that may act and must be applied during the ordinary legislative procedure of the European Union. Inter-institutional practices that serve to omit the application of formal Treaty provisions, as laid down in EU law, constitute by-passing of written laws that establish legal basis for work of EU institutions.

The institutions of the European Union may act - according to the principle of conferral - only based on provisions, that the Contracting Parties anchored in the Treaties. One of fundamental principles of the EU law constitutes the principle of conferral, laid down in Article 5 of the Treaty on European Union [26]. In the light of this principle, the institutions of the EU act only within the limits of the competences that States have conferred upon this supranational organization in the respected treaty provisions. These competences are defined in Articles 2-6 of the TFEU [25]. It means, that competences not conferred on the EU by the treaties remain by the national States. Thus, the EU institutions are bound to act within formal Treaty provisions and inventing of informal modes of inter-institutional and intra-institutional interaction omits the written EU regulations.

5. Materials and Methods

In order to conduct the research the author reviewed opinions of European Union institutions - Commission, Council and Parliament - as expressed during the inquiry of the European Ombudsman on transparency of trilogues. These opinions clearly show the strong interests of all EU institutions to keep the practice of informal negotiations, that bypasses the regulations on the legislative procedure of the European Union, as anchored in the Treaties. Thus the European Union institutions have proven their will to act without following the wording of the Treaties.

Moreover, the author reviewed the empirical research and studies of political scientists on the topic in question. In order to conduct a thorough research, the author has applied its own experience.

The author compared the results with the wording of the Treaties, that are supposed to constitute the legal base for the existence and practice of the institutions of the European Union.

6. Recommendations

If the Member States wanted to heal the democratic deficit, the EP - as an elected body - would help in this regard. It means that the efficiency, i. e. the speed, of a legislative process was of a lower rank in comparison to the issue of democratic deficit. This will of Member States constitutes a reason against considering the "efficiency" as a factor able to preclude the application of formal Treaty provisions. Furthermore, if Member States would find efficiency worth consideration, they would have mentioned it in the respected provisions of the Treaties.

If the Member States preferred efficient over democratic law-making, they had to find a solution to the extended deliberation on legislative files, which was the result of the transfer of more competencies on the EP. Trying to decrease the time for legislative procedures, informal modes of interaction could

arise. The background of informalization may thus be a different one: secrecy was actually wanted and is not only a "side-effect" of the EP empowerment.

7. Discussion Regarding Inquiry of the Ombudsman

The institutions succeeded to install a democratic parliament. So the lack of democracy could be avoided. However, the European Parliament did not succeed to provide "*the* solution for the democratic legitimacy" [9]. This solution considered solely the institutional framework. One needs to continue, go further and consider procedural solutions, since also those are characteristic for a state under the rule of law. Now, the time has come to work on the legislative proceedings and improve those. One may ask if the EU needs to be as democratic as states at all [9]. It surely does not. But if it issues law enjoying direct effect in 27 Member States, it should respond to the principles incorporated in their constitutions. The efficiency of law making procedure may not constitute the justification for bypassing the Treaties. Only a Treaty reform should be able to change the agreed procedures.

Bearing in mind the statement of the Parliament regarding the risk for the internal transparency and accountability of the decision-making process in case of a formalization of the trilogues, one needs to look for further solutions. Will the EU institutions always find a way to bypass the Treaties? They are the one who can start an infringement procedure against Member States, which does not follow the EU law.

Should there be no consequence for the institutions, in case they do not follow the Treaty or find ways to bypass its wording? Frankly, the Member States have no formalized legal mechanisms with which they could sue institutions breaking the Treaties or with which they could influence their practice. They are bound on diplomatic means that are not as promising as legal instruments. This - in the light of the possibilities of EU institutions to sue Member States (infringement procedure) - constitutes an imbalance.

8. Conclusions

In general, informal rules and institutions may be formalized as long as they do not contradict with the law of a higher hierarchy, for instance the Treaties. The intra- and interinstitutional agreements must obey the Treaties.

For now - based on the practice of informal trilogies - the *de facto*[3] legislative procedure exists parallel to *de jure* procedure. That is why - at the point of view of the author - the application of existing informal rules that violate and bypass formal Treaty provisions during legislative procedures runs to invalidity of legal acts of the European Union that come into force in the procedure of informal trilogies, like 95% of EU legislation does.

The negotiations on EU legal acts - as conducted during informal trilogues - are authorized by COREPER, subsequently. However it raises further question: if COREPER can authorize solely the legal draft or if it can also authorize the conduct, that clearly bypasses the rules on legislative procedure, as foreseen in the Treaties.

The paradox here is, that the European Parliament has battled for years - applying different tactics - to gain more competencies and it succeeded. Due to the informalization of the EU legislative procedures, however, the assembly does barely negotiate on legislative draft. Most of legal work occurs during informal trilogies and members of the European Parliament solely rubber-stamp the deal done between the representatives of the Council, the Commission and the Parliament.

However, the democratic legitimacy of any law-making procedure requires public control. Since the EU law is done "in the wings" and the representatives of the EU institutions support this practice, there can be no public control.

Summing up, one should hope that the practice of conducting informal trilogues will change fast and that EU citizens will be able to discover more about new legislative projects in due time. The diplomacy is surely needed and indispensable, in some areas. But there are areas, in which diplomatic solutions are not compatible with democracy. The institution of informal trilogues may serve as an example.

Abbreviations

EU	European Union
TFEU	Treaty on the Functioning of the European Union
ECJ	European Court of Justice

Author Contributions

Magdalena Katz: Conceptualization, Methodology, Resources

Conflicts of Interest

The author declares no conflicts of interest.

References

[1] European Ombudsman, Trilogues and transparent law-making - European Ombudsman - Opening Address, available at https://www.ombudsman.europa.eu/en/activities/speech.faces/en/60991/html.bookmark

[3] Read: informal.

[2] European Parliament, Opinion of the European Parliament in the European Ombudsman's own-initiative inquiry OI/8/2015/JAS concerning transparency of trilogues, available at: https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/61591/html.bookmark

[3] Council of the EU, Opinion of the Council of the EU in the European Ombudsman's own-initiative inquiry OI/8/2015/JAS concerning transparency of trilogues, available at: https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/61592/html.bookmark

[4] European Commission, Opinion of the European Commission in the European Ombudsman's own-initiative inquiry OI/8/2015/JAS concerning transparency of trilogues, available at: https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/61590/html.bookmark

[5] European Ombudsman, Ombudsman calls for more trilogues transparency, Press release no. 9/2016; available at: https://www.ombudsman.europa.eu/en/press/release.faces/en/69214/html.bookmark

[6] For a detailed explanation of trilogues, see the Codecision and Conciliation Guide prepared by the European Parliament's Conciliations and Codecision Unit; http://www.europarl.europa.eu/code/information/guide_en.pdf

[7] European Ombudsman, Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/8/2015/JAS concerning the transparency of Trilogues, available at: https://www.ombudsman.europa.eu/en/cases/decision.faces/en/69206/html.bookmark

[8] European Ombudsman, Ombudsman opens investigation to promote transparency of "trilogues", PRESS RELEASE NO. 9/2015, available at: https://www.ombudsman.europa.eu/en/press/release.faces/en/59975/html.bookmark

[9] Piris, The Lisbon Treaty, A legal and Political Analysis, 2010, p. 119.

[10] Proposal for an Inter-institutional Agreement on Better Regulation of 19.5.2015, COM (2015) 216.

[11] ECJ, decision Case C-409/13.

[12] Skowron M., Secrecy During the Ordinary Legislative Procedure of the European Union: The Legal Dimension, European Public Law, Volume 29, Issue 2 (2023) pp. 219 - 248, https://doi.org/10.54648/euro202301

[13] Katz, M. The EU as an Area of Freedom, Security and … Diplomacy, 23rd Annual International Conference on Law, 13-18 July 2026, Athens, Greece: Abstract Book, p. 49 (available at: https://www.atiner.gr/abstracts/2026ABST-LAW.pdf)

[14] Lord, The democratic legitimacy of codecision, JEPP 2013, 1056, 1059.

[15] Charlotte Burns, Anne Rasmussen & Christine Reh (2013) Legislative codecision and its impact on the political system of the European Union, Journal of European Public Policy, 941, 946.

[16] Farrell/Héritier, Formal and Informal Institutions Under Codecision: Continuous Constitution-Building in Europe, Governance: An International Journal of Policy, Administration, and Institutions, Vol. 16, No. 4, October 2003 p. 577, 584.

[17] Rasmussen/Shackleton, The scope for action of European Parliament negotiators in the legislative process: lessons of the past and for the future, Paper prepared for the Ninth Biennial International Conference of the European Union Studies Association, Austin, Texas, March 31-April 2, 2005.

[18] Rasmussen/Reh, The consequences of concluding codecision early: trilogues and intra-institutional agreements bargaining success, JEPP 2013, 1006, 1020.

[19] Häge/Naurin, The effect of codecision on Council decision-making: informalization, politization and power, JEPP 2013, 968.

[20] Dimiter Toshkov and Anne Rasmussen (2012): 'Time to Decide: The effect of early agreements on legislative duration in the EU', European Integration online Papers (EIoP), Vol. 16, Article 11 p. 4. http://eiop.or.at/eiop/texte/2012-011a.htm

[21] Reh/Héritier/Bressanelli/Koop, The informal politics of legislation: explaining secluded decision making in the European Union, Comparative Political Studies, 46 (9), 2011, 1112, 1114.

[22] Henry Farell & Adrienne Héritier, The Invisible Transformation of Codecision: Problems of Democratic Legitimacy, SIEPS, Report No. 7, June/2003.

[23] Michael Shackelton & Tapio Raunio (2003), Codecision since Amsterdam: a laboratory for institutional innovation and change, JEPP 10: 2, 171, 183.

[24] Henry Farell & Adrienne Héritier, 2004, Interorganzational and intraorganizational power in shared decision making, Comparative Political Studies Vol. 37, 1184, 1189.

[25] Treaty on the Functioning of the European Union, Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, pp. 47-390, http://data.europa.eu/eli/treaty/tfeu_2012/oj

[26] Consolidated version of the Treaty on European Union, http://data.europa.eu/eli/treaty/teu_2016/oj