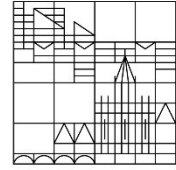




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I Know What You Did Last Trilogue

National Parliaments, Information Costs, and the Scrutiny of Informal EU Negotiations

MASTER THESIS

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ABSTRACT

Trilogues have long been criticised for their informality and lack of transparency. Among the critics are national parliaments who reportedly find it difficult to scrutinise trilogues proceedings and their own governments' role in them. In this thesis, I analyse the effect of trilogues on opposition MPs in national parliaments from a rational-choice institutionalist perspective, arguing that trilogues substantially increase the costs of accessing information and thereby inhibit scrutiny. However, my case study of the German Bundestag also shows that outsourcing tasks of information accessing and processing through a combination of highly formalised and informal institutions can mitigate the negative effects of trilogues. More broadly, the findings further point to an imbalance in the incentive structure of scrutiny where MPs face low expected benefits from scrutiny as the lack of public salience continues to haunt EU politics. This reduces scrutiny of trilogue proceedings even if the high information costs can be overcome through institutional adaptations.

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List of Abbreviations

AA	Auswärtiges Amt
AStV	Ausschuss der Ständigen Vertreter (COREPER)
BMWi	Bundesministerium für Wirtschaft und Energie
COREPER	Committee of Permanent Representatives
EP	European Parliament
EU	European Union
MP	Member of Parliament
OLP	Ordinary Legislative Procedure
RCI	Rational-Choice Institutionalism
TFEU	Treaty on the Functioning of the European Union

1 Introduction

Informal trilogues have recently regained public attention as a distinct mode of decision-making in the European Union (EU) during the negotiations on the new copyright directive. As the issue experienced a sudden surge in public attention in the early months of 2019, a variety of interest groups and political actors struggled to follow the negotiations and secure last-minute changes to the provisional agreement forged by the Council Presidency and Parliament representatives. However, while these specific trilogue negotiations subsequently took place under intense public scrutiny, most of the several hundred other trilogues taking place every year are not met with such strong public interest. This leaves the task of scrutinising, politicising and communicating the proceedings with specialised institutional actors, such as the European and national parliaments. National parliaments in particular have the double duty to scrutinise their own government's behaviour on the European stage as well as to check more broadly whether European legislation conforms with the interests of their constituents.

Over the past decade, however, the emergence of informal trilogues as the dominant mode of negotiation and decision-making in the EU has arguably made scrutiny more complicated for these parliaments. In a public consultation following an inquiry by the European Ombudswoman (OI/8/2015/JAS), several national parliaments complained that trilogues had made the exercise of their scrutiny tasks more difficult due to their informality and opaqueness. For instance, the EU Committee in the United Kingdom's House of Lords submitted that "transparency of trilogues needs to be increased, and that national parliaments need to have greater oversight of and influence over the trilogue process if they are effectively to fulfil their scrutiny function" (House of Lords, 2016, p. 2). The European Affairs Committee of the Dutch Tweede Kamer contended that it often remains unclear "if – and if so – when trilogues are taking place, how long the trilogue phase lasts and what will be discussed during the negotiations" (Tweede Kamer, 2016, p. 1). The Commission des Affaires Européennes of the French Assemblée Nationale concurred, arguing that the opacity of trilogues not only made scrutiny more difficult for national parliaments, but also that it made it more difficult for citizens to understand the decision-making process and different political positions (Assemblée Nationale, 2016).

Besides highlighting these practical difficulties of accessing information on trilogues proceedings, national parliaments also brought forward normative arguments as to why the transparency of trilogues is of their concern. The Romanian Senate's EU Committee, for instance, suggested that "better transparency would consolidate the relationship between citizens and the European institutions and would diminish the power of the lobbyists" (Romanian Senate, 2016). In addition to "[increasing] the possibilities of monitoring the government's efforts during trilogues" (Tweede Kamer,

2016, p. 2), more transparency would “give an impulse to national engagement in the EU legislative process as well as to its democratic legitimacy” (ibid).

These practical and normative concerns warrant a thorough analysis of whether national parliaments are indeed at the mercy of the European institutions when it comes to accessing information on trilogue proceedings and what implications that has for their scrutiny activities. In recognition of the special role of opposition parties in scrutinising their governments, I therefore investigate in this thesis the following research question:

How do informal trilogues affect the ability of national MPs from opposition parties to exercise effective scrutiny over the legislative process and hold their governments to account?

I begin by reviewing the current literature on the role of national parliaments in EU affairs, outlining how their role has evolved and how they have adapted to changing conditions on the European level (Chapter 2). Having identified the shortcomings of the existing literature and derived my research question, I proceed in Chapter 3 by developing my own theoretical framework. Adopting a rational-choice institutionalist perspective, I discuss the roles of actors, institutions, and information in trilogue scrutiny and develop a simple model to describe the scrutiny behaviour of national members of parliament (MPs). This culminates in the formulation of my research hypotheses which guide the subsequent empirical analysis. In Chapter 4, I discuss my research design, justifying the choice of the German Bundestag as a crucial, least-likely case to study and semi-structured expert interviews as a fruitful tool to investigate individual behaviour in the context of a high number of potential confounding variables. This is followed by a brief description of how I address possible validity and reliability concerns as well as ethical considerations regarding the use of my interview data. In Chapter 5, I lay the groundwork for the empirical analysis by outlining the current institutional arrangements that shape the information gathering activities by the Bundestag and its opposition MPs. In my empirical analysis in Chapter 6, I first reflect upon the reported scrutiny behaviour and identify the different factors that determine it. Then, I examine the individual institutions outlined in Chapter 5 and their roles in facilitating the Bundestag’s access to information pertaining to trilogues. Having reflected upon the findings’ significance for my hypotheses, I consider their wider theoretical, practical, and normative implications in my concluding Chapter 7.

2 Literature Review

In this chapter, I review the existing literature on national parliaments in relation to European affairs, arguing that it exhibits a number of shortcomings. Firstly, I argue that so far attention has been paid primarily to formal scrutiny procedures, even though informal ways of acquiring information and holding government to account may be equally important, especially for opposition parties. Secondly, and related to that, I highlight that the special position of opposition parties in scrutiny processes has been largely neglected, with national parliaments often treated as single entities. Thirdly, I contend that existing accounts fail to account for informal practices at the European level and their impact on national parliaments, notably the use of informal trilogues.

The literature has monitored closely the changing role that national parliaments have played in the European legislative process over the years. The first main debate focused on the extent to which national parliaments should be considered losers of European integration. The so-called de-parliamentarisation thesis suggested that, as agenda-setting, policy- and decision-making were increasingly transferred to the European level, national parliaments were robbed of their key legislative competences and lost control over the legislative process (Niblock, 1971; Sprungk, 2010; Auel, 2013). This was countered by a re-parliamentarisation thesis which pointed at various ways in which national parliaments have reasserted themselves and been granted a greater role in the European legislative process in response to the “democratic deficit” criticism (Goetz and Meyer-Sahling, 2008). For example, much attention has been paid to the early-warning mechanism (Articles 5 and 6 of the *Protocol on the application of the principles of subsidiarity and proportionality* of the TFEU) under which national parliaments can formally submit Reasoned Opinions on a Commission proposal if they have subsidiarity concerns ((de Ruiter, 2013; Rozenberg and Hefftlar, 2015; Miklin, 2017; Huysmans, 2019).

The debate has since become more nuanced and moved on to examine how national parliaments have adapted their behaviour and institutions in response to the Europeanisation of decision-making. The rationale behind many of these changes is that, being deprived of their final say over legislation, national parliaments have to get involved at earlier stages of the policy process to influence their governments (Winzen, 2012). In doing so, they focus on what Auel calls the communicative function of national parliaments, which includes publicly holding the government to account (Auel, 2013). Consequently, most of the institutional and behavioural changes relate to the ability to effectively scrutinise the European legislative process and the government’s role in it.

2.1 Behavioural Foundations

Auel and Christiansen provide a succinct overview over the two main ways in which MPs' behaviour in EU affairs is conceptualised in the literature, taking into account the role of institutions (Auel and Christiansen, 2015). On the one hand, sociological approaches suggest that actors follow a logic of appropriateness in which preferences are guided by norms, values and institutions. Rationalist approaches, on the other hand, contend that actors behave according to a logic of consequences where they act in pursuit of exogenously determined preferences. For instance, they may get involved in order to influence policy or to realise electoral benefits. Empirically, Finke and Herbel find that opposition parties are more likely to scrutinise EU legislation when disagreement with the government's position is strong or when the government is weak in terms of seat shares (Finke and Herbel, 2015). I discuss this behavioural aspect further below when constructing my own theoretical framework.

2.2 Institutional Adaptations

According to Rozenberg and Hefftlar, national parliaments have made institutional adaptations in three key areas: parliamentary rights, intra-parliamentary structures, and human resources (Rozenberg and Hefftlar, 2015, p. 8).

Parliamentary rights primarily concern the access to information and the ability to comment on European affairs. In most member states, these are limited to having access to various documents, being informed by the government about ongoing processes on the EU level and issuing non-binding resolutions. As Auel and Christiansen argue, however, exercising these rights is not always straightforward due to "the highly technical character and complexity of EU issues, the lack of transparency of EU negotiations, the lack of time and resources required to process information on EU policies adequately or, in particular, the lack of incentives to get involved" (Auel and Christiansen, 2015, p. 263).

As regards inter-parliamentary structures, a key development has been the creation of standing European Affairs Committees across the EU and the regular scrutiny of EU policy proposals in parliaments' sectoral committees. For instance, Hansen and Scholl highlight the role of cultural factors and mediating institutions in the development of the parliamentary scrutiny systems (Hansen and Scholl, 2002). Dimitrakopoulos finds that the adaption of national parliaments to European integration was incremental and path-dependent, with national parliaments relying on well-known mechanisms and procedures (Dimitrakopoulos, 2001).

In terms of human resources, national parliaments have propped up their administrative staff to handle the vast amounts of documents they receive directly from the EU or from their governments.

For instance, most parliaments have set up special EU units within their administrations and opened representations in Brussels (Högenauer and Christiansen, 2015). Högenauer and Neuhold find that this increasing role of administrative staff in parliamentary work exceeds technical support and that their filter and pre-selection tasks offer them some opportunities for agenda-setting (Högenauer and Neuhold, 2015). However, as Högenauer and Christiansen argue, there is still relatively little knowledge about parliamentary administrations, e.g. regarding their relative influence compared to political staff and the respective importance of formal and informal procedures (Högenauer and Christiansen, 2015, p. 131).

2.3 Shortcomings of the Existing Literature

A key insight of the existing literature is that national parliaments have gone a long way to increase their capability to scrutinise governments and the EU legislative process. This has primarily entailed getting access to relevant information and documents and developing capacities to process the information adequately. There are, however, certain shortcomings of existing scholarly accounts on these developments. In particular, most of the literature has focused on the development of formal procedures through which national parliamentarians obtain information and scrutinise their governments, such as governments forwarding documents for committee scrutiny.

While these channels are certainly important, they may not represent the full scope of activities. For instance, they ignore informal, vertical information exchanges between MPs and their counterparts on EU level, including alerting one another of important legislative developments and updating each other on the progress of negotiations. Auel confirms that, at least in Germany, MPs do indeed regularly resort to informal means to influence EU policy making (Auel, 2006). She finds that they both engage with their government outside formalised procedures and bypass it by dealing directly with EU-level actors.

For opposition parties, these informal channels can be expected to be particularly crucial for two reasons. Firstly, opposition MPs usually do not have the same access to governments' information as MPs from the governing party. Even if MPs have been granted extensive access to documents, national governments continue to exercise gatekeeper functions as regards information that is not put to paper in official documents.

Secondly, as Strelkov highlights, it still seems to be parliamentary party groups that determine the outcomes of formal scrutiny processes (Strelkov, 2015). From that perspective, newly introduced procedures such as the Early Warning Mechanism are also unlikely to be useful to opposition MPs if the government holds a majority in parliament. This may incentivise opposition MPs to acquire information via their party colleagues in the European Parliament and to circumvent official scrutiny procedures entirely. In spite of their vital role in government scrutiny, the literature has largely ignored

this special situation of opposition MPs and instead often treated national parliaments as single entities (Karlsson and Persson, 2018). As a notable exception, Wonka and Rittberger show that opposition MPs indeed use intraparty contacts to learn from their EP colleagues about EU policy-making (Wonka and Rittberger, 2014).

2.4 Zooming in on Trilogues

Another important observation is that existing literature has somewhat neglected how the emergence of informal procedures on the EU level have affected national parliaments and how they, in turn, have adapted to them. Arguably the most relevant such procedure is the widespread adoption of informal trilogues in the ordinary legislative procedure. Trilogues are inter-institutional negotiations (i.e. between Parliament and Council, with the Commission present) behind closed doors that take place before every reading of a file, especially before the first reading. From July 2014 until December 2018, the European Union concluded 299 legislative files through the ordinary legislative procedure, 85% of which (254) were concluded at the first reading stage following agreements in trilogues (EPRS, 2019). In trilogue meetings, the Council is normally represented by the member state that holds the Council presidency while the Parliament is represented by the chair of the responsible committee, the rapporteur, and the shadow rapporteurs (European Parliament, 2019). As outlined in Figure 1, both the Parliament's representatives and the Council Presidency are to report back to the responsible committee or the COREPER/Council working group respectively after every trilogue meeting. If the negotiations are successful, the results just have to be passed by the Parliament's plenary and the Council in their respective first readings to become law. The rationale behind these somewhat secretive meetings is to make the legislative process more efficient and less constrained by procedural rules. As Brandsma points out, both the Council and the Parliament have a strategic interest in passing legislation in first reading because of the institutional setup (Brandsma, 2015, p. 303). On the one hand, the Council finds it difficult to amend legislation itself and therefore benefits from the Parliament only making amendments that are supported by a qualified Council majority. On the other hand, Parliament benefits from first-reading agreements because it thereby manages to avoid stricter voting rules at the second-reading stage. This incentivises the two institutions to meet ahead of the formal readings to negotiate and agree upon the amendments to the Commission proposal that can be supported by both of them.

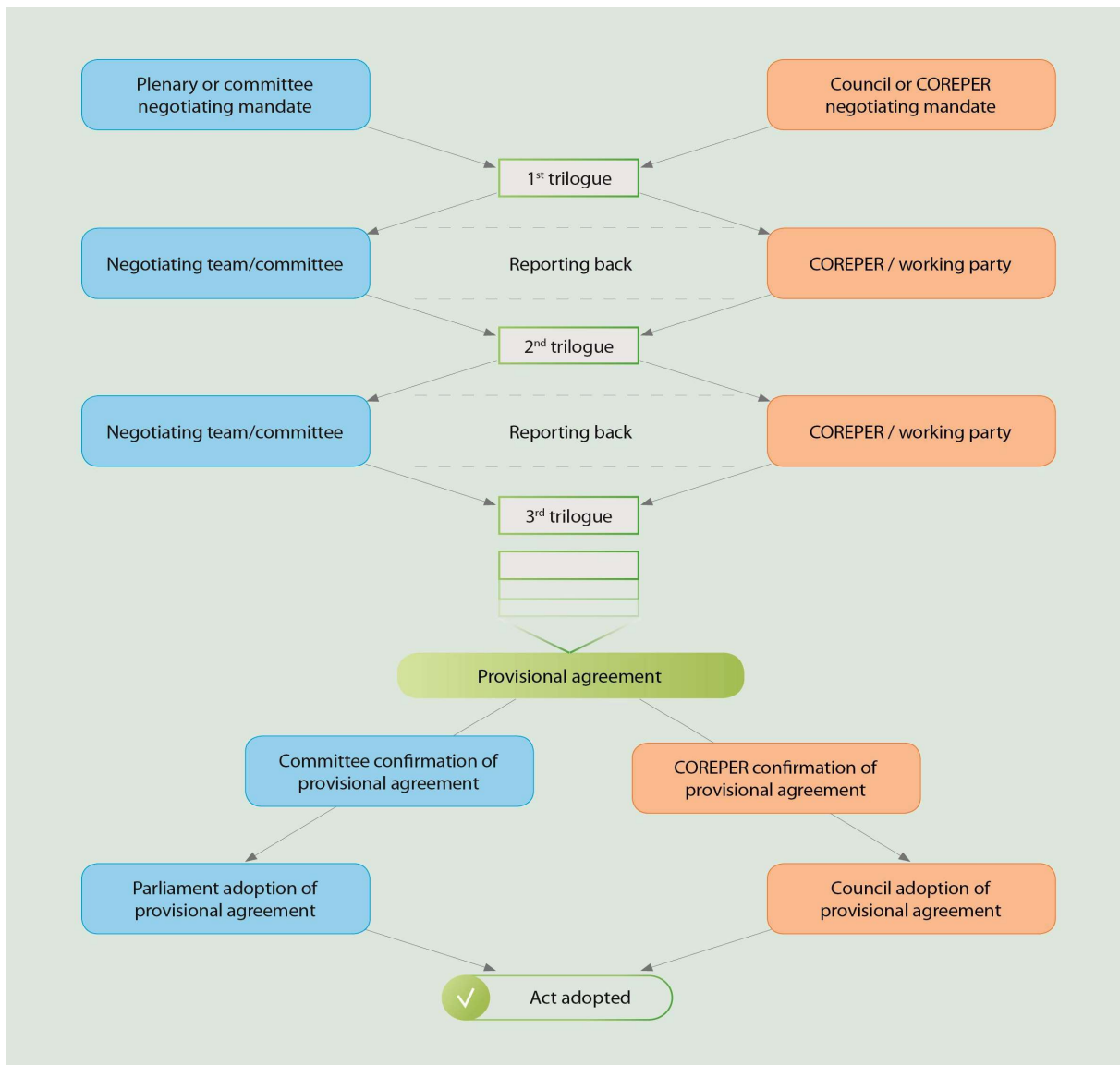


Figure 1: Trilogues in the Ordinary Legislative Procedure (Source: European Parliament, 2019).

As outlined in the introduction, trilogues have attracted criticism for their opaqueness and lack of transparency. Because they are held behind closed doors, little information on trilogue proceedings becomes public. The common justification for this is that secrecy is required to establish trust between the negotiating parties and ensure efficient law-making (Leino, 2017). For instance, the Parliament's secretary-general Klaus Welle has argued that

"[i]f intermediary positions adopted by the delegations or the institutions or suggestions they put forward over the course of the negotiations were made public before the completion of the legislative procedure, there would be a high and concrete risk that those positions and suggestions be used to undermine the provisional agreement." (Teffer, 2018)

At the same time, however, this makes it difficult for the media, stakeholders, or other actors to acquire the necessary information to scrutinise the process effectively. As Cygan emphasises, this is

particularly problematic for national parliaments for two reasons (Cygan, 2013, p. 118). Firstly, the lack of transparency makes it more difficult to follow trilogue negotiations and hence to provide the appropriate feedback to their national governments in a timely fashion. Secondly, the Presidency as the Council's negotiator "tends to hold its cards close to its chest" (ibid: p.118), therefore making it difficult for national governments themselves to follow the negotiations and influence them in accordance with their national parliaments' priorities.

2.5 Summary and Research Question

In light of the intense debates on de- and re-parliamentarisation outlined above, one would have expected a similar interest of the academic community on the impact of trilogues on national parliaments as, for instance, had been triggered by the early-warning mechanism. As this has not been the case, the present thesis seeks to address this gap in the literature. In doing so, it takes into account further shortcomings of the existing literature, most notably the lack of attention paid to opposition parties within national parliaments. The research question is thus:

How do informal trilogues affect the ability of national MPs from opposition parties to exercise effective scrutiny over the legislative process and hold their governments to account?

Having derived my research question from the existing body of literature, I proceed in the next chapter by outlining the theoretical framework that forms the basis for my hypotheses and informs the empirical inquiry.

3 Theoretical Framework

In this chapter, I outline a rational-choice institutionalist framework that provides the theoretical underpinning of my research. I begin by briefly discussing the roles of actors, institutions and information in rational choice institutionalism. I then develop a simple model for the decision of national MPs to scrutinise EU legislation and the effect that trilogues may have on that. Based on this, I formulate hypotheses to be tested in the empirical analysis.

3.1 Rational Choice Institutionalism

Together with historical and sociological institutionalism, rational choice institutionalism (RCI) is one of the three neo-institutionalist approaches which emphasise how institutions structure the actions of political actors and bias subsequent outcomes (Aspinwall and Schneider, 2000, p. 3). What makes RCI particularly suited for the analysis at hand is that it is capable of explaining scrutiny behaviour both as an individual decision and on a structural level as an aggregation/series of individual decisions. It allows these decisions to be broken down to a number of factors and therefore provides analytical clarity and parsimony. Most importantly, one can clearly formulate expectations regarding the effects of a change in one factor (e.g. information availability) on the overall behaviour. Naturally, this choice of theory involves trade-offs. For example, while historical institutionalism may struggle to explain how a specific institution influences individual behaviour, it may have more advanced theoretical tools than rational choice theory in explaining institutional change over time. Similarly, the sociological variant may lead to empirically rich case descriptions, but the logic of appropriateness it ascribes to actors may also make it more difficult to generalise because the insights are somewhat idiosyncratic. Given that my aim is to identify the specific effect of one institution on individual behaviour, I argue that RCI provides a promising theoretical toolbox to formulate expectations, as I explain in the following.

3.1.1 Actors in RCI

According to Pollack, rational choice theory has three core characteristics (Pollack, 2007, p. 32). Firstly, *methodological individualism* entails that individual actors are the unit of analysis, which distinguishes rational choice from its sociological counterparts. Actors are hence conceptualised as individual persons, such as MPs, their staff, civil servants, etc. Actors can also engage in principal-agent relationships where one actor is tasked with acting upon their principal's preferences given their own ones. This may be the case when staff of a parliamentary group process information on behalf of an MP. Furthermore, actors may aggregate and pursue their preferences via institutions. For example, the Bundestag can issue opinions based on the aggregated individual preferences of its members.

Secondly, rational choice theory assumes actors to be generally *rational and utility-maximising*. They are expected to behave according to a logic of consequences, i.e. they rank their exogenously

determined preferences and take the course of action that is likely to maximise their utility. This assumption too differs from sociological theories which assume a logic of appropriateness, according to which actors choose the course of action which appears appropriate given existing norms and conventions. Crucially, the idea of rationality does not necessarily imply that actors always act perfectly rational as they can still take poor or poorly informed decisions. The key assumption here rather concerns the way decisions are being taken given specific (perceived) expressions of parameters.

Thirdly, and most relevant to the institutionalist variant, rational choice theory posits that actors take their *decisions under institutional or strategic constraints*. Individuals are conceptualised as operating in an environment of formal and informal institutions that shape their preferences and actions. As is done in this paper, a typical RCI analysis may therefore examine how a specific institution (e.g. trilogues) impact the decisions of individual actors (e.g. whether a national MP scrutinises EU legislative proposals).

3.2 Institutions in RCI

For the purpose of this paper, institutions are defined as “legal arrangements, routines, procedures, conventions, norms, and organizational forms that shape and form human interaction” (Nørgaard, 1996, p. 39). In line with the core assumptions of rational choice laid out above, RCI usually considers them to be intervening variables (Aspinwall and Schneider, 2000), but they may also be depending variables (Pollack, 2008). For instance, actors’ decisions may be influenced by a restricted access to information or voting and decision-making rules (institutions as *intervening variables*). At the same time, actors can also attempt to change institutions in accordance with their preferences (institutions as *dependent variables*). This dual dynamic of institutions is highlighted by Shepsle who argues that the RCI literature has produced two ways of conceptualising institutions (Shepsle, 1989). The first perspective assumes that institutions constitute exogenously given constraints which determine the rules of the game (i.e. the structure). Institutions determine the actors involved, their opportunities to act, the information they possess, the timing of actions, and the set of possible outcomes. In game-theoretic terms, this may lead to *structure-induced equilibria*.

From the second perspective, institutions are not exogenously given but drawn up by the actors involved to consolidate the terms of their interactions. In that sense, they are more a reflection of how different actors come together in a specific equilibrium, or *equilibrium institutions* (Pollack, 2007). For the purpose of this research, I follow this latter conceptualisation because it highlights that actors do have influence over the institutions in the context of which they operate, even if some institutions are *de facto* exogenously given. For instance, national MPs cannot simply change the practice of trilogues as they have little bargaining power vis-à-vis the European actors. These institutions may be understood as *de facto* intervening variables. Nevertheless, they can set up and amend other

institutions over which they enjoy leverage, such as the administrative apparatus of their national parliament or the informal information channels between them and their European party colleagues. These institutions are intervening variables too, but they can also become dependent variables if amended. Keeping institutions in the equation (rather than considering them to be exogenous) acknowledges the dynamics of (some) institutions and is thus better suited to explain institutional change over time. It also chimes with Aspinwall and Schneider's proposition that RCI should focus more on modelling "specific 'historical' influences" and on the "strategic use of institutions" (Aspinwall and Schneider, 2000, p. 29).

3.2.1 The Importance of Information

A crucial insight permeating most of the literature is that the ability to access and process information is a necessary condition for effective scrutiny. Even though evidence suggests that the availability of information alone does not automatically lead to parliamentary scrutiny (Brandsma, 2012), one can hardly imagine scrutiny without information as its "raw materials" (Cygan, 2013, p. 113). In order to understand the impact of trilogues on scrutiny practices in national parliaments, it is therefore important to first get a sense of how information trickles down from the European to the national level through the various institutions. In Blom & Vanhoonacker's words, how is the information pertaining to trilogues "accessed, structured, channelled, and processed" (Blom and Vanhoonacker, 2014, p. 2)? Which information channels are open to MPs and how actively do they make use of them? Answering these questions is vital because this information regime may act as a moderating variable for which any research has to control. For instance, a malfunctioning information regime may practically inhibit effective scrutiny even if sufficient information on trilogues was theoretically available and accessible.

For the purpose of this research, I define *information* as pieces of knowledge that trigger "a state of conditional readiness for goal directed activities" (MacKay, 1969 cited in Blom and Vanhoonacker, 2014, p. 7). This implies that information, in contrast to simple knowledge, is of potential relevance and use to the informed person because it may influence their future behaviour. For national MPs, information on how their national government has represented their interests in international negotiations matters because it is the precondition for MPs to intervene or publicly call out objectionable government behaviour. Equally, information on provisional legislative agreements enables them to point out flaws in a policy before the agreement is finalised. Finally, information on the policy process may help MPs to point out conflicts of interest or undue influence exerted by third actors, such as lobbyists. From an RCI perspective, information is thus crucial for the realisation of an MPs' preferences, may they be policy influence or electoral benefit.

One way to distinguish information from knowledge is by identifying "information-seeking activities" (Wonka and Rittberger, 2014, p. 625). For instance, MPs may actively consult other actors or

documents to acquire useful information. They may also outsource this task to administrative or political staff, relying on others to screen information and extract what is of operational value.

Apart from the *factual content*, the utility of information also depends on several other factors. For example, the *shape* in which information is conveyed matters. Written information may be more reliable than verbally conveyed information, but it may also be difficult to process. For instance, there are suggestions that the German Bundestag may suffer from information flooding or “Informationsüberflutung” (Abels, 2016, p. 121). The *density* of information, i.e. the share of relevant insights among the data influences how easily information can be used, as does its *complexity*. The *timing* of when information is received may also be crucial to its further use, since information that arrives too late may lose all its utility.

To capture these factors empirically, it is helpful to consider the overall *information regime*, i.e. questions of who conveys which information when and under what circumstances, how information is transformed in this process, and how that impacts the utility for the end consumer. This regime may be understood as consisting of the institutions themselves, but also the actors involved and the choices they make. For instance, the regime encompasses the way in which and the frequency with which actors make use of the institutions at their disposal. In line with the argument above, the information regime is dynamic in that both the institutions and the actors and their behaviour can change over time. Conceptually, it differs from the institutional environment in that the information regime describes the empirical realities, i.e. how information is gathered and processed, while the institutional environment refers specifically to the institutions that affect how actors can and do gather and process information.

3.3 A Simplified RCI Model for MP’s Scrutiny of EU Legislation

Following the rational choice institutionalist framework outlined above, I conceptualise the act of scrutinising EU legislation in its different phases as a decision of an individual MP, based upon exogenous preferences and influenced by the institutional environment. As regards the preferences of MPs, the literature on actor motivation discussed in 2.1 *Behavioural Foundations* provides useful guidance. From an RCI perspective, individual MPs may engage in scrutiny of EU legislation in pursuit of two preferences: electoral/career benefit and policy influence (Auel and Christiansen, 2015). On the one hand, MPs may want to spend their time on activities that strengthen their and their party’s support among the electorate in order to gain political momentum or win votes at the next election ($B_{E/C}$). In turn, whether an MP can expect such utility from scrutinising EU legislation depends on the salience of the issue (S) in question. Issues of high salience are likely to create stronger incentives for MPs to scrutinise EU legislation (Saalfeld, 2003). Such incentives may be even greater for opposition MPs who can expect to gain politically from providing meaningful criticism on government policy. On

a personal level, an MP may also seek to build up expertise in a specific policy area in order to make a name for themselves and develop their party-political career. On the other hand, MPs may also engage in EU scrutiny in order to exert policy influence (B_{Pi}), as has been shown to be the case for government-supporting parliamentary groups (Winzen, 2013). In order for this incentive to work, there has to be a link between the scrutiny activity and the policy outcome (Saalfeld, 2003). While opposition MPs are unlikely to influence government policy directly through mere scrutiny, they may be able to drag the issue into the public spotlight and then rely on public opinion to shift the government's position in the desired direction. The ability of MPs to reap the benefits from scrutiny also depends on whether there are institutions in place that facilitate these activities (I_{Ben}). For instance, the exercise of policy influence on the federal government's position may be supported by regular debates in committees or the Bundestag's plenary.

On the other side of the equation, scrutiny is costly for MPs because it may require time and resources to access information (C_{Inf}) and to process the information adequately (C_{Pr}). In terms of access to information C_{Inf} , for instance, costs arise because of the time needed to retrieve the correct information from databases or because an MP may have to invest political capital into relationships with other actors (e.g. MEPs) to acquire information via informal channels. As regards the costs of processing information C_{Pr} , costs may arise, for instance, from the time and (human) resources invested in scanning and assessing the information, and using the relevant channels to make one's concerns about the legislation heard (e.g. via the committee system, informal contacts, media, etc.). The costs C_{Inf} and C_{Pr} thus also include the opportunity cost that one bears when taking a particular course of action instead of all other possible courses of action. For instance, using resources to scrutinise a trilogue proceeding prevents these resources from being used to scrutinise another legislative file which is potentially more rewarding.

The costs of accessing and information can be heavily influenced by the institutional environment (I_{Inf}). For example, regular, institutionalised information exchanges or a dedicated administrative division screening the bulk of documents for relevant information can significantly reduce the costs for accessing information C_{Inf} . Conversely, institutions such as informal trilogues can also significantly increase the costs of accessing information as their explicit purpose is to provide space for confidential exchanges. By design, trilogues restrict access to information for outsiders. Similarly, the degree of complexity of EU legislation can increase the costs of processing information C_{Pr} as complex legislation will require more expertise and resources to be scrutinised. In turn, parliamentary research services or established relationships with external experts can reduce these costs for individual MPs as they allow them to outsource scrutiny and thereby save time and resources.

3.3.1 Scrutiny in the Ordinary Legislative Procedure

In the ordinary legislative procedure (OLP), the institutional environment and thus the utility of scrutiny varies depending on the stage of the legislative process. During the first stage, the Commission publishes its proposal and forwards it to all national parliaments for scrutiny (Art. 4 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality). National parliaments then have eight weeks to submit a reasoned opinion on whether the proposal infringes upon the subsidiarity principle. This also provides individual MPs with the opportunity, the information, and sufficient time to scrutinise the proposal substantially and voice their concerns before it enters the first reading stage. With access to the entire Commission proposal and eight weeks to act, the institutional environment I_{Inf} allows MPs to access and process information at relatively low costs while the benefits $B_{E/C}$ and B_{PI} are potentially high. At this early stage of the policy process, there is still a fair chance that an MP can influence the public debate on the issue and thereby influence government policy. In these cases, the utility of scrutiny $U_{\text{Early Stage}}$ can be summarised as follows:

$$U_{\text{Early Stage}}: (B_{E/C} + B_{PI}) * S * I_{\text{Ben}} - C_{\text{Inf}} * I_{\text{Inf}} - C_{\text{Pr}} * I_{\text{Pr}} > 0$$

During the second stage of the ordinary legislative procedure, the Council and Parliament prepare their negotiating positions for the trilogues ahead of the first reading. Pursuant to Rule 69c of its Rules of Procedure, Parliament adopts its negotiating mandate based on the respective legislative report adopted by its lead committee or a plenary decision. In the Council, the presidency coordinates internal negotiations (usually at working group or Committee of Permanent Representatives level (COREPER)) in order to find a sufficient majority for a common negotiating position. Once both institutions have adopted their positions, interinstitutional negotiations (i.e. trilogues) are scheduled. It is at this stage that the costs of scrutiny can be expected to rise significantly as access to meaningful information becomes difficult.

For national MPs, there are several channels through which they can get insights on what is discussed during the negotiations. Firstly, they can use formal contacts with their national government. In Germany, for instance, information rights of the Bundestag are regulated in the EUZBBG (*Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union*). §3 (1) thereof states that the government “informs the Bundestag in matters concerning the European Union comprehensively, at the earliest time possible and continuously”. This entails forwarding all documents by the EU (§4 (1) 1.) and all reports from the government and the permanent representation to the EU on the initiation, negotiations and results of trilogues (§4 (2) 2.c). On paper, this suggests that MPs should be fully informed on what is going on during trilogues, corresponding to a low $C_{\text{Inf}} * I_{\text{Inf}}$. However, this crucially depends on a number of factors, notably the quality of the information actually provided. For instance, the documents provided may not contain

the necessary information or be too vague to draw any meaningful conclusions on the content and dynamics of the negotiations. As Cygan highlights, the Council presidency as the Council's negotiator in trilogues "tends to hold its cards close to its chest" (Cygan, 2013, p. 118), which may restrict the information flow to national governments and by extension to national parliaments. Furthermore, the information costs under given institutional constraints $C_{inf} * I_{inf}$ depend on the amount of irrelevant information, with the vast amounts of documents provided by the EU and the national government potentially overwhelming MPs. Other factors, such as whether information really is forwarded in a timely manner, may also play a role.

A second avenue to access information on trilogues is not via the Council, but via the other two institutions involved. Parliament in particular has sought to make trilogues more transparent both for its own members and the public. For instance, rapporteurs are required to report back to their lead committee after every trilogue meeting. However, as Brandsma shows, "the majority of trilogues is not reported back on at all, or not in time" (Brandsma, 2018, p. 1). And if rapporteurs report back, they often do so poorly (ibid). This makes Parliament an unreliable source of information, as MPs cannot be sure if the public committee meetings will reveal any useful information.

National MPs could also nurture their relationships to fellow members in the European Parliament in order to gain access to relevant information. Indeed, Wonka and Rittberger find that national MPs regularly use informal party contacts to obtain information on EU policies (Wonka and Rittberger, 2014). While this could also apply to specific information on trilogues, the weak reporting discipline through Parliament's committee system again suggests that this could be an unreliable source of information. MPs would have to gain access to the (shadow) rapporteurs actually sitting at the table to get a continuous, reliable stream of information.

As a result of these uncertainties and difficulties to obtain relevant information, information costs under given institutional constraints $C_{inf} * I_{inf}$ can be expected to be substantially higher at the trilogue stage. In turn, this could disincentivise national MPs from engaging in meaningful scrutiny in the advanced stages of the legislative process, possibly leaving a gap in democratic scrutiny and therefore legitimacy. My research's main hypothesis is therefore:

H1: Trilogues increase information costs to such an extent that national opposition MPs do not find it beneficial to conduct meaningful scrutiny.

Expressed in the terms of the model outlined above:

$$U_{\text{Trilogue}}: (B_{E/C} + B_{PI}) * S * I_{Ben} - C_{inf} * I_{inf} - C_{Pr} * I_{Pr} < 0$$

In a static model, this would imply that these MPs no longer scrutinise EU legislation once it has reached the trilogue stage because the costs outweigh the benefits. This outcome would correspond to the first conceptualisation of institutions described above where institutions are exogenously given and produce a new *structure-induced equilibrium*.

H1.1: Due to increased information costs, MPs no longer scrutinise EU legislation at the trilogue stage.

However, my theoretical conception of institutions outlined in 3.2 *Institutions in RCI* allows for a second, competing sub-hypothesis. From a dynamic perspective where actors can influence their institutional environment to consolidate their terms of interactions, it is also conceivable that MPs seek to amend existing or create new institutions (i.e. change I_{inf}) in order to facilitate their access to information and thereby lower information costs. In rational-choice theoretical terms, actors would create new *equilibrium institutions*. For example, they could push for better information rights or create a new division within the Bundestag's administration tasked with gathering information on trilogues or maintaining relations with other European actors in order to smoothen and regularise the information flow. Theoretical support for this can be found in the vast literature on parliamentary adaption to the Europeanisation of policy making discussed 2.2 *Institutional Adaptations*, which suggests that national parliaments have come a long way in upping their capacities in EU affairs. As a continuation of that, MPs may seek to adapt their institutional environment such that the benefits of scrutinising trilogues exceed the costs. In the model below, this is denominated by the change from the expected utility at time T to the new expected utility after the institutional adaptations at the time $T+1$.

$$U_{Trilogue}^T: (B_{E/C} + B_{PI}) * S * I_{Ben} - C_{Inf} * I_{Inf} - C_{Pr} * I_{Pr} < 0$$

$$U_{Trilogue}^{T+1}: (B_{E/C} + B_{PI}) * S * I_{Ben} - C_{Inf} * I_{Inf}^{T+1} - C_{Pr} * I_{Pr} > 0$$

H1.2: MPs balance the increased information costs caused by trilogues by adapting own their institutional capacities.

3.4 Summary

In this chapter, I have developed an RCI theoretical framework to answer my research question of how *informal trilogues affect the ability of national MPs from opposition parties to exercise effective scrutiny over the legislative process and hold their governments to account*. RCI theory suggests that trilogues increase the information costs borne by MPs when aiming to conduct effective scrutiny, thus making scrutiny a less beneficial and therefore less likely choice (*H1*). Moreover, RCI offers two (competing) predictions following from this hypothesis. Firstly, MPs may refrain from scrutinising trilogues due to the low expected utility (*H1.1*). Secondly, MPs may adapt the institutional environment

over which they retain (some) control in order to increase the expected utility of scrutinising trilogues (*H1.2*). In order to test these hypotheses, I pay special attention to how information on EU legislation permeates from the European to the national level, which actors are involved, and in what shape or quality information is available. This allows me to identify the specific information costs involved and their effects on scrutiny behaviour.

In the following chapter, I describe and discuss the methodology I employ to answer the research question and its sub-questions and in doing so test aforementioned hypotheses.

4 Research Design and Methodology

In this chapter, I justify the choice of the German Bundestag as a case study and semi-structured interviews as a tool to acquire in-depth insights into the scrutiny behaviour of different actors. I further discuss my operationalisation and data analysis methods as well as strategies to eliminate validity and reliability concerns.

As I have outlined above, the claim of some national parliaments and academics that trilogues inhibit effective parliamentary scrutiny has not yet been scientifically substantiated. In the literature, it is assumed that, since information about trilogues is hard to come by, national parliaments cannot or do not scrutinise and meaningfully comment on the negotiations of EU legislation. With the following research design, I seek to investigate the validity of this claim and the role of other (institutional) factors, the plausibility of the suggested causal mechanism, and the consequences for parliamentary scrutiny.

4.1 Case Selection and Generalisability

In order to fully understand the impact of trilogues on scrutiny behaviour and the institutional environment, I conduct a case study of the German Bundestag. Case study research enables the researcher to examine “a contemporary phenomenon (the “case”) in depth and within its real-world context, especially when the boundaries between phenomenon and context may not be clearly evident” (Yin, 2018, p. 39). The institutional arrangements and multiple potential avenues of information flow shaping parliamentary scrutiny of EU legislation indeed constitute such a complex context that an in-depth investigation is warranted. Focusing on one case in depth instead of analysing a larger number of cases superficially enables me to distinguish between the effect of trilogues themselves and the effects of other institutions influencing parliamentary scrutiny. It further allows for “an intensive reflection on the relationship between concrete empirical observations and abstract theoretical concepts” (Blatter and Haverland, 2012, p. 19), and thus a detailed examination of the suspected causal mechanism.

I choose the German lower chamber, the Bundestag, from the population of potential cases because it represents a *crucial, least-likely case* according to Gerring’s case selection typology (Gerring, 2006, p. 115). The Observatory for Parliaments after the Lisbon Treaty (OPAL) has ranked the Bundestag as the second highest of all 40 national parliamentary chambers in the EU in terms of institutional strength and fifth most active in EU affairs (Auel, Rozenberg and Tacea, 2015, p. 79). Of all national parliaments, it is also reported to have by far the highest absolute number of administrative staff working on EU affairs (Högenauer and Christiansen, 2015, p. 125). Moreover, the Bundestag has substantial information rights vis-à-vis the German government, as evidenced by the EUZBBG explicitly

covering trilogues. As the federal parliament of the biggest and one of the founding member states, the Bundestag can further be expected to have built up a strong institutional network to the European level which may facilitate cooperation and information exchange. This may include intra-party relationships with German MEPs as well as with staff at the Council and the Commission. In light of this exceptional institutional strength of the Bundestag in EU affairs, my theoretical framework outlined above would suggest that – compared to MPs from other parliaments – members of the Bundestag would face the lowest information costs and therefore be the *least likely* to refrain from scrutiny of EU affairs.

In terms of generalisability, that allows me to conclude that, if a dampening effect of trilogues on scrutiny behaviour is found in the Bundestag, then it is *highly likely* that parliaments with lower institutional strength (and thus higher information costs) would face at least an equally strong disincentive to scrutinise. However, if no effect is found for the Bundestag, that finding *cannot* be generalised across the wider population of cases. Parliaments of lower institutional strength may have a harder time coping with the additional informational demands of trilogues and hence experience an effect of trilogues even if the Bundestag does not.

4.2 Data Collection

The empirical data for my analysis was collected through in-depth semi-structured elite interviews with primarily open-ended questions. This design combines several advantages with regard to the research goals stated above. First of all, my research aims to go beyond merely measuring the magnitude of the effect of trilogues, in particular by analysing the underlying causal mechanism at play. This requires a qualitative approach capable of both capturing the institutional dynamics shaping the information flows and delving into the subsequent choices individual MPs make. Elite interviews are well suited for that purpose because they can shed light on the causal mechanisms and allow the researcher to “directly and deeply assess the roots of individual actions and attitudes” (Mosley, 2013, p. 2). In other words, the positions that these elite interviewees occupy equip them with precisely the knowledge needed to answer my research questions (Halperin and Heath, 2016, p. 298). As regards the information flows, the difficulty of obtaining information on trilogues itself makes it evident that the people seeking to overcome that difficulty are in the best place to report about it, including the formal and informal channels of information and the frequency of their use. As regards the individual scrutiny behaviour, in-depth interviews are a useful tool to understand how individual MPs view information costs as part of their cost-benefit analyses as well as how they may have increased institutional capacities.

4.2.1 Interviewee Selection

In order to understand the information costs involved in EU scrutiny at the various stages, it is necessary to get a detailed picture of both the information flows and how they relate to the individual decisions of individual MPs. I therefore interviewed political and administrative actors along those information flows, aiming to evaluate their own role in and their assessment of the process. In having a combination of both political and administrative actors at various stages of the information flow, I could triangulate their assertions and increase the reliability of the data.

As regards administrative actors, I interviewed an official at the Bundestag Liaison Office in Brussels, the head of a unit at the Bundestag's administration's Europe subdivision, and two key officials responsible for relations with the Bundestag at the Federal Foreign Office and the Ministry for the Economy. The latter two ministries are responsible for the notification duties of the federal government vis-à-vis the Bundestag pursuant to the EUZBBG and therefore occupy key positions in the information regime. As regards political actors, I interviewed officials from all four opposition parties currently represented in the Bundestag. Among them were political staff at the Liaison Office in Brussels, EU affairs advisors/coordinators of parliamentary groups, as well as MPs and their aides.

In total, I interviewed fourteen actors in twelve interviews. In one case, an interviewee invited two of their colleagues to join and complement answers where necessary. Two of the interviews were conducted by phone due to the geographical distance while the rest were conducted face-to-face. The interviews took usually between 30 and 40 minutes, with one extending over two hours. All interviewees but two agreed to have the interview recorded which allowed me to transcribe them word by word. In the other two cases, I took extensive notes and compiled an interview summary. After the interviews, I sent each interviewee the respective transcript/summary prior to using the data as to allow them to make corrections or clarifications. Three interviewees made use of that opportunity, even though most corrections were only minor corrections.

4.2.2 Interview Technique

I choose semi-structured interviews with primarily open-ended questions because they can “provide detail, depth, and an insider's perspective, while at the same time allowing hypothesis testing and the quantitative analysis of interview responses” (Leech, 2002, p. 665). Although some information (such as the frequency with which a specific institution is used) could also be captured with structured and closed questions, getting at the deeper considerations behind an actor's actions require some flexibility and openness on part of the researcher. For instance, it is not clear from the outset which channels of information are primarily consulted by MPs and why that is the case. In addition, open-ended questions also increase response validity as they allow the interviewees to express their considerations within their own thoughts framework (Aberbach and Rockman, 2002, p. 674). Finally,

allowing for a more open interview process also enables me to benefit from insights from the first interviews in subsequent interviews and to contrast different opinions.

My task is therefore to be prepared for different kinds of responses and adapt the interview to make it most likely to yield interesting insights. For that, I devise general interview guides for both political and administrative actors (Appendix 1). These guides are structured as follows: first, I introduce the general research topic and my background before agreeing on some general interview parameters. I explain that the interviews are anonymised and that any data is treated with utmost care before inquiring whether the interview may be recorded for accuracy and transcription purposes. The structure of the subsequent interview is theory-guided, i.e. the order of and the questions themselves reflect the specific information needs identified through my theoretical considerations (Gläser and Laudel, 2010, p. 115). In order to prevent interviewees from being primed with certain topics, I first ask them to describe their considerations and actions in general before asking about specific aspects.

I generally sought to create an environment in which the interviewees would feel comfortable talking about their work. For instance, I wore business-casual clothing that would convey both my integrity and trustworthiness without giving the interview too much of a formal tone. By emphasising the anonymisation of my interview data at various stages, I intended to promote openness and honesty among my interviewees. While conducting the interview, I tried to carefully encourage my interviewees by nodding, smiling, and signalling interest in what they were saying (Leech, 2002).

4.3 Operationalisation

In order for my research to produce valid results, the key concepts specified in the theory section need to be operationalised adequately for the empirical analysis. The operational definition of a concept should enable the researcher “to determine its presence or absence, strength, and extent” (Halperin and Heath, 2016, p. 135). The concepts to be operationalised are *institutions*, *information*, *information costs*, and *scrutiny*.

4.3.1 Institutions

The conceptual definition of *institutions* outlined above, i.e. “legal arrangements, routines, procedures, conventions, norms, and organizational forms that shape and form human interaction” (Nørgaard, 1996, p. 39), already provides useful guidance as to how they can be identified practically. Their effects, in turn, can be identified when interviewees express that such an institution has led to a change in behaviour or in outcomes more generally. In the interview guides, questions 3-9 (administrative staff questionnaire) and 5-8 (political staff/MP) aim specifically at finding out about the effect of trilogues on parliamentary scrutiny. For example, question 3 (admin. staff) asks whether the rise of trilogues has had any impact on their work at all. It is only after this question that I ask about

specific aspects, such as whether trilogues have led to a change in their organisations' set-up or whether it has made it more difficult to access information. As argued above, asking the general question first helps to account for priming bias, as interviewees may be more likely to mention factors such as *access to information* as an issue if it has been mentioned before.

4.3.2 Information and Information Costs

I have defined *information* conceptually as pieces of knowledge that trigger “a state of conditional readiness for goal directed activities” (MacKay, 1969 cited in Blom and Vanhoonacker, 2014, p. 7). On the operational level, this can refer to, for instance, the content or the consequences of a policy proposal, the behaviour of an actor in negotiations, or knowledge about processes (when is what happening?). Information may be found both in documents and verbal conversations. For instance, a key document in trilogues is the multi-column document which sets out the Commission proposal (1st column), Parliament's position (2nd column), the Council's position (3rd column) and the provisional text agreed upon where applicable (4th column). Other important information would, for example, reveal how the federal government behaves when the Council decides upon its negotiating position.

Information costs then refer to the effort required to access this information and make use of it in a utility-oriented way. For example, information costs can be identified when interviewees speak of the manpower required to find information or the time to read a document and understand it. In the interview guides, questions 1-2 and 5-7 (admin. staff) and 4, 7-8 (pol. staff/MP) aim at teasing out information on how information is gathered and processed and what costs may be involved in that. For example, question 4 (pol. staff) asks how the interviewee accesses information for scrutiny and therefore which channels of information flow they consult.

4.3.3 Scrutiny

Scrutiny may be understood as behaviour aimed at controlling the policy process both substantially and procedurally. For instance, this may include evaluating the consequences of policy proposals or the appropriateness of government actions. It may be followed by a communication of the results of said evaluation to other actors, such as the government or the wider public. In the interview guides, questions 1-2 (admin. staff) and 1-4 (pol. staff/ MP) seek to find out about general scrutiny behaviour before trilogues as intervening variable are introduced in the subsequent questions. For example, question 3 (MP/pol. staff) asks the interviewee to illustrate their scrutiny behaviour using an example.

4.4 Data Analysis

I analyse the raw interview data through a qualitative content analysis. Qualitative content analysis seeks to analyse elements of recorded communication in a systematic, rule-guided, and theory-guided manner in order to draw inferences about that communication (Mayring, 2010, p. 13). The aim is not

only to analyse the data qualitatively, but to do so in a structured fashion that allows me to draw meaningful comparisons between interview sources and valid conclusions about the suspected causal mechanism. Moreover, using such a structured method of analysis helps to resist the temptation of “free interpretation” which may lead to a lack of scientific rigour and transparency (Gläser and Laudel, 2010, p. 45).

The main instrument of a qualitative content analysis is a category system that is based on the theory to be tested (deductively) and which is revised and completed during the empirical analysis (inductively) (Mayring, 2010, p. 59). The purpose of this exercise is to filter and structure the raw data and attribute individual data points/text sequences to the relevant theoretical aspects. This allows for a more focused as well as a more systematic analysis.

According to Gläser and Laudel, the analytical process comprises four stages: preparing the extraction of relevant data, extracting data, processing the data, and evaluating it (Gläser and Laudel, 2010, p. 203). Preparing the extraction of relevant data includes collecting the evidence, determining indicators and building a category system based on existing theory. During the extraction, the category system is complemented through induction, and the data is interpreted. The processing stage encompasses the structuring of data along temporal and thematic lines while the evaluation stage entails the interpretation of the data with regard to the hypotheses and the proposed causal mechanism.

4.4.1 Category System

The RCI framework outlined above forms the basis for the deductive element of my category system, as outlined below. The category system was then complemented inductively based on the interview data.

Table 1: Category System

Variable	Expression	Definition/Coding Rule	Example
Institution (Trilogue, parliamentary administration, information rights, etc.)	I1: Positive impact	Institution is considered to facilitate actions (e.g. information access, scrutiny)	I1: “Also EU-DoX benutze ich sehr viel. Und das ist sehr hilfreich. Also ich habe auch diese Feeds abonniert. Also ich kriege zu bestimmten Ratsarbeitsgruppen, also in meinem Fall ist das Auswärtiges, EU, Inneres.
	I2: Neutral/no impact	Institutions is considered to have no/balanced impact	Ja, die drei, glaube ich. Regelmäßig die Briefings in mein Postfach. Das ist extrem hilfreich, weil man dadurch halt einfach... Es ist so ein Frühwarnsystem, wenn man so will.
	I3: Negative impact	Institution is	Also man kriegt mit, was ist in der

		considered to inhibit actions	Pipeline. Man kriegt auch mit, welche Haltung vertritt die Bundesregierung dazu? Also man liest ja auch die Weisungen dazu." (Interview I)
Career/Electoral Benefits	B1: High benefits B2: Low/No benefits	Expectation of personal/group advantages Low/no expectation of personal/group advantages	B2: "Aber es geht auch, manchmal auch so ein bisschen mühsam, dass man dann auf die Vorhaben der anderen Fraktionen, also der Oppositionsfraktionen auch antworten muss. Das macht nicht ganz so viel Spaß. Also es macht schon Spaß, aber dabei kann man eben nicht ganz so viel gewinnen, weil dann watscht man die ein bisschen ab... Da muss man dann einfach die kritischen Punkte rausarbeiten, aber letztlich ist unser Ziel ja immer, die Bundesregierung zu stellen. Oder die Regierungskoalition." (Interview G)
Policy Influence	PI1: High influence PI2: Low influence	High chance of changing policy expected Low chance of changing policy expected	PI2: "Aber die Frage ist dann: Was bringt uns das als Oppositionsfraktion? Wir können ja auf einen Trilog nur sehr, sehr, sehr beschränkt Einfluss nehmen. Also die Bundesregierung kann da mit Sicherheit Einfluss drauf nehmen. Als Oppositionsfraktion können Sie das nur mit sehr großem Aufwand machen, indem Sie, wenn Sie, während so ein Trilog läuft, dann im Plenum des Bundestags an einem Punkt ansetzen, zu dem Thema, um das Thema nochmal öffentlich zu machen." (Interview B)
Information Costs	IC1: High costs IC2: Low/No costs	Perceived high OR low/no investment needed to access or process information, e.g. in terms of time, political capital, manpower, expertise	IC1: "...sondern wir berichten dann auch, soweit es dann möglich ist, über die Trilogverhandlungen. Das ist im Einzelfall nicht immer so ganz einfach. Da haben Sie auch schon den Punkt getroffen mit Ihrer Frage, weil das ja auch allgemein bekannt ist, dass da weniger nach außen dringt als bei den Beratungen des europäischen

			Parlaments, die ja im Grunde auch öffentlich sind.” (Interview D)
Scrutiny Behaviour	S1: Intensive scrutiny S2: Superficial/No scrutiny	Scrutiny of detailed policy changes and behaviour within trilogues Scrutiny is limited to basic elements of policy/government behaviour	S2: “Selten. Also das ist eine Fachtiefe, die wir nicht leisten können im Prinzip.” (Interview H)

4.5 Validity and Reliability

The crucial value of any research depends on its validity, i.e. whether it measures what it is supposed to measure, and its reliability, i.e. the precision and consistency of the measurement (Mayring, 2016, p. 141). Regarding the former, a distinction is usually made between internal and external validity. Internal validity describes the certainty with which one can assume one’s conclusions about the causal mechanisms at play to be accurate. Conducting an in-depth case study that includes multiple different perspectives from different actors in the same process, I expect internal validity to be high. If my research confirms the proposed causal mechanism, I expect to have identified all relevant confounding variables as they most likely would have flagged up during the in-depth interviews. As argued in the section on case selection, the external validity of my research, i.e. the ability to apply my conclusions to the wider population of cases, depends on my findings. If I do find an effect of trilogues on the Bundestag’s scrutiny behaviour, this is likely to be the case for other parliaments too. If no effect is found, however, my findings could not be generalised.

I further seek to maximise the reliability of my findings by including both political and administrative actors at different stages of the scrutiny process. These diverse data points can be used to fact-check and triangulate initial findings and combined to create an accurate picture of the dynamics of scrutiny behaviour.

4.5.1 Avoiding Biases

Elite interview research is (as indeed most other methods are) prone to different biases that risk affecting the validity and reliability of the results (Halperin and Heath, 2016, p. 290). For instance, Beckmann and Hall contend that elites tend to provide skewed representations of reality, in particular by overstating “the significance of individuals (rather than institutions), personalities (rather than incentives), and processes (rather than contexts)” (Beckmann and Hall, 2013, p. 198). This can pose a significant challenge to the success of my research which specifically aims to investigate the effect of institutions on incentives. While controlling one’s interviewee entirely is impossible, this risk can be

mitigated by being aware of this potential bias during both data collection and analysis. In particular, I seek to address this by asking precisely worded questions guiding the interviewee where appropriate.

A second issue is that open-ended questions are “the riskiest but potentially most valuable type of elite interviewing” (Berry, 2002, p. 679) because the loose interview structure makes the interviewer vulnerable to sloppy questioning. Moreover, the wide discretion enjoyed by the interviewee can lead to compelling insights but also potentially render the responses difficult to compare. To address this issue, I employ two remedies suggested by (Berry, 2002). Firstly, I triangulate the findings of individual interviews by having a mixture of political and administrative actors with different perspectives on the same process (p. 681). Where appropriate, statistics and documents can serve to fact-check the claims of my respondents. Most importantly, however, I try to be as well informed as possible going into the interview in order to be able to spot where interviewees may exaggerate or undersell certain factors (ibid).

A third risk stems from confirmation bias, i.e. the tendency of the researcher to look for and elicit from the respondent specific evidence which fit their theory (Halperin and Heath, 2016, p. 256). As I have suggested earlier, asking specifically about problems with information access caused by trilogues may make the interviewee more likely to report such problems. To avoid this, I first ask general questions that do not specifically aim at (dis-)conforming my theory. Only after an unbiased answer has been given do I resort to asking about specific issues, bearing in mind that the responses may be less reliable.

4.6 Ethical Considerations

In terms of research ethics, it is important to follow through with the promise of confidentiality and anonymity made to the interviewees and hence to treat the potentially sensitive interview data from recordings and transcripts with utmost care. As the interviewees provided their insights under the assumption of anonymity, it is possible that them being identified in connection with some of their statements could have repercussions at the workplace. In order to prevent that, I tried to avoid giving any contextual information or quoting individuals where the combined information could lead to the respondent being identified. Moreover, I only stored the interview recordings offline on a separate hard drive to minimise the risk of accidental leakage.

5 Current Institutional Arrangements

There are a number of institutions that potentially impact the ability of the Bundestag's opposition MPs and their staff to scrutinise the European legislative process and the role that the federal government plays in it. On the one hand, there are what may be called traditional institutions of scrutiny, most notably the parliamentary committee system, small and written questions addressed to the government, and issuing parliamentary opinions on policy issues. On the other hand, there are also those institutions that have been introduced in response to the growing importance of European legislation, in particular a set of legislative changes including the EUZBBG, the creation of a new sub-department within the Bundestag administration, and the Bundestag Liaison Office in Brussels. In the following, I briefly discuss their roles in the scrutiny process and their relevance for trilogues specifically.

5.1 The Parliamentary Committee System and the Right to Issue an Opinion

Parliamentary scrutiny of EU legislation formally takes place in the Bundestag's committees (*Ausschüsse*). The Committee on European Matters assumes a double role, both leading the process (*federführend*) in institutional matters and assuming shared responsibility (*mitberatend*) for legislation in the various policy areas. In the latter case, the corresponding committees lead the scrutiny process. For instance, the Committee on Agriculture is responsible for the Common Agricultural Policy and the Committee on Transport is responsible for European transport policy. In committee meetings, MPs can debate legislative files, question representatives of the federal government about the state of negotiations and prepare opinions that the Bundestag may issue on a certain file. Committees could therefore function as a vehicle to gather information on trilogues via the federal government (I_{Inf}), process that information (I_{Pr}), and exert policy influence (I_{Ben}).

5.2 Legal Provisions

Three legal changes are crucial for the Bundestag's scrutiny of the European legislative process: an amendment to the German Basic Law (*Grundgesetz*), the amended Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the EU (*EUZBBG*, 2009), and the Responsibility for Integration Act (*IntVG*, 2009). In 1993, the basic law was amended by the introduction of Article 23, §2 of which states that the federal government has to notify the Bundestag of European matters comprehensively and as early as possible. This article forms the basis for the EUZBBG outlined above which governs the duty of notification and guarantees the Bundestag substantial access to information about European legislative files and also trilogues more specifically. This notification

“shall cover, in particular, the Federal Government’s decision-making process, the preparation and course of discussions within the institutions of the European

Union and the opinions of the European Parliament, of the European Commission and of the other Member States of the European Union as well as the decisions that have been taken. The same shall also apply to all preparatory bodies and working groups.” (Section 3 §2 EUZBBG)

Section 4 further elaborates that notification shall take place primarily through the forwarding of all documents of the EU institutions and preparatory bodies (e.g. working groups) as well as all reports from the German Permanent Representation on the meetings of these institutions and the convening of trialogues and their proceedings and outcome. These legal provisions may therefore enable the Bundestag to significantly reduce the information costs related to trilogues (I_{inf}).

5.3 Bundestagsverwaltung

In response to the growing importance and amount of European legislation, the Bundestag has built up substantial institutional capacities within its own administration. In 2006, the administration introduced a new unit for EU matters which was upgraded to a subdivision (*PE-Unterabteilung*) in 2013 and now employs more than 60 members of staff (Deutscher Bundestag, 2013). It takes on a variety of tasks to facilitate the work of the Bundestag’s members, such as analysing legislative proposals, compiling timelines and memoranda on the state of negotiations, maintaining its own database with all EU-related documents it receives, and monitoring the federal government’s compliance with its notification duties vis-à-vis the Bundestag (Deutscher Bundestag, 2017a). It also aides the Bundestag’s Committee on European Union Matters in its work.

The PE subdivision comprises, among others, a unit for EU documentation (PE5) and the Bundestag Liaison Office in Brussels (PE4), both of which are integral to the scrutiny activities of the Bundestag. PE5 is the largest unit of its subdivision with about 20 employees. It is responsible for ensuring the correct implementation of the federal government’s notification obligations vis-à-vis the Bundestag as enshrined in Article 23 (2) of the Basic Law and the EUZBBG. The main tool for this is the database *EuDoX* where the unit’s employees sort the documents they receive from the federal government and the European institutions into the corresponding digital files and make them immediately available to the Bundestag. According to the Bundestag’s own estimates, over 25,000 EU-related documents are fed into the database every year which is many times more than the 10,000 documents that the Bundestag itself produced in the whole of the last legislative period (Deutscher Bundestag, 2013). The subdivision also requests individual documents at the federal government on behalf of the Bundestag’s members and compiles monitoring reports on the federal government’s compliance with its notification duties.

5.4 Liaison Office in Brussels

The Bundestag's Liaison Office in Brussels was established in 2007 and has been integrated into the PE subdivision's structure as unit PE4. It consists of 15-20 employees, seven of which are administrative staff while the remaining ones work for the six parliamentary groups. The administrative and political staff function as vanguards of the Bundestag's parliamentary scrutiny, both serving as an "early-warning system" (Deutscher Bundestag, 2013) and coordinating interactions between the European and the national level (Deutscher Bundestag, 2017a). By observing the dynamics on the European level in the run-up to new legislation (*Vorfeldbeobachtung*) and networking with other actors, the Liaison Office seeks to "create a dense net of information to the different institutions of the EU" (Deutscher Bundestag, 2015, p. 4).

The Bundestag's administration and its Liaison Office in Brussels could play a substantial role in reducing the cost of acquiring information on trilogues (I_{inf}) by providing an infrastructure to allow MPs to easily access documents related to trilogues, monitoring the information flow between the government and the Bundestag, and by using informal contacts to obtain additional information in Brussels. Moreover, both institutions could play an important role in processing information (I_{pr}) by raising awareness of relevant issues, condensing the mass of information, and putting it in context.

6 Results and Discussion

In this chapter, I analyse my interview data and discuss how it relates to the theoretical considerations made above. To that end, I begin by sharing some general observations of the data collection process and reflecting upon how they impact the quality of the data. This is followed by a discussion of the interview findings regarding the current practice of trilogue scrutiny and problems emerging in that context with a view to the main hypothesis. I then proceed to sketch out the institutional environment that shapes the ability of individual opposition MPs and their staff to scrutinise the European legislative process and trilogues in particular. Next, I discuss how this affects the information costs before returning to my hypotheses.

6.1 General Observations

All respondents were able to comment meaningfully on the parliamentary scrutiny of the European legislative process, its perceived advantages and drawbacks, as well as their own role in it. Interestingly, however, none of the respondents referred to trilogues or problems associated with them until I specifically asked about them. While the respondents had knowledge of, an opinion about and/or experience with trilogues, these did not seem to be high on their own agenda. When asked about problems emerging within their own scrutiny work, they rather referred to other issues, in particular those at other stages of the legislative process or those related to information processing. I discuss the individual aspects and the underlying reasons for this further below, but it may suffice to stress at this point that there appear to be greater issues in the eyes of the respondents. In spite of this caveat, the displayed knowledge of trilogues and awareness of problems associated with them suggest that the respondents were familiar with the issue and able to provide useful insights.

A second important observation is that the respondents appeared to give honest and realistic answers. For instance, they often disagreed with suggestions from previous interviews with which I confronted them. They also gave plausible accounts of their work in the scrutiny process without appearing to exaggerate their own role, capacity, or influence. Indicating that my strategy of highlighting the anonymisation of the interviews had borne fruit, the respondents seemed to be at ease and readily conceded flaws even within their own institution's/party's work. This suggests that my interview data is reliable and constitutes a fair representation of the actual behaviour and attitudes of my respondents.

A third relevant observation is that the conceptual and empirical focus on opposition MPs and parliamentary groups within the Bundestag was justified. Several respondents from the opposition, the government, and the Bundestag administration suggested that opposition MPs would be in a special role as they did not have the same access to government sources as MPs from the governing

parties. For instance, it was suggested that government MPs could often just call the relevant officials at the ministries to retrieve the necessary information (e.g. Interviews C, D, G). Others reported that, perhaps self-evidently, the interest in thorough scrutiny of the government's activities on the European stage was substantially lower among MPs from governing parties (e.g. Interviews E, J, K).

6.2 Patterns and Problems of Trilogue Scrutiny

Above, I hypothesised that *trilogues increase information costs to such an extent that national opposition MPs do not find it beneficial to conduct meaningful scrutiny* (H1). In order to determine whether this is the case, I first discuss how trilogues are scrutinised by MPs and political staff and identify the factors explain that pattern of scrutiny. This exercise aims to examine the actual relevance of information costs and to control for potential confounding variables and effects that may influence the relationship between trilogues as an institution and the scrutiny behaviour. Table 2 summarises the factors that have been reported to influence the scrutiny behaviour of my respondents and considers whether they are specific to trilogues or apply to their activities more generally.

The overall trend permeating the interview data is that the political actors of the Bundestag scrutinise trilogue proceedings only very selectively, if at all (e.g. Interviews E, H, I, J and K). Asked about whether they would seek information specifically about trilogues, one respondent could remember one time they had done so (Interview E) while others reported to do so “rarely” (Interview H), “basically never” (Interview I), and “little” (Interview K). One interviewee suggested that they were more concerned with the legislative process before trilogues and once EU legislation is to be implemented nationally (Interview E). Another respondent suggested that trilogues are not relevant because their strategy was always to influence the legislative process at much earlier stages and in a broader sense, i.e. by scrutinising the general strategy rather than individual dossiers (Interview J.2). The overall consensus, in any case, seemed to be that $U_{\text{Trilogues}} < 0$.

There seem to be different reasons for why trilogues do not receive a lot of attention, as the following quote illustrates:

“But the question is: Of what use is that to us as an opposition group? We can only exert very, very, very limited influence on a trilogue. The federal government can certainly exert influence there. As an opposition group, you could only do that with a lot of effort if you schedule a debate in the Bundestag plenary when a trilogue is running in order to bring the issue to the attention of the public. But the trilogues proceed quickly, so it may not work for calendar-related reasons, there are other important topics. There are a number of different aspects, and even then, there is an extremely low chance of success. You have to ask yourself: What

is the use of that? Is the effort that you put in in proportion to the utility that you get out of it? In my opinion, that's not the case. " (Interview B)

The idea that the chance of influencing policy was too low to justify such in-depth scrutiny as would be necessary when scrutinising trilogues was also echoed by other respondents (e.g. Interviews G, H and K). One argued that they did not wield sufficient influence to make a difference because too many actors were involved (Interview G). Another one stated that it would be almost impossible to introduce their own proposals in the run-up to trilogues and once trilogues had started, there was little they could do about it anyway (Interview K).

The quote above further suggests that time constraints play a role in why trilogues are rarely scrutinised, both because there are “calendar-related reasons” and “other important topics”. This points to two separate, albeit related issues. On the one hand, the Bundestag has its own institutional rules that govern how and when it deals with certain dossiers, such as its own committee structure (I discuss this further below). This means that its institutional attention span may not be in synchrony with the EU legislative process. For instance, one respondent noted that the Bundestag only meets two or three times a month which could inhibit the Bundestag’s ability to react quickly (Interview D). Another interviewee reported that the Bundestag had previously been accused of taking too long to issue a formal opinion on a legislative proposal (Interview C). They illustrated this with an example where the Bundestag had only issued an opinion once the trilogue had already started, thus making it difficult for the federal government to retrospectively take that into account without upsetting existing negotiation progress between the Council and the Parliament.

On the other hand, European legislation has to compete for attention with “other important topics”, such as national legislation, both in the parliamentary space and in the public debate. For instance, interviewees reported that they had to think twice before trying to schedule a plenary debate on an issue because the agenda was always crammed (Interviews F and G). Given the low salience of EU issues in comparison to national issues, it appears to be difficult and little rewarding to put an issue on the public agenda. As a consequence, a lot of scrutiny of trilogues appears to take place only reactively, i.e. only once the issue has been raised in the media. As one interviewee puts it:

“But I believe the real filter is how much attention one wants to dedicate to issues that are not of immediate relevance in the German public. As soon as an issue becomes relevant in the media, such as the copyright directive, there is time for it, and everyone understands that you have to engage with it.” (Interview H)

This impression also matches statements from the Bundestag administration which receives a lot of information requests on trilogues once the media has reported on them (Interview L). The copyright

directive appears to be a case in point where a political staff member of the Bundestag Liaison Office also reports to have received a lot of questions from their MPs (Interview B). Crucially, however, other interviewees also used the copyright directive to exemplify the lack of attention paid to EU dossiers more generally (Interviews C and K). One interviewee even suggested they had to do “educational work” with their MPs to make them aware of the EU dossiers and of the opportunities to access information as their capacities were so limited (Interview E). They suggested that some colleagues may not even be aware of the possibility of accessing documents via EuDoX.

In this context, it also becomes evident that the costs of familiarising oneself with the details of trilogue proceedings are generally too high. One respondent contended that scrutinising trilogues required such in-depth knowledge that even their small team of parliamentarians in the EP would struggle with this (Interview H). Another interviewee conceded that they could not accommodate that level of detail and would leave this to their EP colleagues (Interview I), as did another (Interview E).

In line with the theoretical considerations made above, there was also general agreement among interviewees that there were difficulties obtaining information on trilogues. This notwithstanding, interviewees’ opinions differed as to their ability to overcome these difficulties and access sufficient information to scrutinise trilogues. One interviewee reported that they considered trilogues problematic both because it was difficult to assess the federal government’s position in them as well as because the Parliament was not fully represented:

“And in informal trilogues, there is the problem that there is no publicity. That also makes it difficult for us to figure out which position the government has. Apart from that, this is also a democracy-theoretical problem because the EP no longer participates really, only its two representatives. Of course, the Parliament agrees to it beforehand, but we still think this is problematic.” (Interview E)

When asked about whether the four-column documents in combination with other documents provided by the federal government would help to understand the negotiations, they said that they did not know. Another interviewee took a similar line, arguing that they only had third-hand information on trilogues which made them difficult to understand (Interview H). One respondent further pointed out that, while the lack of direct reporting made trilogues somewhat of a “black box” (Interview L), the informal trilogues taking place before the actual trilogues were of greater concern because there were no briefings on these at all. Yet another suggested that the documents provided by the government and the European institutions allowed them to see where the negotiations were going, but that trilogues nevertheless “had nothing to do with democracy” because they were “horse trade” (Interview K).

The interviewees that worked in Brussels were somewhat more optimistic as regards their ability to obtain information. One interviewee suggested that there were transparency problems but that these did not really apply to the Bundestag because its members had substantial indirect access to information via their document database EuDoX and the German Permanent Representation (Interview B). One could also get such information via the Parliament. They even declared that they “can get the information, of course” (Interview B). Another interviewee working at the Liaison Office confirmed that it may sometimes be difficult to obtain information, but suggested that this could be remedied by making use of their informal contacts:

“It is not always that easy. You have hit the nail on the head with your question because, as is well known, less information becomes public than during deliberations of the European Parliament which are basically public. There, every citizen can follow the deliberations via livestreams. That is not the case with trilogues. Informal contacts are all the more important here and we maintain these of course.” (Interview D)

Nonetheless, they emphasised that “ultimately, one can get the information” on trilogues (ibid). This suggests that informal contacts may be key in getting timely access to relevant information on trilogues.

When asked about whether trilogues had an effect on their work or whether they had changed anything in their work to respond to the emergence of trilogues, most respondents (even if they had already worked in their position for long) either said that the emergence of trilogues had been too long ago or that they did not know of any specific measure that had been implemented, be it institutional or otherwise (e.g. Interviews B, C, G, L). However, when responding to that question, one respondent also specifically referred to the Bundestag’s Liaison Office trying to gather informal information on trilogues (Interview G). In response to the question, another one also highlighted that the Bundestag received a lot of information via the formal forwarding procedure pursuant to the EUZBBG. One respondent working at the Liaison Office called trilogues their current “construction site” which suggests that they adapt their behaviour to acquire information (Interview D).

Table 2: Factors Influencing the Scrutiny Behaviour

Factor	Denotation in the model	Specific to Trilogues?	Reported Impact on Scrutiny Behaviour
Low salience of EU politics	S	No	Strong discouraging effect
Lack of policy influence in trilogues	B_{PI} * I_{Ben}	Yes	Strong discouraging effect

Institutional attention mechanics	I_{Ben}	Partly	Discouraging effect
Competition for attention and resources by other (national) issues	Opportunity costs in C_{Inf}, C_{Pr}	No	Strong discouraging effect in connection with low salience of EU politics
High information threshold/understanding of details required for trilogue scrutiny	$C_{Pr} * I_{Pr}$	Yes	Strong discouraging effect
High costs and difficulties of accessing information	$C_{Inf} * I_{Inf}$	Yes	Unclear: Strong discouraging/ inhibiting effect OR No significant effect
EUZBBG	I_{Inf}	Partly	Enabling effect?
Bundestag Administration	I_{Inf}, I_{PR}	Partly	Enabling effect?
Liaison Office	I_{Inf}, I_{PR}	Partly	Enabling effect?

6.2.1 Interim Conclusions

Considering these results in light of the theoretical considerations made earlier, two tentative conclusions can be drawn. Firstly, the interview data seems to confirm that MPs and their staff do not scrutinise trilogues a lot because the benefits of doing so are too low compared to the effort required, as was hypothesised in H1 and illustrated by the model below.

$$U_{Trilogue}: (B_{E/C} + B_{PI}) * S * I_{Ben} - C_{Inf} * I_{Inf} - C_{Pr} * I_{Pr} < 0$$

Secondly, however, the data also suggests that difficulties to access information about trilogues may be only one among several factors impacting the scrutiny of trilogues. The utility $U_{Trilogue}$ appears to depend largely on the public salience S of the issue in question which in turn influences the electoral and policy influence benefits $B_{E/C} + B_{PI}$. Moreover, limits to their own resources, both in terms of time and manpower, play an important role, as the emphasis on the opportunity costs and the high knowledge requirements for trilogue scrutiny illustrates. Nonetheless, the disagreements between interviewees about information-related problems highlight that these should not be neglected. On the one hand, access to information is still a precondition for scrutiny, even if it only takes place in cases of high salience. Problems in this regard are therefore of vital importance. On the other hand, the potential absence of information problems would also be remarkable and raise the question of why the Bundestag faces no problems while other parliaments have reported them.

The reason for why the respondents did not report any specific changes in their work in response to the emergence of trilogues may be that trilogues are but a puzzle piece in the overall scrutiny of EU legislation and processes. Nevertheless, this does not preclude the possibility that there are institutional (or other) safeguards that also cover trilogues. Respondents may be so used to their existence that they did not consider these institutions to be particularly noteworthy. For instance, respondents' references to the Liaison Office and the EUZBBG indicate that these institutions do play an important role in the information regime, i.e. in the way information is collected and processed. This warrants a close inspection of the key institutions that impact the ability of opposition MPs and their staff to scrutinise the European legislative process and the role that the federal government plays in it.

6.3 The Information Regime from an Institutionalist Perspective

In order to capture the role of institutions in trilogue scrutiny, I earlier derived two competing hypotheses from existing theory. Based on a static model, H1.1 suggested that, *due to increased information costs, MPs no longer scrutinise EU legislation at the trilogue stage*. Based on a dynamic model, H1.2 suggested that *MPs balance the increased information costs caused by trilogues by adapting own their institutional capacities*. At first sight H1.1 appears to be confirmed because very little trilogue scrutiny takes place. However, the confounding effect of the low expected benefits make it difficult to attribute this finding clearly to high information costs. In fact, as the interview data discussed in the following indicates, the Bundestag does seem to have institutional safeguards in place that offset a substantial part of the effects of trilogues on information costs, which lends support to H1.2.

This section discusses the precise role that the institutions outlined earlier play in offsetting information costs to identify their key qualities. The interview data suggests that, while traditional institutions of scrutiny (parliamentary committee system, small and written questions addressed to the government, parliamentary opinions) continue to play an important role for the scrutiny of the European legislative process, they are less relevant in the context of trilogues. On the other hand, institutions that have been introduced in response to the growing importance of European legislation (EUZBBG, new sub-department within the Bundestag administration, Liaison Office) are highly relevant in offsetting the increased information costs of trilogues. The results are summarised in Table 3 and Table 4 below.

6.3.1 The Parliamentary Committee System and the Right to Issue an Opinion

While parliamentary scrutiny of EU legislation formally takes place in the Bundestag's committees, the interview data highlights three factors that may inhibit the effectiveness of the committee system for scrutiny of EU files, in particular with regard to trilogues.

First of all, legislative files usually go through a fixed procedure before they are debated in committees which can make the scrutiny process lengthy and lead to poor alignment with the legislative developments on the EU level. For instance, it can take several weeks for a proposal until it has gone through the various preparation and deliberation steps prior to the formal delegation to a specific committee (Interview L). Committees also only meet during weeks where the plenary is in session and only discuss a small fraction of all the possible files due to their high workload. Multiple respondents reported that this fixed procedure can inhibit the effective scrutiny of the Bundestag as the European legislative process often moves faster and outpaces the Bundestag (Interview C, F, K).

In addition, interviewees have reported that scrutiny in committees rarely bears fruit because the parliamentary groups from the governing coalition lack interest in conducting thorough scrutiny of EU matters because they do not want to undermine their own government (Interviews E, J, K). As a result, the Bundestag rarely makes use of its right to issue an opinion on EU matters pursuant to Article 23 (3) of the German Basic Law (Interviews C, G, K).

Moreover, while committees are able to invite members of the government for questioning, they do not always represent a reliable source of information. Firstly, this is because the quality of information provided by government officials in committee meetings seems to vary significantly as it depends, among others, on the issue and the reporting official (Interviews F, G, H, I). Secondly, the German government usually does not participate in trilogue negotiations and is therefore not as closely involved in the negotiation process as may be required (Interview C). It also often only reports back to the Bundestag on trilogues once the Council Presidency has officially reported back to the Council (Interview L).

These factors indicate that the committee system does not lend itself well to the scrutiny of EU legislation at the trilogue stage. While it could help to process information (I_{pr}) by way of prioritising and debating the prioritised issues, its relative inflexibility appears to be at odds with the sometimes-fast-moving developments on the European level. Furthermore, the possibility of questioning government officials further does not seem to be a reliable and quick way of accessing information. Consequently, the committee system may not be suited to reduce information costs in trilogues (I_{inf}).

6.3.2 EUZBBG

Several interview respondents affirmed that the EUZBBG was integral to the Bundestag's scrutiny activities by granting it far-reaching access to information on EU processes (e.g. Interviews F, K, L), with one calling it an "essential necessity" (Interview F). In doing so, it also has a significant effect on the costs of accessing information on trilogue proceedings (I_{inf}) as its formalised implementation ensures a steady and reliable flow of information.

Within the federal government, these legal requirements are implemented by the Federal Ministry for Economic Affairs and Energy (*BMWi*) unless the Common Foreign and Security Policy is concerned (Interview C). In these latter cases, special rules apply and the Federal Foreign Office (AA) handles the information flow itself (Interview A). In all other cases, however, the *BMWi* functions as the federal government's information hub and point of access for the Bundestag. While the Commission forwards most documents directly to the Bundestag, the Council only allows national delegations to access its documents via the data base *Delegates Portal*. The *BMWi* then downloads all these Council documents and forwards them to the Bundestag (Interview C). This means that, as long as these documents are forwarded correctly, the Bundestag and its members have the same access to Council documents as the federal government. Among those Council documents are also memoranda of the Council Presidency on trilogue negotiations and sometimes the four-column documents that give an overview over the state of play in trilogue negotiations. As one respondent explained, an internal review of the Council found that the four-column documents were classified in different ways by different actors which led to an incoherent forwarding practice (Interview C). Depending on the Council working group, policy area and directorate general in charge, four-column documents were sometimes classified as working documents and sometimes as official Council documents, only the latter of which are automatically forwarded to the Bundestag by the federal government (Interview C, D).

In addition, the *BMWi* also controls whether diplomatic cables from the Permanent Representation (*Drahtberichte* or *DiploKor*) are forwarded correctly. Whenever a member of the Permanent Representation writes a report about a council working group or a meeting of the Committee of Permanent Representatives (COREPER) (e.g. where the Council Presidency reports back on the progress in trilogue negotiations), they are instructed to include a specific *BMWi* address in their list of recipients. The *BMWi* automatically forwards these reports to the Bundestag which receives them nearly at the same time as the federal government itself. Due to the high turn-over among staff working at the Permanent Representation, it may happen that the reporting person is unaware of that obligation and does not send the document to the Bundestag (Interview C). In that case, however, the *BMWi* reminds the sender of that obligation and forwards the report manually. This, however, would only occur "in the rarest of cases" (Interview C).

Diplomatic cables from the Permanent Representation are generally assumed to be of high quality in terms of detailedness and accuracy because they are not written specifically for the Bundestag, but for internal use in government ministries. As the ministries' civil servants need to be able to work with the information contained in these reports, respondents suggested that they would contain all the necessary information (Interviews A, C). This seems to be corroborated by respondents receiving the reports who suggest that they are usually informative (Interviews I, K). Due to the principle of "same-

day reporting”, diplomatic cables are also often submitted on the same day of the meeting or the day after at the latest.

Nevertheless, as there is no leeway as to which cables are forwarded to the Bundestag, the authors of the diplomatic cables could, in principle, leave out details if they deem the risk of leakage to be high. Some respondents highlighted that diplomatic cables and other documents had been leaked in the past when the corresponding file was politically salient, as illustrated by cases related to dual-use item legislation or trade negotiations (Interviews A, C). This had led to complaints from other member states who saw their negotiation positions made public via German sources. Although it is not clear whether the reports were leaked by a civil servant in the government or the Bundestag (Interviews C, L), their authors would have to take into account that a large number of people has access to them (Interviews A, C). Some respondents also conceded that they could not assess as to whether the diplomatic cables are accurate because there was no way of fact-checking them (Interviews I, L). However, the fear that the diplomatic cables would become less detailed if the Bundestag gained access to them in such a systematic fashion via the EUZBBG turned out to be unjustified, as a respondent working for the Bundestag’s administration reported (Interview L).

The BMWi and the AA are further responsible for forwarding the written instructions (*AStV-Weisungen*) for the German representatives in COREPER I (BMW) and COREPER II (AA) meetings (Interview C). As the Council decides upon and possibly amends its negotiating mandates for upcoming trilogues in these COREPER meetings, these instructions contain important information on the federal government’s position in the lead-up to trilogues and are hence important for scrutinising them. However, contrary to its demands, the Bundestag only receives the documents after the COREPER meeting (Interview C, L). The last monitoring report of the Bundestag further highlights that there are sometimes delays in the forwarding of written instructions because COREPER meetings can last several days and the instructions are only forwarded together in a bundle (Deutscher Bundestag, 2017b, p. 22). A similar arrangement for instructions for Council working group meetings does not exist because the instruction process is not formalised (e.g. not all instructions are written down) and there are too many working groups (Interview C).

The Bundestag and its members can also request the federal government to forward individual non-papers, room documents and other documents that have been circulated in meetings and are mentioned in the council working group or COREPER reports (Interviews C, L). These can contain further information on potential compromise proposals and initiatives from other member states.

In summary, the EUZBBG grants the Bundestag and its members substantial access to information on EU processes by providing for the forwarding of many EU documents as well as diplomatic

correspondence with the Permanent Representation in Brussels. As regards trilogues, the Bundestag has access to preparatory Council documents, memoranda by the Council Presidency, the written instructions for the trilogue negotiation mandate, the reports on Council configurations where the Council Presidency de-briefs the member state delegations on the progress of trilogue negotiations, and other unofficial documents. Most importantly, the Bundestag sometimes also receives the four-column documents that offer a succinct overview over the state of the negotiations. The standardised procedure ensures that the flow of information is quick and reliable, thereby substantially reducing information access costs (I_{inf}). It also makes this channel of information largely, although entirely, independent of the behaviour of individual actors. Nevertheless, the density and complexity of the information contained in the documents may still involve high information processing costs because they are not specifically written for Bundestag scrutiny.

6.3.3 Bundestag Administration

As many respondents pointed out, however, the sheer number of EU legislative processes and corresponding documents is so great that a thorough scrutiny of all files and documents is next to impossible, let alone at the level of detail required for the scrutiny of trilogues. The Bundestag administration appears to be a key instrument in managing the bulk of EU files (I_{pr}). For instance, the document database EuDoX as a “super luxurious tool” (Interview C) allows the Bundestag’s MPs and their staff to access all available documents relating to a specific file at once and with ease. The fact that the Bundestag even receives document requests from federal ministries (Interview L) underlines the information cost-cutting effect of their administration. Moreover, PE5 collects requests from the Bundestag’s members for additional and missing documents, makes these requests to the federal government on their behalf and follows up on them if necessary. This procedure ensures anonymity on the part of the requesting party and unifies and streamlines the process of document requests, thereby further reducing the effort and time for MPs to obtain additional information.

In addition to providing and structuring large amounts of information in the shape of documents, the administration also processes a lot of information in order to facilitate the work of the MPs. For instance, units PE2 and PE3 survey new EU files and make suggestions to the parliamentary groups regarding which of these files should be debated in committees and which committee should take the lead on a specific file (Interview L). They also write memoranda on relevant files, either out of their own initiative or upon request of a member of the Bundestag. This allows MPs and their staff to quickly get a succinct overview over an EU file and the current state of play in the legislative process.

Both the database EuDoX and these information processing services of the Bundestag’s administration play important roles for the scrutiny activities of the Bundestag, as was confirmed by many of the interview respondents. While one respondent perceived the Bundestag administration as a “service

for the parliamentary groups” (Interview H 94) delivering good work, another one highlighted that the Bundestag administration enabled them to “quickly get an overview and to see where it may pay off to go further into depth” (Interview G 169). Another respondent contended that the PE subdivision “played a good role. [...] They receive a lot of good information and if you really ask, they do help you and explain to you” (Interview F 89). Interviewees further suggested that the administration is one of the most advanced parliamentary services in EU matters among the EU’s national parliaments (Interviews E, L).

As regards specifically the scrutiny of trilogues, these administrative services therefore serve several purposes. Firstly, they raise awareness of important files and provide substantial amounts of information in a structured manner. If, for instance, a four-column document is unavailable, they obtain that document on behalf of the MPs. Secondly, they distil that information to make it accessible for MPs and their staff while ensuring equal access in case someone wants to delve deeper into the legislative process. In doing so, the Bundestag’s administration can save MPs time and effort for both information acquisition (*I_{inf}*) and processing (*I_{pr}*).

6.3.4 Liaison Office in Brussels and Cooperation with the European Parliament

As one respondent emphasised, the Liaison Office’s main task of monitoring the EU sphere in the run-up to new legislation (*Vorfeldbeobachtung*) refers to gathering information both before proceedings are started formally as well as during the legislative process and thus explicitly covers trilogues (Interview D). When doing so, its staff acts both out of their own initiative as well as upon (information) requests of members of the Bundestag or the Bundestag’s administration. As regards their information gathering activities, one facilitating factor is their close institutional and spatial connection to the European Parliament (Interview D). With the Liaison Office being situated within the Parliament, its employees have dedicated seats in the Parliament’s committee meetings. This allows them, for instance, to attend committee meetings where the rapporteur reports back on trilogue negotiations (Interview D).

Political staff at the Liaison Office perform similar tasks of information gathering and processing, albeit with a stronger emphasis on the priorities of their own parliamentary group. They see their task as “facilitating the prioritisation” (Interview H) and employing a longer-term perspective to identify “the big questions” (Interview B) of relevance to their parliamentary group. However, one respondent also noted that the usefulness of their liaison office crucially depended on the efforts and individual political interests of the liaison officer (Interview I). Others suggested that their parliamentary group had been slow in occupying their dedicated spot at the Liaison Office (Interviews J.1, K).

The Bundestag's parliamentary groups and their liaison officers in Brussels also maintain close relationships with their respective colleagues in the European Parliament or seek to establish such relationships to improve the information flow, as was suggested by various respondents (Interviews D, E, H, J, L). For example, one said that it was their EP party group where all the information would be collected and that their representative in Brussels would stay in close contact with their EP colleagues to report back to Berlin (Interview G). While in some cases the cooperation with EP colleagues appears to be on an ad hoc basis due to the additional coordination efforts required for structured cooperation (Interview E), others explicitly emphasised that their parliamentary group planned to establish such inter-parliamentary cooperation to advance their goals (Interviews J, K). One interviewee mentioned that having a rapporteur or shadow rapporteur from their own EP party group would allow them to access information on trilogues for a specific file (Interview H).

This reflects the broader impression that informal contacts continue to play an important role for gathering information, both for administrative and political staff working in and with Brussels (e.g. Interviews B, D, E, F, G, K). One respondent argued that formal and informal contacts, i.e. "just to talk to people and ask", was almost the most important source of information (Interview B). Another one remembered that there had been a time where they received a lot of information via another member state (Interview E) while yet another had planned to regularly travel to Brussels to get heads-up information and discuss issues with colleagues there (Interview K).

Informal contacts appear to be all the more important in the context of trilogues where the Liaison Office talks to the different negotiating parties to acquire information (Interview D). This allows the administrative liaison officers to gather information "on all relevant dossiers, [...] including the trilogue negotiations", and consequently to compile reports with a "strong assessing character" instead of "chewing over" publicly available information (ibid). This is also recognised by recipients of these reports who explicitly mentioned that reports often contain useful references to informally gathered information (Interviews G and I).

A crucial factor for the success of this informal way of gathering information appears to be the size and depth of one's network and to know "with whom one can speak to get some information" (Interview G). According to one interviewee, there is a "huge network" (Interview D) behind these activities and this would require "a lot of creativity" (ibid). Another one confirmed that the ability to access information depended on one's network, e.g. to council working groups (Interview E). In contrast to formalised institutions such as the EUZBBG, the effect of the Liaison Office on information costs (I_{inf} and I_{pr}) is therefore strongly dependent on the behaviour and skill of the employees that work there.

Table 3: Impact of Institutions on the Costs of Accessing Information

Institution	Mechanism of Impact	Reported Impact on Costs of Accessing Information (I_{Inf})	Reported Factors Influencing Institution's Impact
Committee System	Information access via the questioning of government officials	Low	Agenda/schedule, issue area, gov. official's knowledge, depth of information provided
EUZBBG	Provision of trilogue-related documents	High	Classification of documents, author, timing of forwarding
Bundestag Administration	Monitoring the implementation of the EUZBBG/requesting documents on behalf of MPs	High	Response time from the fed. government
Liaison Office	Informal information gathering through networking with EU-level actors	High	Size of network and connections to decision-makers, skill and interest of the individual employee (esp. political staff)

Table 4: Impact of Institutions on the Costs of Processing Information

Institution	Mechanism of Impact	Reported Impact on Costs of Processing Information (I_{Pr})	Reported Factors Influencing Institution's Impact
Committee System	Discussion of EU files with colleagues	Low	Agenda/schedule, interest among governing parties
EUZBBG	-	-	-
Bundestag Administration	Structured provision of documents via EuDoX database Awareness raising about important files Compiling analyses and memoranda	High High High	- Awareness and assessment skills of employees Awareness and assessment skills of employees
Liaison Office	Discussion with EU-level actors "digested" in specific reports Providing condensed information upon request	High	Size of network and connections to decision-makers, skill and interest of the individual employee (esp. political staff)

6.4 Information Costs in Trilogue Scrutiny

Recalling the theoretical considerations from above, the overall information costs can be described as $C_{Inf} * I_{Inf} + C_{Pr} * I_{Pr}$ where the costs of accessing information C_{Inf} and processing information C_{Pr} are influenced by the institutions shaping, hindering or facilitating these activities (I_{Inf} and I_{Pr} respectively). My interviews have confirmed that there are two main channels through which information on

trilogues can be and is accessed by opposition parliamentary groups. These channels are characterised by different degrees of formalisation and subsequently involve different information costs.

The most important channel appears to be the formal forwarding of documents by the federal government to the Bundestag pursuant to the EUZBBG and facilitated by the Bundestag's administration. It ensures that all members of the Bundestag have access to the federal government's position in the Council preparations of trilogues (although only *ex post*), the Permanent Representation's correspondence, the Presidency's briefs on the progress in trilogues, and often also the four-column documents. As these documents are forwarded and then fed into the database EuDoX via a fairly automated procedure, they are made accessible in a quick and structured manner, thus involving a fairly low institutional factor I_{inf} influencing the costs of accessing information C_{inf} .

At the same time, the formalised nature of the procedure also involves higher information processing costs C_{pr} because it neither helps extracting the relevant bits of information, nor does it provide contextual information that helps putting the masses of documents into perspective. This interpretation is corroborated by a number of interviewees. For instance, while one conceded that they find it difficult to understand reports from the Permanent Representation as they often lack context (Interview C), another one highlighted that the documents in EuDoX "do not serve the purpose of informing" (Interview H) and that they had a "depth of the subject that we cannot accommodate" (*ibid*). The latter interviewee also suggested that forwarding these documents did not mean that the federal government sufficiently fulfilled its notification duties pursuant to the EUZBBG because it did not actually inform, it simply provided the opportunity to inform oneself. Another one contended that they would almost never read the four-column documents because it is "too much" (Interview I) and would lead to a "total overload" (*ibid*). Instead, this interviewee relied on online platforms of non-governmental organisations as "radar system" to draw their attention to different EU proceedings and to provide short introductions to important documents, such as four-column documents (*ibid*).

As outlined above, the Bundestag's administration can reduce these information processing costs by compiling its own memoranda on specific files and the progress of the negotiations. This outsourcing of information processing to administrative staff can substantially reduce the factor I_{pr} for members of the Bundestag, i.e. decrease their overall information processing costs. As the administration's employees also work a lot upon request from MPs or their staff, they can direct their resources to where their attention and expertise is most needed.

Nonetheless, accessing and studying these documents may not be sufficient because they only show one excerpt of the full picture and only do so once they have been compiled and forwarded to the Bundestag. For instance, information about emerging compromises that have not yet been brought to

paper would potentially not be included. To access such additional information, the Bundestag's members can rely on the administrative and the political staff at the Liaison Office in Brussels to use their informal contacts. This channel of information is, by its very nature, less formalised. It entails potentially higher information costs as it depends on actors' behaviour, in particular on the staff working at the Liaison Office and them having a strong network and access to council working groups, rapporteurs, or the Commission. Consequently, the informal way of accessing information is less reliable than a legally enforceable right to information, such as the EUZBBG, backed up by automated procedures. At the same time, informally gathered information also has the advantage that it is already pre-processed and thus entails lower information processing costs on the receiving end. Therefore, the Liaison Office as an institution facilitating informal information flows seems to have a strong decreasing effect on the information processing costs C_{Pr} (i.e. low I_{Pr}) and some decreasing effect on the costs of accessing information C_{Inf} via I_{Inf} .

Taken together, the existing institutional set-up consisting of the EUZBBG, the Bundestag's administration, and the Liaison Office in Brussels can substantially reduce the costs of both accessing and processing information related to trilogues, as represented by a low institutional factor I_{Inf} and I_{Pr} respectively. The key to lowering the information costs can be summarised as follows: Firstly, legal provisions ensure access to and a constant stream of information. Secondly, outsourcing the information collection and processing helps administrative staff helps digesting the large amounts of information and making it available for MPs. Thirdly, developing personal, informal contacts with key officials enables agents of the Bundestag's members to collect additional detailed and contextual information.

In the final part of the analysis chapter, I now return to the model of trilogue scrutiny and consider how these findings relate to the hypotheses derived based on the theoretical framework.

6.5 Hypotheses

The theoretically derived model of trilogue scrutiny suggested that high information costs would reduce the utility of scrutinising trilogues $U_{Trilogue}$ to such an extent that it was no longer beneficial to MPs.

$$U_{Trilogue}: (B_{E/C} + B_{PI}) * S * I_{Ben} - C_{Inf} * I_{Inf} - C_{Pr} * I_{Pr} < 0$$

The analysis of the interview data has confirmed that the costs of accessing and processing information about trilogue proceedings can be substantial, but also that institutions play a key role in reducing these costs. This notwithstanding, the benefits of trilogue scrutiny appear to be too low to offset the remaining information costs unless public salience is high. This confirms the main hypothesis H1 that *trilogues increase information costs to such an extent that national opposition MPs do not find it*

beneficial to conduct meaningful scrutiny in the sense that, since the benefits are so small, information costs would have to be even lower for MPs to find trilogue scrutiny to be beneficial.

The difficulty to pin down precisely the effect of trilogues on the information costs lies in the simultaneous dampening effect they have on the potential benefits of scrutiny due to the low prospects of policy influence and electoral benefit under low salience **S**. In abstract terms, the effect of trilogues on the benefits contained in I_{Ben} confounds the measured impact of trilogues on the information costs contained in I_{Inf} and I_{Pr} . While this makes it difficult to isolate the effect of trilogues on information costs empirically, the above presented evidence indicates that the effect is quite considerable.

In cases where salience is high, however, the cost-cutting effect of the institutions discussed above appears to sufficiently reduce the information costs related to access and processing so that effective scrutiny is possible and beneficial. This can be expressed by the model as follows:

$$U_{Trilogue}: (B_{E/C} + B_{PI}) * S * I_{Ben} - C_{Inf} * I_{Inf} - C_{Pr} * I_{Pr} > 0$$

$$\text{Where: } I_{Inf} = I_{Inf-Trilogue} * I_{Inf-EUZBBG} * I_{Inf-BT-Admin} * I_{Inf-Liaison Office}$$

$$\text{And: } I_{Pr} = I_{Pr-Trilogue} * I_{Pr-EUZBBG} * I_{Pr-BT-Admin} * I_{Pr-Liaison Office}$$

$$\text{If: } S = \text{high}$$

As regards the competing hypotheses H1.1 (no scrutiny at the trilogue stage due to information costs) and H1.2 (institutional capacities are adapted to balance the increase in information costs caused by trilogues), the findings also require a nuanced analysis. Most notably, even though most interviews reported (substantial) information problems, none of the respondents specifically argued that their low levels of trilogue scrutiny were due to a lack of information. Rather, an institution-focused analysis shows that the Bundestag does have substantial institutional capacities that lower the costs of accessing and processing information. This lends tentative support to H1.2. However, the interview data also did not give any indication that the institutions were specifically set up or amended in response to the emergence of trilogues. In that sense, the causal mechanism underlying H1.2 could not be proven to be at work here, even though the expected outcome can be observed in cases of high salience. There appears to be circumstantial evidence that the causal mechanism is at least plausible, such as the statement by one interview emphasising that their parliamentary group had joined forces with another group to task the Bundestag administration with systematically evaluating the federal government's compliance with its EUZBBG notification duties (Interview E), thereby strengthening that institution.

7 Conclusion

In this paper, I have examined how *informal trilogues affect the ability of national MPs from opposition parties to exercise effective scrutiny over the legislative process and hold their governments to account*.

The interview data has highlighted that trilogues have a substantial positive effect on information costs which makes the scrutiny of trilogues both more difficult and less attractive. At the same time, the case study of the German Bundestag has demonstrated that these effects can be mitigated through a combination of tailored institutions. Nevertheless, the lack of salience of many EU issues continues to hamper trilogue scrutiny, even if the information costs can be lowered. In this concluding chapter, I briefly outline the theoretical and practical implications of my analysis.

On a theoretical level, the analysis illustrates two things. Firstly, it shows that rational-choice institutionalism is a useful tool to investigate which factors determine the scrutiny behaviour of MPs and the role that different institutions play in that. Secondly, it shows the benefits of adopting a dynamic model of behaviour and conception of institutions, revealing that institutions do not only have a role as intervening variables inducing structure in a given situation. In so far as actors have some leverage over them, institutions are also dependent variables that actors set up or amend to create new equilibria of interactions. Rational-choice theory, including its RCI variant, may therefore benefit from the insight that institutions can trigger both behavioural and institutional changes.

Substantially, the analysis highlights that trilogues do increase information costs for national parliaments, and in particular for opposition MPs who do not have direct access to government ministries. This finding can be generalised across member states because the institutional effect of trilogues is the same for all national parliaments. However, the analysis also shows that national parliaments can indeed offset a significant part of the effect of trilogues on information costs by creating the appropriate institutional environment on their side. In the case of the Bundestag, it appears that this has largely worked despite some difficulties remaining. As outlined in *4.1 Case Selection and Generalisability*, however, this cannot be generalised across member states because the Bundestag as a *crucial, least-likely* case with possibly the most advanced institutional capacities is not representative of the wider population of cases. The interviews rather indicate that problems of accessing and processing information are likely to be present in other member states to a much greater extent. Even though this study suggests that the combination of highly formalised, regularised information access rights, administrative information processing capacities, and informal intelligence gathering could get them a long way in addressing these information costs, the question remains as to whether this is feasible for smaller parliaments, both practically and financially. Another caveat concerns those states where the opposition is not strong enough to push for agreements as far-

reaching as the EUZBBG. As the governing majority will often not want to facilitate scrutiny of its own government, the opposition's ability to create new equilibrium institutions may be limited.

While these are questions for future research to answer, their implications may extend far beyond the issue of trilogues. Given the increasing complexity and amount of European processes and legislation and their persistently low public salience, it is perhaps time to reconsider whether national parliaments are in a good position to scrutinise the EU legislative process in addition to their domestic duties. Institutions can play a role in reducing the costs of scrutiny, but costs only represent one part of the incentive structure. If the prospects of actually influencing proceedings are so low, resource-strained MPs may find it an unappealing choice to scrutinise the EU legislative process, let alone at trilogue level. A task for the future may therefore be to clarify the responsibilities of the European and of national parliaments and then assess what additional means of information processing and influence may be required.

A second, primarily normative issue to address for further research is whether national parliaments ought to rely (partly) on informally gathered information on trilogues to exercise their job as representatives of their constituencies. As my analysis has shown, the informality introduces a set of actor-related variables that make this channel of information less reliable and potentially open to political favouring. It makes parliaments dependent on the network and skill of their agents in Brussels and possibly disadvantages smaller or (less-well staffed) parliaments. Parliamentary groups that are not well represented on the European level may also face greater difficulties accessing decision-makers, such as rapporteurs. Finally, it also puts additional strain on decision-makers who may have to convey the same informal information to representatives of the over 40 national chambers and parliaments, raising questions of efficiency.

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Appendix

Interview Guides

Einleitung: Vielen Dank, dass Sie sich Zeit für mich genommen haben. Wie bereits erwähnt, forsche ich im Rahmen meiner Masterarbeit zu den Kontrollaktivitäten des Bundestages im europäischen Gesetzgebungsprozess. Mein besonderes Augenmerk liegt dabei auf der Transparenz dieses Prozesses und den Möglichkeiten von Oppositionsparteien, an relevante Informationen zur Ausübung effektiver parlamentarischer Kontrolle zu gelangen.

Inhalte dieses Interviews werden selbstverständlich anonymisiert verwendet, d.h. es wird für keine andere Person erkennbar sein, wer diese Aussagen getätigt hat. Ist es für Sie in Ordnung, wenn ich unser Gespräch aufnehme, um Ihre Auskünfte später möglichst genau wiedergeben zu können? Die Aufnahme wird gelöscht, sobald ich sie transkribiert habe.

Administrative Staff

1. Sie arbeiten in (*Organisation*) in der Funktion der/des (...). In welchem Verhältnis steht Ihre Arbeit zur parlamentarischen Kontrollarbeit des Bundestages im europäischen Gesetzgebungsverfahren?
2. Woher erhalten Sie die Informationen, mit denen Sie arbeiten?
 - a. Wie verarbeiten Sie diese Informationen?
 - b. An wen leiten Sie die Informationen weiter?

Die große Mehrheit der EU-Gesetze wird mittlerweile bereits in der ersten Lesung im Anschluss an interinstitutionelle Verhandlungen, sogenannte Trilogie, verabschiedet.

3. Hat diese Entwicklung Auswirkungen auf Ihre eigene Arbeit?
 - a. Haben Sie oder Ihre Organisation Ihre Arbeit verändert, um dieser Entwicklung Rechnung zu tragen? Wenn ja, wie? Wenn nein, wieso nicht?
4. Welchen Einfluss hat die Verabschiedung von Gesetzen in erster Lesung aus Ihrer Sicht auf die Kontrollaktivität des Bundestags?
5. Versuchen Sie aktiv, an Informationen zu Trilogie zu gelangen und wenn ja, wie?
 - a. Welche Vor- und Nachteile bietet dieses System der Informationsbeschaffung?
 - b. Treten dabei Schwierigkeiten auf und falls ja, welche?
 - c. Nutzen Sie auch (*nichtgenannte aus: Bundestagsverwaltung, Ausschuss, Fraktion, Verbindungsbüro, MEPs*) (*aktiv/passiv*)?
 - i. Warum (nicht)?
 - d. Sind die Informationen zeitig verfügbar?
 - e. Sind die Informationen angemessen aufbereitet?
6. Ermöglichen diese Informationen/Dokumente aus Ihrer Sicht den politischen Entscheidungsträgerinnen und -trägern, den EU-Gesetzgebungsprozess zu verstehen und effektiv zu kontrollieren?
7. Wie oft werden Sie von Mitgliedern des Bundestags oder deren Mitarbeitern kontaktiert?
 - a. Was sind deren Anliegen?
 - b. Fragen sie bei Ihnen spezifische Informationen/Dokumente an?

Trilogie wurden in der Vergangenheit für ihre Intransparenz kritisiert. Ihre Verfechter sagen, dass dies notwendig ist, um eine gewisse Vertraulichkeit in den Verhandlungen zu garantieren.

8. Teilen Sie diese Einschätzung? Wieso?
9. Welche speziellen Probleme sehen Sie, und wie könnten diese behoben werden?
10. Gibt es sonst noch Aspekte dieses Themas, die Sie für wichtig erachten?

11. Haben Sie noch Fragen?

Ich bedanke mich herzlich für Ihre Zeit und aufschlussreichen Auskünfte. Stünden Sie ggf. noch für etwaige Nachfragen per Email zur Verfügung?

MP or Political Staff

1. Sie sind in (*Funktion*) tätig. Inwieweit beschäftigen Sie sich auch mit der Gesetzgebung auf europäischer Ebene?
 - a. Warum beschäftigen Sie sich auch mit europäischer Gesetzgebung?
 - b. Was versprechen Sie sich davon?
2. Wie entscheiden Sie, ob Sie sich mit einem einzelnen Gesetzesvorhaben beschäftigen?
(*Impuls von anderen Akteuren, öffentliche Aufmerksamkeit, Fortschritt im Prozess, Thema, etc.*)
 - a. Welche Faktoren spielen bei dieser Entscheidung eine Rolle?
3. Können Sie anhand eines Beispiels erklären, wie Sie bei der Kontrolle der Gesetzgebung vom Vorschlag der Europäischen Kommission bis hin zur Verabschiedung durch das EU-Parlament und den Rat vorgehen?
4. Wie erhalten Sie die dafür notwendigen Informationen? (*Bundestagsverwaltung, Ausschuss, Fraktion, Verbindungsbüro, MEPs*) (*aktiv/passiv*)
 - a. Welche Vor- und Nachteile bietet dieses System der Informationsbeschaffung?
 - b. Treten dabei Schwierigkeiten auf und falls ja, welche?
 - c. Sind die Informationen zeitig verfügbar?
 - d. Sind die Informationen angemessen aufbereitet?
 - e. Nutzen Sie auch (*nichtgenannte aus: Bundestagsverwaltung, Ausschuss, Fraktion, Verbindungsbüro, MEPs*) (*aktiv/passiv*)?
 - i. Warum (nicht)?

Die große Mehrheit der EU-Gesetze wird mittlerweile bereits in der ersten Lesung im Anschluss an interinstitutionelle Verhandlungen, sogenannte Trilogie, verabschiedet.

5. Wie bewerten Sie diese Entwicklung?
6. Hat diese Entwicklung Auswirkungen auf Ihre eigene Kontrollaktivität?
 - a. Haben Sie Ihr Verhalten verändert, um dieser Entwicklung Rechnung zu tragen?
Wenn ja, wie? Wenn nein, warum nicht?
7. Versuchen Sie aktiv, sich über Inhalte von Trilogie zu informieren und wenn ja, wie?
 - a. Sind diese Informationen zeitig verfügbar?
 - b. Sind diese Informationen angemessen aufbereitet?
 - c. Wenn nicht, wieso nicht?
8. Ermöglichen diese Informationen/Dokumente Ihnen, den EU-Gesetzgebungsprozess effektiv zu kontrollieren?
 - a. Was hindert Sie an der effektiven Kontrolle?

Trilogie wurden in der Vergangenheit für ihre Intransparenz kritisiert. Ihre Verfechter sagen hingegen, dass dies notwendig sei, um eine gewisse Vertrautheit in den Verhandlungen zu garantieren.

9. Teilen Sie diese Einschätzung? Wieso?
10. Gibt es sonst noch Aspekte dieses Themas, die Sie für wichtig erachten?
11. Haben Sie noch Fragen?

Ich bedanke mich herzlich für Ihre Zeit und aufschlussreichen Auskünfte. Stünden Sie ggf. noch für etwaige Nachfragen per Email zur Verfügung?