

Informal bargaining in bicameral systems:  
Explaining delegation by the Council of the European Union and  
the European Parliament

August 16, 2018

# Abstract

This project is about the effects of institutional design on decision-making in the European Union. Specifically: *delegation to informal* inter-institutional legislative bargaining. I develop a spatial complete information model to explain the decision to delegate to the ‘informal arena’ and test its empirical implications. The meta-theoretical umbrella for this project is New Institutionalism and I view the decision to delegate through a principal-agent lens, i.e., delegation may result in policy outcomes that differ from counterfactual non-delegated acts. I contribute to the theoretical and empirical literatures on informal law-making in the European Union and legislative organisation more generally.

## Research Question

Farrell and Héritier (2003) have famously hypothesised that key actors gain undue influence when legislative negotiations in the EU are delegated to the informal arena. The empirical literature has produced mixed evidence of whether or not this is the case. The institutions themselves suspect that they might be at a disadvantage in informal negotiations (Kluger Dionigi and Koop, 2017), the European newsmedia allege that ‘foul play’ takes place behind closed doors (Fox, 2014; Cooper, 2016), and the European Ombudsman, Emily O’Reilly, recently launched an investigation into the practice of informal inter-institutional legislative negotiations (European Ombudsman, 2016). Meanwhile, the practice becomes ever more common. It is in fact the standard law-making practice nowadays. If the press is bad, if the institutions see themselves at a disadvantage, and if individual legislators could gain undue influence, then why does delegation to the informal arena take place? Furthermore, when does delegation not take place? These are the questions that I address in this dissertation.

## Research Design

The theoretical literature on informal negotiations in the EU has formulated the expectation of agency-drift based on careful and convincing analyses of the potential that agents have to

deviate from their mandates. This project differs from that literature, because I concentrate on the incentive structure of all actors. The potential to deviate from the mandate is a necessary condition for agency-drift but it is not sufficient. An agent will only shirk (deviate from the mandate) when this is beneficial for the agent. I develop a complete information spatial model in a bicameral setting. The model shows that shirking is usually an unattractive strategy for the agent due to the incentive structure in bicameralism. I derive predictions when agency-drift occurs and differentiate: (1) when agency-drift is beneficial to the principal who is, therefore, happy to delegate, and (2) when agency-drift is detrimental to the interests of the principal and delegation does, therefore, not occur. I test the theory in three empirical chapters. The first shows that the principal is representative of the chamber as a whole. The second, that the principal strategically selects ‘allied’ agents when delegation to the informal arena is on the cards. The third shows that the decision to delegate is related to the risk of agency-drift.

In this project, I apply the principal-agent lens following EU scholars such as [Farrell and Héritier \(2003\)](#), and [Shackleton and Raunio \(2003\)](#). In the informal arena, key actors who lead the informal negotiations have informational advantages which allow them to influence policy such that it better reflects their preferences ([Farrell and Héritier, 2003](#)). The result is agency-drift, a term coined by the principal-agent literature. The principal-agent framework suggests that delegation of a principal—the parent chamber—to an agent—the lead negotiators in the informal arena—may come at a cost. If the preferences of principals and agents diverge and the principal is unable or unwilling to properly check on the agent, decision outcomes that result from delegation—the informal arena—will differ from outcomes were the principal did not delegate—the formal arena. The legislative process raises questions about legitimacy if policy outcomes depend on whether or not delegation takes place, especially if the decision to delegate is at the discretion of the law-makers themselves.

In general, the theory, proposed in this project, may travel to other bicameral contexts, subject to careful consideration of the rules and norms in those other contexts. Overall, this project inspires optimism in the legislative system of the European Union. Even if the potential for agency-drift exists, shirking is rarely a winning strategy.

## **Data**

The main task to test the model is gathering preference data for all actors involved in the legislative game, i.e., the principals and agents in the Parliament and in the Council because I conceptualise the legislative actors to be policy-seekers whose utility is maximised if policy outcomes reflect their preferences. I conceive the policy space as one dimensional and interpret the dimension to be conflict over ideological left–right politics.

I generate preference data for a comprehensive twenty years period from 1994 to 2014. I combine two data sources: (1) the 1999, 2002, 2006, 2010, and 2014 waves of the ‘Chapel Hill Expert Surveys’ (Bakker et al., 2015) and (2) roll-call data from the European Parliament for the 1994–2014 period. Using Bayesian Item Response Theory, I scale preferences into a common political space, i.e., preferences in the Council are on the same scale as preferences in the Parliament.

In addition to the preference data, I collected an original dataset that includes contextual information on members of the European Parliament (MEPs). It contains information on names, age, nationality, national party affiliation, transnational group affiliation, and committee functions such as committee chairs, vice-chairs, memberships, and substitute memberships for all representatives that have been members of the European Parliament to this day.

Finally, I employ and extend the ‘informal politics of codecision’ dataset (Bressanelli et al., 2014). It includes information on all concluded files subject to the ordinary legislative procedure. Among many other variables, it contains the names of the principals and agents in the Parliament, the appointment dates of the agents, and whether delegation to the informal arena took place.

## Context

In 1999, the Amsterdam Treaty amended the ordinary legislative procedure (then codecision) such that conclusion at first reading became possible. It was the advent of the ‘informal arena’ which since then co-exists with the ‘formal arena’. Under the ordinary legislative procedure, the EU’s legislative system resembles symmetric bicameralism—the Council of the European Union (Council) and the European Parliament (EP) both need to agree to a proposal to change the status quo. In the formal arena, bills shuttle back and forth between the two chambers in a maximum of three reading stages. In the informal arena, both chambers delegate inter-institutional negotiations to representatives who meet behind ‘closed doors’ to produce a compromise that is subsequently rubber-stamped by the parent chambers. At the outside of the legislative process (when the ordinary legislative procedure applies), both chambers decide jointly whether to delegate to the informal arena or not.

## Chapter Summaries

The first chapter of my project introduces the reader to the aim of my thesis: to explain delegation to the informal arena. It provides an overview over the literature, discusses the contribution of my project, the benefits of viewing the consequences of institutional design through

the principal-agent lens, the research design of the project, and summarises each chapter.

## **Chapter 2: The Ordinary Legislative Procedure**

This chapter fulfils three purposes: (1) to summarise the legislative procedure focusing on the sequence of the decision-making process, and in particular the timing of the decision to enter the informal arena or not; (2) to introduce the actors that are involved in the legislative game, and (3) to illustrate the differences between the formal and the informal arenas as well as establishing when and why the agent has the potential to shirk.

With respect to (1), the key events are: The Commission proposes and then the Parliament assigns a proposal to a lead committee. The committee selects its agent and then decides jointly with the Council whether or not to delegate decision-making to the informal arena. With respect to (2), the two institutional actors are the Council and the Parliament which I disaggregate to principals and agents. In the Council, the member states are jointly the principal and the Council presidency is the agent. In the Parliament, the lead standing committee is the principal and the agent is the rapporteur. The key differences, with respect to (3), are that participation and information in the informal arena are restricted. Furthermore, the mandate is vague for the Parliament's agent but not for the Council's agent. In addition, the rules that govern the informal arena have changed over time and reduced the potential for shirking.

In summary, this chapter establishes that the necessary pre-condition for agency-drift—the *potential* for the agent to shirk—exists. It, therefore, sets the stage for the analysis of the *incentive structure* for the agent to shirk and the principal to delegate. The potential for shirking exists for the Parliament's agent, but not for the Council's agent. Therefore, the following analysis concentrates on the Parliament while treating the Council as a unitary actor.

## **Chapter 3: A Spatial Model of Delegation to the Informal Arena**

The main task of this chapter is to develop a theory that predicts when delegation to the informal arena takes place and when it does not. I open the chapter by briefly describing that the New Institutionalism approach provides the meta-theoretical umbrella for this project. Following New Institutionalism, my approach is actor-centric where actors are assumed to be rational policy-seekers who are constrained by the rules that they operate under. Next, I discuss (1) the procedural models of legislative politics in the European Union and (2) cooperative bargaining solutions. The main insights from (1) the procedural models are that the Council and the Parliament are co-equal legislators under the ordinary legislative procedure. Furthermore, the Commission is not a relevant actor with respect to policy outcomes. The insights from (2), the cooperative bargaining solutions, are that the Council position is well approximated by a

weighted average of actors' preferences where the weights are preference intensities and actor capabilities.

I then develop a simple complete information spatial model. The baseline model concentrates on the Parliament, assuming that the Council always wants to delegate to the informal arena. Actors lose utility the further the outcome from their preferences. In addition, the principal incurs a cost for legislating in the formal arena. I construct two policy environments that cover the general set of actor constellations. In the first, agency-drift is detrimental to the principal's interests. However, the incentives for agency-drift rarely exist; policy conflict between principal and agent needs to be large in comparison to policy conflict between the principal and the opposition chamber. In the second environment, the agent always shirks resulting in agency-drift. This is beneficial for the principal unless policy conflict between principal and agent is large in comparison to policy conflict between the principal and the Council.

Following the baseline model, I discuss several extensions to the model. The central extension treats the Council as a proper actor, i.e., I relax the assumption that the Council always wants to delegate to the informal arena. The consequence is that agency-drift does not occur in the second policy environment—where agency-drift is beneficial for the principal in the Parliament—because the Council vetoes delegation to the informal arena.

In summary, I put forward a complete information spatial model in a bicameral setting. The model predicts (in the extended version) that shirking is seldom a winning strategy for the agent even under the circumstance where the agent has the potential to deviate from his mandate. The model explains variation in the decision to delegate to the informal arena and it suggests that bicameralism can be effective in mitigating agency-drift.

## **Chapter 4: Preferences on Legislation 1994–2014**

The main objective of this chapter is to generate preference data in a common space and to assess the validity of the estimates. I open the chapter with a discussion of the dimensionality of the policy space and justify the decision to analyse a uni-dimensional space where left–right politics is the underlying dimension. Next, I describe the Chapel Hill Expert Survey data that is used to approximate government positions in the Council. Furthermore, I describe that the aggregate Council position is the weighted average of the member state positions where the weights are power index scores based on the Penrose method (Penrose, 1946). Then, I describe the roll-call data used to infer preferences of individual members of the European Parliament (MEPs) and discuss the Bayesian Item Response Model used to scale policy positions of MEPs into the same space as the positions of the governments in the Council.

In short, I use the national party positions from the Chapel Hill Expert Surveys as priors for

each MEP who is a first time member of the Parliament. For re-elected MEPs, I use their left–right preference estimates from the previous term as a prior. Furthermore, I employ contextual information in the scaling model and I use preference estimates from a scaling technique that does not include prior information but is commonly used—NOMINATE (Poole et al., 2018)—as covariates. I estimate preferences for each Parliamentary term separately for the 1994–2014 period and show that face validity of the estimates is high.

## Chapter 5: Committee Organisation 1994–2014

I analyse two research questions: (1) are standing committees representative of the plenary? (2) Does ideology predict selection into standing committees? I find that the committee system is highly representative of the chamber as a whole and that there is no evidence that ideology predicts committee membership over twenty years of legislative organisation and across nineteen standing committees.

The research questions are motivated by the fact that the principal in the Parliament, the respective lead committee, is itself the agent of the chamber as a whole. If the committee system were unrepresentative, one should expect biased policy, i.e., agency-drift. The questions are further motivated by mixed evidence regarding the committee system’s representativeness in the extant literature.

The research design for question (1) is as follows. I combine the individual preference data with the context data on individual MEPs and construct a dataset of membership in the standing committees from 1994 to 2014. I construct the committee median positions, and dispersions from individual members. Committee membership is reshuffled halfway through the legislative term. Therefore, committee median positions and dispersions are derived for half terms. Median positions are important because committees decide by simple majority according to the rules and dispersion matters because it showcases the degree of preference heterogeneity.

To answer question (2), I construct for each individual committee a dependent variable that is 1 if an MEP was a full member and 0 otherwise. The level of observation is the individual member in a half term. In a series of logistic regressions, I regress committee membership on ideology and a number of covariates, including fixed effects for legislative terms and nationality.

In summary, I show that the committee medians are very close to the floor median and that they become ever more representative over time. Furthermore, they span a similar ideological range and there are no systematic outlier committees. In fact, there is more variation over time than across committees. Finally, ideology is not related to committee membership. Overall, committees are heterogeneous and representative. There is little policy conflict between the principal who decides on delegation to the informal arena and the overall principal in the

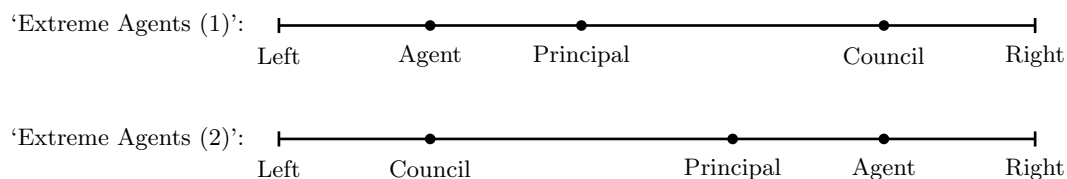
Parliament. The chapter contributes to the literature on legislative organisation in the European Parliament.

## Chapter 6: Strategic Agent Selection

The research question in this chapter is: Does the principal select the agent strategically anticipating that the informal arena is on the cards? I find that strategic selection does indeed take place. The principal selects ‘allies’, agents who diverge less from the preferences of the principal.

The research question is motivated by contrasting predictions of the baseline model and the extended model that treats the Council as a proper actor. The baseline model predicts that the principal selects agents who are further from the Council than the principal as illustrated in figure 1. The extended model predicts that from a pool of possible candidates, the principal selects agents whose preferences diverge less from the principal’s.

Figure 1: Selection of Extreme Agents



Note: The Council, and the principal and agent in the Parliament are ordered along the left–right dimension. The baseline model predicts that the principal selects agents that are further from the Council than she is herself—labelled ‘extreme agents’. The two constellations are effectively equivalent.

I argue that the rule change in 1999, that made delegation to the informal arena possible, constitutes a natural experiment. Before delegation was possible, the principal did not have an incentive to select the agent strategically but did so after the rules changed. I apply a regression discontinuity design to estimate the effect of the advent of the informal arena on agent selection. I merge the preference data, and the contextual data to the extended dataset on the ‘informal politics of codecision’ where the level of observation is a completed file (Bressanelli et al., 2014).

The results show that the principal did indeed employ the ‘ally principle’, selecting agents that are noticeably closer to the principal after the rule change. In a series of 1000 placebo tests, I show that the rule change is the only consistently detectable discontinuity in the 1999–2014 period. The results contradict the predictions of the baseline model and lend credibility to the extended model that treats the Council as a proper actor. The chapter contributes to the literature on report allocation in the European Parliament.



## Chapter 7: The Decision to Delegate 1999–2014

The research question in this chapter is: Does the principal delegate to the informal arena if the agent has an incentive to deviate from his mandate, leading to agency-drift? The results are pending but first analyses suggest that delegation is less likely if the agent has an incentive to shirk.

The research question is motivated by the theory of this project which suggests that agency-drift should be the exception rather than the norm because the incentive structure rarely favours shirking and because the principal does not delegate if it does.

I merge the dataset on the ‘informal politics of codecision’ with the preference data and the contextual data. The level of observation is a concluded file. The dependent variable is binary, indicating whether delegation to the informal arena took place or not. The independent variables are the relevant actors’ preferences as well as contextual controls..