

Power and Transparency in Political Negotiations

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Abstract

This paper argues that transparency affects bargaining power in political negotiations. The more opaque actor has an advantage over the more transparent one. I test the effect of opacity on power using the case of the European Union. Its legislative system exhibited variation in the level of transparency of one legislative chamber—the European Parliament—but not the other—the Council of the European Union—in an otherwise similar legislative context. Variation in the level of transparency existed in the intervening period from 1999 to 2009 when it became possible to conclude informal negotiations early in the legislative process and stringent rules for conducting such informal negotiations did not yet exist. I exploit this variation and find a strong and robust link between opacity and power. Recognizing that link may enhance our understanding of how political institutions work and inform institutional design.

1 Introduction

The transparency of a lawmaking institution is a prerequisite for its legitimacy. It grants stakeholders opportunity to influence the legislative process and constituents the ability to hold representatives to account. In political negotiations, we theorize that the ability to conceal information may be advantageous (Schelling, 1980). Legitimacy and influence¹ are in conflict when negotiators may choose rules regarding their transparency themselves. Bicameral systems such as the United States, Germany, and the European Union leave legislative organization—including rules regarding transparency—to the legislative chambers. Efforts that affect transparency may also affect the institutional balance of power. Recognizing that

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¹Power and influence are synonymous throughout this article.

link may enhance our understanding of how political institutions work and inform institutional design.

To assess whether transparency really does affect legislative influence substantially, we would need to observe a political system where the level of institutional transparency varies within an otherwise similar legislative context. The European Union is such a political system. It is bicameral, the Commission proposes and the two legislative chambers are the European Parliament (EP) and the Council of the European Union (Council). The legislative process allows for a maximum of three reading stages.²

With the entry into force of the Amsterdam Treaty in May 1999, agreements at first reading between the EP and the Council became possible. These are usually referred to as early agreements. When the legislative chambers disagree on policy, informal negotiations are carried out to conclude files at first reading (*informal* early agreements): both chambers send delegations which negotiate a compromise behind closed doors that is subsequently rubber-stamped by the parent chambers. The informal procedure co-exists with the formal one, where bills shuttle back and forth between the two chambers. Which of the procedures is applied is decided jointly by both institutions on a case by case basis.³

In the intervening period under investigation, from 1999 to 2009, the EP could become more opaque in informal than in formal negotiations. I exploit this variation to test the link between transparency and power. Here, transparency describes the degree of openness of the intra-chamber formation of a negotiation position.⁴ The ‘upper house’ of the EU, the Council, which is composed of the ministers from the member states, forms its position in an opaque manner. Negotiations are closed to members of the EP and the public. It is due to this lack of transparency that the EP always faces uncertainty about the position of the Council. This is different in the EU’s ‘lower house’. The EP is composed of directly elected representatives from each member state who form standing committees. The EP’s level of transparency depends on the procedure—formal or informal—and timing. In the formal procedure, its position is

²The process is sequential. At first and second reading, the EP can make its amendments first, followed by the Council. After the second reading, a conciliation committee produces a compromise that it submitted to an up-or-down vote in both chambers at third reading.

³An ever increasing amount of legislation is concluded at first reading and based on informal compromises in order to increase legislative efficiency (see e.g., [Rasmussen and Reh, 2013](#)). Uncontroversial files do not require informal negotiations. Selection effects are addressed in this paper.

⁴The conceptualization of transparency is narrow in this paper. Research on transparency is often concerned with the question whether citizens can know their representatives’ behavior (see, e.g., [Stasavage, 2004](#); [Hagemann and Franchino, 2016](#)).

formed in a public committee session where a Council representative is usually present. In the informal procedure, the committee delegates to a team of negotiators who did not have a clear mandate if the informal negotiations commenced before the EP had formed its formal first reading position. Consequently, the Council was less certain about the EP’s position in informal first reading agreements compared to all other agreements.

The time period under investigation—1999 to 2009—corroborates the effect that the combination of informal negotiations and timing have on the opacity of the EP position. Informal and early negotiations were criticised precisely for lacking transparency by practitioners and observers of EU politics (Farrell and Hérítier, 2003; Shackleton and Raunio, 2003; Farrell and Hérítier, 2004; Hérítier and Reh, 2012; Reh, 2014; Roederer-Rynning and Greenwood, 2015). This led to reforms by the EP in 2009 where the committees gained influence through clearer mandating and the requirement to complete the committee stage—committee sessions are public—before entering informal negotiations (Hérítier and Reh, 2012).⁵ The debate about the legitimacy of informal negotiations is ongoing (Fox, 2014; Cooper, 2016), however, the process has become less opaque with reforms in 2009, 2012, and 2016.

In this paper, I argue that the EP has gained substantial influence over lawmaking through informal and early negotiations where its position is opaque compared to all other agreements. The findings in this paper support this narrative. However, rather than measuring opacity directly, the combination of informality, conclusion before the EP forms its formal first reading position, and the time period of 1999 to 2009 are an approximation. The degree of opacity will vary across other factors such as files and committees⁶ as well. Intra-institutional reforms should have made the EP more transparent and, thus, less influential. This prediction should be investigated in future research.

I develop the argument and test it on salient pieces of European legislation.⁷ In order to isolate the effect of opacity from background covariates, I employ propensity score matching. Furthermore, I propose a measure of relative power that requires the prior specification of a counterfactual. This allows researchers to move beyond the expectation that the institutions

⁵In 2004, the non-binding ‘Guidelines for First and Second Reading Agreements’ already attempted to revitalize the role of the committees, one of the institutional losers of informal and early negotiations (Judge and Earnshaw, 2011; Hérítier and Reh, 2012).

⁶I control for committees and, hence, policy areas in the analysis.

⁷I employ the Decision Making in the European Union II data set (DEUII) (Thomson et al., 2012) and the ‘Dataset on the Informal Politics of Codecision’ (Bressanelli et al., 2014; Reh et al., 2013).

‘meet in the middle’, to take actor constellations into account, and to include expectations, such as the status quo constraints postulated in veto player theory, directly.

2 Inter-Institutional Influence in the EU

Several contributions have investigated the balance of power between the institutions (Costello and Thomson, 2013; Crombez, 1997, 2000; Häge and Keading, 2007; Hagemann and Høyland, 2010; Kardasheva, 2009; Kasack, 2004; König et al., 2007; Kreppel, 2002; Scherpereel and Perez, 2015; Tsebelis, 1994; Tsebelis and Kreppel, 1998; Tsebelis and Garrett, 2000; Tsebelis et al., 2001). Early contributions focused on procedural differences, such as the differences between consultation, cooperation, codecision I and codecision II using amendment success as a dependent variable (Crombez, 1997, 2000; Kardasheva, 2009; Kasack, 2004; Kreppel, 2002; Tsebelis, 1994; Tsebelis and Kreppel, 1998; Tsebelis et al., 2001).

By and large, the debate on the power derived from the rules of the process has been settled by the agreement that under codecision II (with the Amsterdam Treaty in 1999), the EP and the Council are on an equal footing (Tsebelis and Garrett, 2000). Thus, the expectation that both institutions should possess equal influence serves as a counterfactual throughout this paper.

Costello and Thomson (2013) show that despite the rules of the process, the Council is generally the more influential institution, and provide insights into factors that make the institutions influential (see also Thomson, 2011). First, the Commission plays a role of arbitration and whichever institution is closer to the Commission is found to be more influential (see König and Junge, 2009, for a similar argument). Furthermore, policy type matters. The EP is more successful on regulatory issues than on redistributive ones. Redistributive policy directly affects the member states’ governments, who make up the Council, whereas regulatory policy mostly affects companies within member states (Costello and Thomson, 2013). A third finding, however, is somewhat puzzling: the effect of being the more conservative institution. While the Council gained power from being closer to the status quo, the EP did not. If being more conservative constitutes a bargaining advantage, both institutions should be affected in the same way. I propose a solution by arguing that being closer to the status quo does not in itself constitute an advantage. This is only so when the institution is constrained by the

status quo.⁸ I construct three policy environments that account for such constraints.

A pioneering study on inter-institutional power, in the light of informal negotiations, provides evidence that the EP's rate of successful amendments increases with informal negotiations (Häge and Keading, 2007). Häge and Keading argue that there is no inherent difference between informal and formal negotiations but that the Council copes less well with an ever increasing workload and is thus keener to conclude sooner. Recent interview data with Council representatives supports this view. The interviewees suggested that the workload in the EP is more evenly spread out, whereas in the Council, one Presidency handles all informal negotiations (Kluger Dionigi and Koop, 2017, p. 55). In this study, I take these findings into account while aiming to refine our understanding of the legislative process further. In line with Häge and Keading (2007), I do not argue for a general difference between formal and informal negotiations. Rather, my argument focuses on variation in the level of transparency. In the following, I describe the conceptualization of transparency in this paper and previous research, discuss how the timing of informal negotiations leads to variation in the level of transparency, and lay out the strategy to test my claim.

2.1 Transparency

Transparency is defined narrowly and in the context of bicameral negotiations in this paper. Inter-institutional negotiations are preceded by an intra-institutional formation of a negotiation position. I consider a legislative chamber transparent if the process of the formation of the negotiation position—the mandate—is known to the opposing chamber. I consider a legislative chamber to be opaque if the opposing chamber faces uncertainty about the mandate and must infer it from claims made during the inter-institutional negotiations or by relying on back-channels.

Research on legislative transparency focuses on the effects of making lawmakers' records available to the public (cf. Stasavage, 2004; Carey, 2008; Hagemann and Franchino, 2016). The literature points to a trade-off: when bargaining becomes public, citizens are better able to hold representatives to account. However, the risk of bargaining failure increases

⁸Whether an actor is constrained or not follows from veto player theory (Tsebelis, 2002). An actor who can veto legislation accepts policy change only if s/he prefers it to the status quo. Therefore, an actor who is close to the status quo, can be constrained in the sense that s/he only accepts small changes from the status quo (see the section on Relative Influence).

because representatives might be less willing to compromise (Stasavage, 2004). Hagemann and Franchino (2016) contest this finding, arguing that public records reduce problems of incomplete information and hence reduce the risk of negotiation failure.

In line with Hagemann and Franchino (2016), I argue that transparency reduces information asymmetry which does not only reduce the risk of negotiation failure but also puts the legislators on a more level playing field. In contrast to previous research, my argument focuses on inter-institutional transparency, i.e., transparency does not necessarily involve the public in this paper.

2.2 Uncertainty

I employ a spatial model of politics, where actors are rational and have single-peaked and symmetric preferences in a uni-dimensional policy space (Riker and Ordeshook, 1973). The spatial model is commonly applied to EU politics (see e.g., Thomson et al., 2006; Thomson, 2011; Crombez and Vangerven, 2014). Actors are powerful when they alter outcomes to better reflect their preferences against the will of others (Dahl, 1957).

Both the EP and the Council are veto players in the lawmaking process and treated as unitary in the following. Starting from classic veto player theory (Tsebelis, 2002), policy change is only expected when a potential compromise is in the win set of all veto players. That is to say, EP and Council have to prefer the compromise to the status quo. Negotiations between the EP and the Council serve to find such a deal. If both had complete information about the preferences of the other, this would be a formality (Cameron and McCarty, 2004). The expectation for the outcome is the midpoint between both actors if both are equally patient (both have the same discount factor).⁹

With uncertainty the following problem persists. Suppose female negotiator A does not know the true position of male B. This puts her at a disadvantage as B could be insincere about his position. Figure 1 illustrates the challenge for A. She does not know the true ideal point of B but she knows the position with some uncertainty, indicated by the vertical line hatched box around B. Knowing the position of A, B will not accept anything to the left

⁹The bargaining situation would be one where both actors can make repeated offers and counter-offers. This is the case in EU negotiations where many rounds of negotiations take place. Even in the formal procedure—limited to three reading stages—because the third stage is preceded by a conciliation committee that may feature many rounds of negotiations. Rubinstein (1982) has shown that the outcome is expected to be the midpoint.

of the midpoint. He will, however, accept anything to the right, indicated by the horizontal line hatched box. Thus, the midpoint is the best A can do and the point she would get with complete information. If A believes B is to the left of his actual ideal point, she will insist on a compromise in the cross-hatched box. B will veto this.¹⁰

Figure 1: Extreme Information Asymmetry



Notes: A and B are two veto players. B knows the ideal point of A exactly. A, however, knows the ideal point of B with some uncertainty only, indicated by the vertical line hatched box around B. The midpoint is the best A can do as B will veto anything to the left of it. B may achieve an outcome to the right of the midpoint due to the uncertainty A faces.

When A somehow manages to become more opaque, B will not know the true position of A anymore and will now, on occasion, also accept compromises to the left of the midpoint. Figure 2 illustrates this. This scenario (figure 2) is clearly better for A than the previous one (figure 1). Note that while the latter scenario is better for A than the former, B is still favored overall due to being even more opaque.¹¹

Figure 2: Reduced Information Asymmetry



Notes: Both veto players, A and B, are faced with some uncertainty about the other's position. Hence, outcomes to the left or right of the midpoint—within the horizontal hatched line box—may occur. B is favored overall. Relative to figure 1, however, A has gained influence.

In the illustrations above, the status quo does not feature. The reason is to keep the illustration of the effect of uncertainty simple. The reader may imagine this as a scenario where both actors are distant enough from the status quo to be unconstrained by it (the midpoint between them is in the win set).

In the EP, legislative files are prepared by the responsible standing committee. Committee sessions are public and a Council representative is usually present (Corbett et al., 2011). The

¹⁰See Wøien Hansen (2014) for an excellent explanation of first reading non-agreements.

¹¹If B accepts a compromise to the left of the actual midpoint, this is so because he believes that the compromise represents the midpoint policy. I implicitly assume that both chambers would rather conclude sooner, i.e., delayed decision making is costly. Otherwise, the Council would always veto and get the midpoint policy in the second reading, which in turn means that informal first reading agreements would never occur. I do not discuss this cost further as I have no expectation about it differing systematically between the chambers.

standard formal procedure should leave the Council well informed about the EP's position. MEPs never get access to intracameral negotiations within the Council, no matter whether a compromise is negotiated informally or not (Häge and Keading, 2007; Costello and Thomson, 2013). Under both formal and informal negotiations, the EP faces a similar degree of uncertainty about the Council's position.

With the entry into force of the Amsterdam Treaty in 1999, conclusion at first reading became possible (Farrell and Héritier, 2003). First reading agreements do not have to be based on a compromise reached in informal negotiations. Uncontroversial files, usually, do not require trilogues, i.e., informal inter-institutional negotiations that involve the EP, the Council, and the Commission (Rasmussen and Reh, 2013; Brandsma, 2015).

The timing of informal negotiations at first reading is consequential. Such negotiations may either be concluded before or after the EP has formed its formal first reading position (called the formal first reading opinion). Informal agreements that are reached before the EP has formed its formal first reading opinion are known as 'informal first reading agreements' (Rasmussen and Reh, 2013). The reason is that an informal compromise requires a formal vote in both chambers. Because the informal compromise was reached before the EP voted on its first reading formal opinion, both the EP and the Council can rubber-stamp at first reading (Rasmussen and Reh, 2013).

The EP became more opaque in informal first reading agreements because its delegation did not have a clear mandate. In addition, it was not certain which committee members would be included in the EP delegation and it was not a given that the delegation would report back and inform the full committee, in a public session, on the state of the negotiations (Roederer-Rynning and Greenwood, 2015). The increased opacity of the EP is the source of increased uncertainty of the Council about the position of the EP.¹² Therefore, the information asymmetry between the Council and the EP is reduced. I derive the following hypothesis: The EP gains influence, relative to the Council, in informal first reading agreements.

Agreements based on informal negotiations that commence at first reading, but where the informal compromise is found only after the EP has already voted on its formal first reading

¹²The Council may find out about the EP's position through informal channels. In formal negotiations or informal negotiations with a clear mandate, an official paper trail, that clearly identifies the EP's position, exists. In informal early negotiations, the Council must rely on back-channels and hence information that may be inaccurate.

opinion, but before the Council has formed its formal position (the first reading common position) are called ‘informal early second reading agreements’. The informal compromise is included in the first reading common position of the Council, however, the sequential nature of the legislative process requires a formal vote from the EP as well, which then rubber-stamps the compromise at second reading (Reh et al., 2013). Hence the term ‘informal early second reading agreement’.¹³

Such informal negotiations place a clear mandate on the EP delegation, namely the EP’s first reading formal opinion.¹⁴ Therefore, the Council has already learned the position of the EP and does not face additional uncertainty. Although both ‘informal first reading agreements’ and ‘informal early second reading agreements’ are based on informal negotiations at first reading, they are distinct. Whereas the position of the EP is uncertain to the Council in the former, it is known in the latter. This emphasizes the argument that the EP gains influence due to variation in the level of transparency rather than a general difference between informal and formal negotiations.

While decreasing transparency may bring short-term gains for the EP in negotiations with the Council, there may also be long-term costs associated with this development. Practitioners and observers of EU politics criticised the legitimacy of informal early agreements precisely because of a lack of transparency (Farrell and Héritier, 2003; Shackleton and Raunio, 2003; Farrell and Héritier, 2004; Corbett et al., 2011; Héritier and Reh, 2012; Reh, 2014; Roederer-Rynning and Greenwood, 2015). The period between 1999 and 2004 was un-regulated and committees were identified as institutional losers of the treaty changes (Reh, 2014). In 2004, the non-binding ‘Guidelines for First and Second Reading Agreements under the Codecision Procedure’ were introduced. These suggested a clearer mandate for the EP delegation by the committee prior to informal negotiations (Roederer-Rynning and Greenwood, 2015). This would have increased transparency. However, the 2004 guidelines had the character of a norm, similar to the widely ignored norm, that early agreements should be the exception. Evidence exists that the norm was not widely followed but that there was variation across committees which developed their own ‘culture of trilogues’ (Roederer-Rynning and Greenwood, 2015,

¹³An early second reading agreement does not necessarily have to be based on an informal compromise. The EP can also accept the first reading common position of the Council without prior informal negotiations.

¹⁴Rule 69 (formerly 66) of the the EP’s Rules of Procedure states that no new amendments are allowed unless new facts or legal situations have arisen (European Parliament, 2014).

2016). More stringent reforms were introduced in 2009, 2012, and 2016. These are outside the scope of this study which is restricted to the period from 1999 to 2009.¹⁵

3 Research Design

In the following, I propose a new measure of relative power that makes the counterfactual expectation explicit and thereby allows researchers to refine their expectation with relevant data such as the location of the status quo. Furthermore, I describe the data, the variables, and the identification strategy.

3.1 Relative Influence

Bargaining power is evaluated by comparing observed outcomes to a counterfactual. The literature on the EU's legislative procedures has settled on this consensus: with the 1999 reforms of codecision, the Council and the EP are on an equal footing (Tsebelis and Garrett, 2000). This consensus is based on the rules only. In practice, the Council is generally the more influential legislator (Thomson, 2011; Costello and Thomson, 2013). To capture this de-facto influence, I will compare observed outcomes to a counterfactual that is based on the rules of the process. The counterfactual is thus equal power.

Current measures of relative power place the expectation exactly at the midpoint between Council and EP in every case and then measure the deviation from that expectation (see e.g., Costello and Thomson 2013). To account for the expectations from veto player theory, authors have included a measure of distance to the status quo or an indicator of which actor is closest to the status quo as a control in their models (Costello and Thomson, 2013; König and Junge, 2009). However, based on veto player theory, an actor can be closer to the status quo and be completely unconstrained. To account for the expectations of veto player theory, I construct three policy environments that will yield different expected outcomes between actors with the same power and propose a measure of relative influence that returns consistent estimates for each environment.

The first environment is unconstrained and the expectation is the midpoint between both

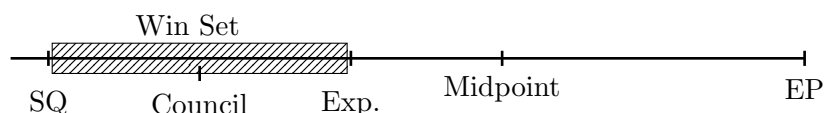
¹⁵This is due to the scope of the DEUII data. The reforms should have increased the transparency of the EP in informal and early negotiations. The general proposition that transparency is related to power, however, is not affected by these developments. Refer to the appendix for a discussion of the rule changes.

actors.¹⁶ According to veto player theory, this is the case when both actors prefer the midpoint between them to the status quo. This is the standard assumption in recent studies on inter-institutional power in the EU (see e.g., Costello and Thomson, 2013; Häge and Keating, 2007).

The second general policy environment is constrained because the status quo is in between both institutions. Both want policy change but in opposite directions. Every alternative to the status quo leaves either the EP or the Council worse off and because both can veto, no policy change is expected.¹⁷ In contrast to the first policy environment, the expectation is not the midpoint between both actors but the status quo.

In the third policy environment, both institutions prefer policy change in the same direction. The constraint arises because one institution is quite ‘conservative’ while the other is quite ‘progressive’. Figure 3 depicts such an environment. The Council prefers the status quo to the midpoint and both institutions prefer all points within the win set to the status quo. The rightmost point in the win set, sets the Council indifferent between status quo and policy change. This is the counterfactual expectation according to veto player theory even if both actors are equally influential.

Figure 3: Status Quo Constraint on the Conservative Institution



Notes: SQ is the status quo and Exp. is the counterfactual expectation. The midpoint between the Council and the EP is not included in the win set. Veto player theory predicts that the outcome is the point that sets the Council indifferent between status quo and policy change.

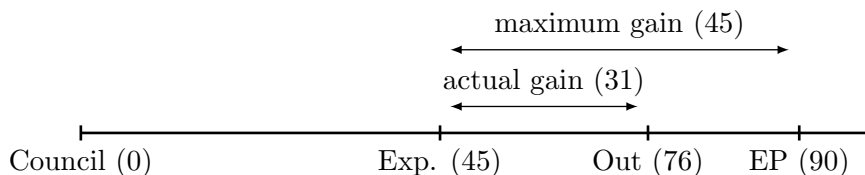
To measure relative influence in a way that is consistent with theory, the counterfactual expectation is determined first. I then set a constant to 0.5 which is the result if the counterfactual is the outcome. Further, I set the actual gain/loss of the relevant institution in relation to the maximum it could have gained. The proportion is multiplied by 0.5, reflecting that there are two actors, and the product is added to the equal influence constant. Figure 4

¹⁶Both actors make repeated offers and counter-offers. Rubinstein (1982) has shown that the outcome is expected to be the midpoint if both actors have the same discount factors. Note that this expectation was established by the procedural bargaining models of legislative politics in the EU (see e.g., Tsebelis and Garrett, 2000).

¹⁷The higher the dimensionality of the policy space, the less likely is this policy environment.

illustrates the procedure.

Figure 4: Relative Influence



Notes: Exp. is the counterfactual expectation, Out is the actual outcome. The positions are in brackets.

In the example, the EP won because the outcome was closer to it than the counterfactual expectation. The maximum it could have gained is 45 and it got 31. Its relative influence is $0.5 + \frac{31}{45} \times 0.5 = 84\%$. Equally, the Council gained -31, and its relative influence is $0.5 + \frac{-31}{45} \times 0.5 = 16\%$. The following algorithm generalizes the approach:

Algorithm 1 Relative Influence of the EP

Determine the counterfactual expectation (*exp*).
 Was the outcome closer to the EP than the expectation (*actual*)?
 Calculate as $actual = |EP - exp| - |EP - out|$
if EP won, i.e., $actual > 0$ **then**
 What is the maximum the EP could have gained (*max gain* EP)?
 Calculate relative influence as $0.5 + \frac{actual}{max\ gain} \times 0.5$
else
 What is the maximum the EP could have lost (*max loss* EP)?
 Calculate relative influence as $0.5 + \frac{actual}{max\ loss} \times 0.5$
end if

The intuition behind the algorithm is that equal influence (0.5) should be assigned if the expectation is the outcome. Supposing that the EP ‘pulled’ the outcome closer to its preference, I calculate the gain as a percentage of the maximum it could have gained. This percentage is added to the equal influence constant and multiplied by 0.5 to reflect that I add a portion of the remaining 50% to the relative influence. The algorithm works equally for all policy environments.¹⁸

Existing measures have the counterfactual expectation built in as the midpoint between the Council and the EP and, thus, cannot be extended to reflect veto player theory or other factors such as the salience an actor attaches to an outcome. Furthermore, the proposed

¹⁸In cases where the outcome falls outside the actor interval, all influence has been attributed to the actor that was closer to the outcome. See the appendix section comparative statics of relative influence for a discussion. Figure 6 illustrates comparative statics.

measure takes the actor constellation into account. It compares the gain/loss of an actor of interest to the maximum gain that an omnipotent actor would achieved within the same actor constellation.

3.2 The Garden of Forking Paths

The relative influence measure, I propose, is one of many equally reasonable attempts to map theory onto empirical test (Steege et al., 2016). In this project, several coding/conceptual decisions were necessary. Such decisions could drive the final result. Gelman and Loken (2014) refer to this as the ‘garden of forking paths’. In order to alleviate these concerns, I construct as many data sets as there are combinations of these coding decisions and subsequently run the analysis on each choice combination (Steege et al., 2016). The consequences of the different paths are illustrated in the estimation section.

The first fork, is the relative influence measure. In addition to my proposed measure, I also show results that are based on a more standard measure where relative influence is the distance of the Council to the outcome over the sum of the distances of both institutions to the outcome. This measure implicitly assumes that the counterfactual expectation is the midpoint. In total, sixteen choice combinations are presented. I highlight decision forks throughout the paper.

3.3 Data

‘The Decision Making in the European Union II’ data set (Thomson et al., 2012) is merged with the ‘Dataset on The Informal Politics of Codecision’ (Bressanelli et al., 2014; Reh et al., 2013). The DEUII contains information on 331 controversial issues raised by 125 legislative proposals which were introduced between 1996 and 2008.¹⁹ It contains policy positions and salience scores of the member states, the EP, and the Commission on each issue. Furthermore, the outcome and the status quo of each issue are included.

The Council position is not given but must be estimated from the member states’ positions. The compromise model is used most often (see e.g., Thomson, 2011; Costello and Thomson, 2013; Rasmussen and Reh, 2013). It is derived as the average over the member states’ positions weighted by salience and either the Banzhaf power index (Banzhaf, 1965) or the Shapley-

¹⁹For a discussion of the DEUII, please refer to Princen (2012), Thomson et al. (2006), and Slapin (2014).

Shubik power index (Shapley and Shubik, 1954). The compromise model has been shown to approximate a Nash bargaining solution (Achen, 2006).²⁰

The data set collected by Bressanelli et al. (2014) provides information on whether the position of the EP was opaque or not. I approximate this by informal negotiations that were started at first reading and concluded before the EP had published its formal first reading opinion.²¹ The data also provide information on the lead EP committee for each file, the number of committees asked for an opinion, the length of a proposal, the number of recitals, and the years of introduction and conclusion of all files.

While the DEUII data are on the issue level, the Reh et al. data are on the file level. In line with previous research a uni-dimensional policy space is assumed (see e.g., Rasmussen and Reh, 2013; Warntjen, 2008). The power indices are decision forks, I use the compromise model with the Banzhaf index and, alternatively, the Shapley-Shubik index.

In line with previous research, missing values have been imputed (König et al., 2005; Slapin, 2014). It is debatable whether imputing missing reference points is justified in the DEUII data. In this data, the reference point (referred to as the status quo in previous and following sections) is the outcome that ensues if negotiations fail. Values for the reference point are missing because there were either multiple reference points, e.g., when failure to agree would lead to different national regulations or when an agreement was pre-supposed (Thomson et al., 2012, p. 612). I argue, that even in case that there are multiple reference points, an aggregate unobserved reference point exists just like the position of the Council is an aggregate of individual member state positions. Equally, in cases of pre-supposed agreements, a veto or breakdown of the negotiations remains a theoretical possibility.

An alternative way to treating missing values on the reference point, that avoids list-wise deletion, is to consider all policy environments where the reference point is missing to be unconstrained. This may be more acceptable to readers who do not believe that the reference point is missing in the traditional sense but rather that a reference point does not exist. In

²⁰A second option, could be the pivot model which assumes that the Council position is determined by the pivotal member state (see e.g., Warntjen, 2008). While this model closely follows a veto-player logic, it is fiendishly difficult to apply because the winning coalition always needs a two-thirds majority in my sample. Due to the decision rule, there are always two pivots (the left-pivot and the right-pivot) within the Council and it is not clear which one determines the Council position.

²¹The authors searched the procedural files of the EP's Legislative Observatory, where it is mentioned whether an informal compromise was reached (Reh et al., 2013, p. 1127). See also Yordanova (2013, ch. 5) who first coded informal agreements this way.

line with the logic of the garden of forking paths, the consequences of both choices of dealing with missing values on the reference point will be presented in the estimation section.

I impute 1,000 data sets and run each of the following analyses on all data sets to account for the imputation uncertainty. The imputation model is described in the appendix.

3.4 Case Selection

The following sample of the DEUII is selected. First, I include only codecision files, where both legislative chambers have a veto. Second, only post-Amsterdam proposals are in the sample. Codecision was reformed significantly with the Amsterdam Treaty. The Council and the EP were not considered to be co-equal legislators beforehand (Tsebelis and Garrett, 2000) and first reading agreements were not possible (Farrell and Héritier, 2003). In my sample, the voting rule in the Council was qualified majority voting.

3.5 Variables

The dependent variable is the relative influence of the EP. It is calculated as was described in the section on relative influence.

The central argument in this paper is about the link between transparency and power. The variable *EP Position Opaque* is the binary ‘treatment’ and approximates opacity. It indicates that an agreement, that was based on an informal compromise, was reached before the EP formed its formal first reading opinion.

The variable *Commission Supports EP* indicates whether the Commission was closer to the EP position than to the Council position. Commission representatives attend Council meetings (Corbett et al., 2011). It is, therefore, possible that the Commission acts as an *information broker* by informing the EP about the Council position whenever it prefers the EP’s text over the Council position. This variable was found to influence power (Costello and Thomson, 2013). The variable *2nd Principal* indicates whether the lead EP negotiator, the rapporteur, was from the same country as the Council Presidency. In addition, the rapporteur had to be from one of the coalition government parties. As the Council Presidency is the main negotiator for the Council in trilogues, rapporteur and Presidency will be in contact. It has been argued that such a connection may mean that the EP is in a weaker position because the rapporteur’s re-election depends on which list position he will be assigned by his national

party (Rasmussen, 2011).

In the bargaining literature, salience—the relevance of a given issue to an actor—is often combined along with the position of an actor into the utility the actor derives from an outcome (Bueno de Mesquita and Stokman, 1994). EU member states are more influential in the Council when an issue is more salient to them (Arregui and Thomson, 2009). Furthermore, salience was found to decrease voting cohesion in the EP (Bressanelli et al., 2016), and employed as a predictor, albeit insignificant, of informal and early negotiations (Reh et al., 2013). Furthermore, when member states attach greater salience to an issue, they may lobby EP representatives from their country to vote along national lines (Costello and Thomson, 2016). The variable *Relative Salience* measures how important an issue is for the EP relative to the Council and is defined as: $\frac{\text{Salience EP}}{(\text{Salience EP} + \text{Salience Council})}$. The variable ranges from 0 to 1. Values greater than 0.5 indicate that an issue is more salient to the EP than to the Council. Values less than 0.5 indicate that an issue is more salient to the Council. *Salience EP* and *Salience Council* are the institutions’ respective salience scores from the DEUII data, where *Salience Council* is the simple average of the salience scores of the member states in the Council.²² In addition to relative salience, *Salience Commission* captures how salient an issue is to the Commission. It is the institution’s salience score from the DEUII data.

File complexity was employed as a predictor of whether the EP’s lead negotiator gains influence in informal negotiations (Rasmussen and Reh, 2013), and whether informal negotiations take place (Reh et al., 2013). The variable *Committees Asked* is a count of how many committees were asked for an opinion. *Length of Proposal* is a word count of the Commission proposal, and *Recitals* is a count of the number of recitals in the Commission proposal. All three variables are proxies for file complexity.²³

Time Trend is a daily ticker, counting time passed since the Amsterdam Treaty. Informal negotiations became more common over time (Reh et al., 2013). In 2004, ten new member states acceded to the Union. This is controlled for by the *Enlargement* indicator. The variable

²²Aggregating Council salience as the simple average of member states’ salience disregards the size and capabilities of the member states. An issue may be more salient to the Council overall, if it is very salient to France than if it is equally salient to Luxembourg. Therefore, I also aggregate Council salience as a weighted average, where the weights are derived from the Shapley-Shubik index. I re-run the analysis with the alternative Council Salience score. The results are substantially equivalent (see table 7 in the appendix).

²³The number of recitals, committees asked for an opinion, length of the proposal, and duration in months are count variables that are skewed and have outliers. Therefore, these variables have been log-transformed if they did not include zeroes, otherwise the square-root transformation was used.

Directive indicates whether the file was a directive or a regulation. Directives have more distributive consequences and may be more salient to member states (Costello and Thomson, 2013).

3.6 Addressing Selection Effects

To capture the effect of opacity on the relative influence of the Parliament, outcomes of informal first reading agreements are compared to a baseline that includes all formal agreements that were concluded at any stage (first, second, or third) and all informal agreements concluded after the first reading formal opinion of the EP had already been formed.

If informal first reading agreements differ systematically from all other agreements, the estimate of opacity could be distorted. If, furthermore, these differences are non-ignorable to treatment assignment (selection), merely including them as control variables in a regression does not solve the problem. If, in addition, some control and treatment cases are removed from each other on any of the differences (lack of common support), these treated and control cases would become incomparable but regression would still yield estimates that are severely biased by the outlying cases.

These concerns are slightly attenuated because I do not compare informal and formal agreements. Rather, I compare informal agreements that were concluded at first reading to all other agreements (formal and informal). Nevertheless, first reading agreements could, for example, be less controversial than other agreements, i.e., there is less conflict over policy outcomes between the Council and the EP. More recently, the proportion of first reading agreements has increased substantially from 25–30 percent in 2000 and 2001 to roughly 90 percent in 2010 and 2011 (Hix and Høyland, 2013). In my analysis, however, I am specifically interested in first reading agreements that were negotiated informally in trilogues. In-depth research concludes that for the sixth Parliament, 28 percent of first reading agreements did not require trilogues (Rasmussen and Reh, 2013). For the period from 2010 to 2014 (seventh European Parliament), 24 percent of first reading agreements did not require informal negotiations (Brandsma, 2015). Less controversial files, usually, do not necessitate informal negotiations (Rasmussen and Reh, 2013; Brandsma, 2015). The potential for selection bias, however, remains if informal early agreements were systematically different in terms of policy conflict.

In addition to policy conflict, selection into treatment could be related to salience. If the Council is only willing to negotiate informally and conclude early on lower salience files, this could explain the EP's success. Equally, informal early negotiations could be facilitated by shared nationality and party affiliations of the Council and EP sides. File characteristics such as complexity could be systematically related to whether informal early negotiations commence. In addition, if informal early agreements are negotiated in later time periods while the comparison group of all other agreement types was employed earlier, negotiation styles among other things could have changed in the meantime. Finally, Directives, as discussed, have more distributive consequences than Regulations. While Directives may not be more salient to the Council on average, they could be more salient to some member states.

3.7 Propensity Score Matching

The idea behind propensity score matching is to find pairs of observations that look similar, and hence, should both be in the control or treatment group but that are in opposite groups. Generally, the propensity score is the probability of treatment assignment; in this study, it is the probability that an informal early first reading agreement was struck. The true propensity score is unknown and must be estimated. Matching on the propensity score is sufficient to reduce bias due to observed covariates (Rosenbaum and Rubin, 1983). The nine predictors, discussed above, were used to estimate the propensity score: political conflict between the EP and the Council, how salient an issue is to the EP relative to how salient it is to the Council, how salient it is to the Commission, ties between the EP lead negotiator and the Council side that are due to nationality and party affiliation, time within the 1999–2009 window of this study, whether a file was a directive, and file complexity proxied by word length of a proposal, committees asked for an opinion, and the number of recitals.

The matched samples are similar in terms of background covariates, thereby isolating treatment effects from background characteristics (Rubin, 2007). Matching also reduces the importance of functional form- and model assumptions by excluding observations that lack common support, i.e., control cases that are far removed from treated cases (King and Zeng, 2006; Ho et al., 2010). Furthermore, given a set of valid observed covariates—balance (similarity) on un-observed covariates that are related to observed covariates increases as well (Stuart, 2010).

Pairs were identified using the Matching package for R (Sekhon, 2011). I used 1:1 matching with replacement. A matching observation was found for each of the 46 treated units (where the EP position was opaque). None of the control observations was used more than twice to ensure that the analysis does not depend on too few control units. Table 1 shows sample balance before and after matching.

Table 1: Balance Summary Statistics and Tests: Propensity Score of Opaque EP Postion

	Before Matching	After Matching
Mean Treatment	0.51350	0.51350
Mean Control	0.23807	0.51049
Std. Mean Difference	113.24605	1.23532
T-test p-value	$3.68e^{-9}$	0.29000
K-S Bootstrapped p-value	0.00000	0.91731

Notes: Balance of the propensity score in the treatment and control groups before and after matching. Averaged over the 1000 imputation data sets. Original number of observations: 140; Original number of treated observations: 46; matched number of treated observations: 46.

The matched sample is clearly more balanced on all statistics. The means in the treatment and control groups are quite close after matching. The difference is no longer significant according to a difference in means test. Equally, the Kolmogorov-Smirnov test, which tests for the difference across the entire distribution (Sekhon, 2011), detects a significant difference before but not after matching. The sample size is reduced from 140 to 92 observations.²⁴ Summary statistics for all variables are provided in the appendix (table 5).

3.8 Addressing Differences Across Policy Areas

Inter-institutional negotiations involve different Council configurations and different EP committees depending on policy area. The extant literature provides evidence that variation between committees exists in terms of how frequently they negotiate informally, how they handled informal negotiations, and in terms of their bargaining styles vis-à-vis the Council (Reh et al., 2013; Roederer-Rynning and Greenwood, 2015, 2016). The Committee on Economic and Monetary Affairs (ECON), e.g., is described as exceptionally successful (Roederer-Rynning and Greenwood, 2016). ECON and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) employ informal negotiations frequently while the Committee on In-

²⁴Due to the smaller sample size, the variance of all estimates increases. Table 6 in the appendix details results for a model run on the larger unmatched sample. The effect of transparency on influence holds.

dustry, Research and Energy (ITRE) as well as the Committee on Transport and Tourism (TRAN) do not (Reh et al., 2013).

The strategy to address such differences is to estimate committee-fixed-effects models. As a result, all confounding sources that differ across committees but are constant over the time-period, are controlled for. While I cannot rule out all potential sources of bias, I can substantially reduce the potential for biased estimates by matching on important characteristics that may influence selection into treatment and by estimating fixed-effects models that account for the bulk of the differences between the various parliamentary committees and, hence, policy areas.

4 Estimation

In the following, I describe the frequency of the policy environments as they occur in the data, present the results of testing my argument, and illustrate how different conceptual choices and model specifications affect the findings.

4.1 Data Overview

I have argued the importance of comparing manifestations of bargaining power to the correct counterfactual. The expectations (the counterfactuals) were dependent on the existence of spatial constraints in the policy environment, summarized in table 2.

Firstly, 46% of the time, negotiators were in a constrained policy environment. In these cases, the midpoint is not the expected outcome. Furthermore, the Council is the more conservative institution, being closer to the status quo 56 out of 79 times, compared to the EP's 23 out of 79.²⁵ However, being more conservative is not automatically advantageous, i.e., merely being more conservative does not mean that the policy environment is constrained. The Council was constrained 32% of the time. The EP, on the other hand, was constrained 48% of the time.

König and Junge (2009) argue that the Commission will sometimes propose when the status quo lies between both chambers, either due to mistakes (imperfect foresight) or due to shifted majorities. In line with their argument, this occurred 13 times (14%).²⁶

²⁵These numbers do not include cases where the status quo is located between the institutions.

²⁶This is partly related to imputation. Hence the alternative model specification where all issues with

Table 2: Frequency of Policy Environments in the Data

	Constellations			Unconstrained	Constrained	Total
(1)	SQ	Council	EP	38	18	56
(2)	SQ	EP	Council	12	11	23
(3)	Chamber One	SQ	Chamber Two	-	13	13
	Total			50	42	92

Notes: Based on the matched data (the parametric propensity score), averaged over the 1000 imputation data sets and rounded to the nearest integer.

The relative influence of the EP over all issues is 39%. The matched sample includes 46 (50%) treated cases (where the EP position was opaque). For these cases, the EP’s relative influence is 49% and 30% otherwise.

4.2 Inter-Institutional Influence

The dependent variable is a ratio ranging from zero to one. Therefore, fractional logit models are estimated (Papke and Wooldridge, 1993). The data structure is such that issues are nested in legislative files. Standard errors were, thus, clustered by file.

A model was fitted to each of the 1,000 imputation data sets. From each model, I ran 10,000 simulations. The combined 10 million rows matrix was used to extract point estimates and uncertainty. The results, illustrated in table 3, are based on the proposed measure of relative influence, the Banzhaf power index, status quo constraints were taken into account, and missings on the status quo were imputed.

The first model presented in table 3 excludes the propensity score and is thus similar to difference in means tests on the matched samples. In the second and third models, I control for the propensity score—and thereby the control variables—because matching did not yield an exactly balanced sample on all covariates (Ho et al., 2010). In the second model, the propensity score was estimated using logistic regression. In the third model, I use a non-parametric, data-driven approach to estimate the propensity score. Using an ensemble of classification trees, I avoid making functional form assumptions when estimating the propensity score; allow for

missing reference points are treated as unconstrained. In addition, the finding is related to dimensionality. Issues are nested in proposals. If each issue is treated as a separate dimension, it becomes less and less likely that the status quo should prevail as the number of dimensions increases.

Table 3: Treatment Effect of Opaque EP Position: Fractional Logistic Regression

	Treatment Only	Parametric Propensity Score	Non-Parametric Propensity Score
EP Position Opaque	1.441** (0.481)	1.577*** (0.461)	1.542*** (0.390)
Propensity Score		-1.644 (1.201)	-1.144 (3.221)
Constant	-1.322 (1.343)	-0.148 (0.829)	-0.448 (1.653)
N	92	92	92
R^2 (correlation squared)	0.22	0.27	0.27

Notes: Standard errors are clustered by file and listed in parentheses. Committee fixed-effects are included. ** $p < 0.01$, *** $p < 0.001$. The parametric propensity score was estimated using logistic regression. The non-parametric propensity is based on a classification-tree ensemble, estimated using gradient boosting.

the exclusion of bad predictors; and interactions among the control variables.²⁷

Across all three models, the EP gains relative influence when its position was opaque. The effective increase in power is quite substantial. Becoming more opaque increases the power of the EP between 16 and 53 percentage points (36 on average).²⁸

4.3 Placebo Test: Informal Transparent Negotiations

I argued that opacity is approximated by early first reading agreements rather than all informal agreements. Only in informal first reading agreements was a compromise reached before the EP's position became common knowledge. We would, therefore, expect that the EP does not become more influential in informal early second reading agreements.

Informal early second reading agreements are similar to informal first reading agreements in most aspects. In both, informal negotiations started during the first reading stage. The difference is that in informal early second reading agreements, the compromise was reached only after the EP had published its formal first reading opinion. The formal opinion makes the position of the EP common knowledge. An informal compromise was then reached between the EP and the Council before the Council published its first reading common position, i.e., during the first reading stage. The Council could, thus, incorporate the deal in its first reading common position and the EP in its second reading formal opinion.

²⁷I use the *GBM* package for R (Ridgeway, 2007) which implements gradient boosting.

²⁸The scenario is based on the 95% confidence level and the model that includes the parametric propensity score.

Table 4: Placebo Test: Effect of Informal but Transparent Negotiations

	Treatment Only
Informal Transparent Negotiations	-0.923 (3.975)
Constant	-0.278 (0.766)
N	92
R^2 (correlation squared)	0.191

Notes: Standard errors are clustered by file and listed in parentheses. Committee fixed-effects are included.

Table 4 illustrates the effect when I replace the approximation for opacity (informal first reading agreements) with informal but transparent negotiations (informal early second reading agreements). In line with the expectation, the EP did not gain influence in such informal negotiations. While this test does not rule out all alternative explanations, it corroborates the claim that the EP becomes more influential due to opacity.

4.4 Robustness to Coding Decisions and Model Specifications

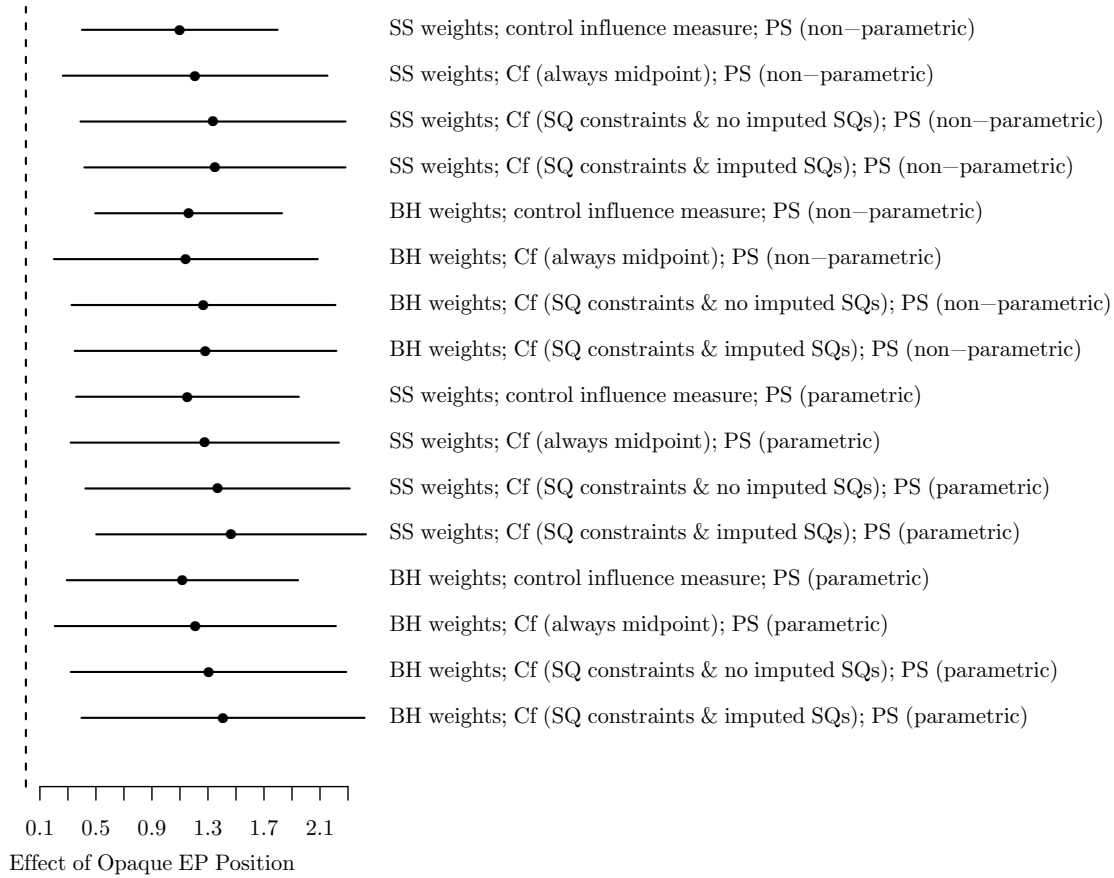
Throughout this paper, several coding decision have been favored over others. The consequences of these decisions are described below. The first decision fork was which measure of relative influence to use.²⁹ When estimating the Council position, I further distinguished between the Banzhaf- and Shapley-Shubik power indices. The counterfactual either takes status quo constraints into account or not. Furthermore, if status quo constraints are accounted for, I differentiate between imputing missings on the status quo and treating them as unconstrained environments. Finally, the sample is matched based on the parametric or the non-parametric propensity score.³⁰ This led to sixteen combinations. The main effect—EP position opaque—is illustrated in figure 5 and is based on a fractional logit model that includes the propensity score and committee fixed-effects.

Independent of the conceptual choice, the main effect is significant across all specifications. The estimate of the effect is strongest when I account for status quo constraints and impute missings on the status quo. Not imputing missing values, made the effect slightly weaker but not by much. The non-parametric propensity score allows for interactions between the control

²⁹The control measure is $\frac{|\text{Council-outcome}|}{|\text{Council-outcome}| + |\text{EP-outcome}|}$.

³⁰The parametric score is a logistic regression where treatment is regressed on all nine control variables. The non-parametric score is based on a boosted classification tree ensemble.

Figure 5: Main Effect by Data Coding Choice



Notes: The effect of the opaque EP position for sixteen combinations of data choices. The segments are the 95% confidence intervals. BH = Banzhaf power index; SS = Shapley Shubik power index; Cf = counterfactual; SQ = status quo; PS = propensity score.

variables and does not impose functional form assumptions. This made some difference: the effect is slightly weaker overall and differences between other data choices become less pronounced. Finally, the new measure of relative influence and the control measure, differ mainly with respect to the variance of the estimate. Variance is smallest for the control measure. The new and control measures produce different estimates even if the counterfactual is always the midpoint. In well-behaved situations, when the outcome is in the Council–EP interval, the measures are equivalent. However, they treat unexpected outcomes differently. For a discussion and comparative statics refer to figure 6 in the appendix.

Overall, the effect of opacity is robust across all combinations of conceptual choices and model specifications. The evidence presented here points towards a substantive link between transparency and power in political negotiations. Many legislatures around the world are

bicameral and many legislative chambers may choose rules regarding their legislative organization themselves. Efforts that affect transparency are likely to also affect the institutional balance of power. The results also imply that a balance of power between institutional actors, such as the envisioned equal formal influence of the EP and the Council in the EU, requires a balance of transparency as well.

5 Conclusion

In this paper, I analyze the relative influence over legislative outcomes between the EP and the Council. I argue that the EP gains power when its position becomes more opaque to the Council.³¹ This happens in informal negotiations that are concluded early—before the EP issued its formal first reading opinion.

The argument is not about a general difference between informal and formal negotiations, which can take place at all reading stages. Rather, the aim is to capture variation in the level of transparency of the EP. Informal negotiations that were concluded after the formation of the formal first reading opinion—when the EP’s position became known to the Council—did not increase the EP’s influence.

A limiting factor is that transparency is approximated and not measured directly. However, early agreements—informal negotiations that took place before the plenary vote on the formal first reading opinion—were criticised precisely because of their lack of transparency by observers and practitioners (Farrell and Héritier, 2003; Shackleton and Raunio, 2003; Farrell and Héritier, 2004; Corbett et al., 2011; Héritier and Reh, 2012; Reh, 2014; Roederer-Rynning and Greenwood, 2015). What is more, in the period under investigation, 1999 to 2009, there were no rules on whether the committee stage should have provided a mandate or not. The degree of opacity resulting from the practice of early informal negotiations would, at best, have been the same as in all other negotiations but on average it should have been higher. While I am confident that the research design allows for the identification of the effect of opacity, other factors, such as the ones argued for in Häge and Keading (2007), may play a role in making the EP more influential.

³¹The EP gains influence on a particular legislative file when its position becomes more opaque. In the long run, however, transparency and with it a greater claim to legitimacy, may make the EP more influential as an institution.

In line with excellent qualitative research on the subject, significant committee fixed-effects point to substantial variation on the committee level (Roederer-Rynning and Greenwood, 2015, 2016). Future research should attempt to provide further insights into this variation (for a discussion of different practices see Kluger Dionigi and Koop, 2017). Reforms within the EP in 2008, 2009, 2012, and 2016 have regulated the practice of informal negotiations (please refer to the appendix for a detailed discussion of the reforms). Nowadays, the lead committee adopts a report that is voted on in the plenary before the EP enters into informal negotiations. The plenary vote provides the mandate for the delegation. The position of the EP is, therefore, known to the Council in informal negotiations and consequently, the EP should have lost its recently acquired power. The debate on the legitimacy of early informal negotiations is, however, ongoing (Fox, 2014; Cooper, 2016). Recently, the European Ombudsman, Emily O'Reilly, concluded in her investigation into trilogues that the Council should make its position public before entering into informal negotiations with the EP (European Ombudsman, 2016). Given that the published opinion is genuine—this could be confirmed by the Commission—such a change would eliminate the informational asymmetry between the Council and the EP and thereby reduce the power imbalance between the institutions. While the EP has chosen to become more transparent, the Council has thus far not reciprocated. The EP should attempt to put pressure on the Council to become more transparent as well.

In addition to the central finding—the EP gained influence when it became less transparent—I proposed a new measure of relative influence that requires the prior specification of a counterfactual expectation. The advantage over previous measures is that the assumption does not have to be the midpoint in all cases. Rather, researchers can include expectations from the location of the status quo, or other factors such as the salience of an issue.

In this paper, I have argued that transparency affects influence in political negotiations generally and provided evidence for that link. Bicameral systems the world over leave legislative organization to the legislative chambers themselves. These lawmaking institutions face incentives to sacrifice transparency in order gain influence. Recognizing that link may enhance our understanding of how political institutions work and inform institutional design.³²

³²I thank an anonymous reviewer for pointing out that a similar logic could apply to intra-institutional negotiations within the Council. Recent discussions involve a greater role for national parliaments in mandating their ministers in the Council. If national parliaments provide a public mandate for the member state ahead of negotiations within the Council, the member state could be weakened in the negotiations with other member states.

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6 Appendix

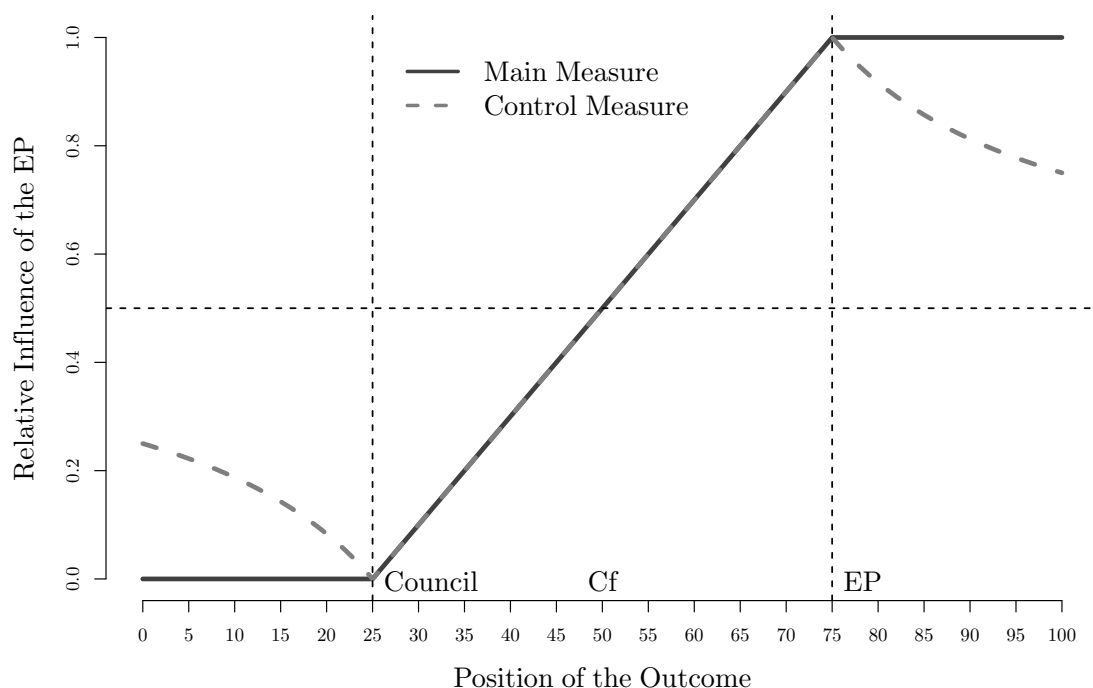
Comparative Statics of Relative Influence Measure

The proposed measure of relative influence and the control measure lead to different estimates when the counterfactual expectation is assumed to be the midpoint in every case. For ‘well behaved’ scenarios—the outcome is in the interval from Council to EP—both measures are equivalent. When the outcome lies outside this interval, they differ. These ‘strange’ outcomes are due to measurement error of the actor positions or because some other actor was influential.

Figure 6 illustrates the difference. The positions of the Council and the EP are fixed at 25 and 75 respectively. The outcome is varied on the x-axis and the relative influence of the EP is depicted on the y-axis. When the outcome is outside the actor interval, I attribute all influence to the actor that is closer in my proposed measure. This would be correct when one assumes that the actor position is incorrectly estimated. The control measure tends back towards equal influence and would be better if the actor positions were correct but another actor was influential. However, the control measure, has the unfortunate property to impose a heavier penalty when the outcome is just outside the interval than when it moves further away.

The Council position is estimated from the positions of the member states and missing EP positions were imputed. Therefore, I suspect that error plays a greater role than influence of other actors. Independent of the measure, the effect of an opaque EP remains significant.

Figure 6: Relative Influence by Measurement Strategy and Outcome



Notes: Actor positions are fixed (Council 25, EP 75). The counterfactual expectation is the midpoint. The x-axis depicts the outcome, the y-axis the relative influence of the EP.

Imputation Model

Out of the 140 cases selected from the DEUII data, 51 rows contain at least one missing value (36%). It has been demonstrated that multiple imputation is preferable to list-wise deletion (Honaker and King, 2010; Lall, 2016). Where possible, I therefore use the Amelia II algorithm (Honaker et al., 2011) to estimate missing values.¹

The positions of the Commission and the EP, reference points and outcomes have been imputed. Member state positions have not been estimated as the pattern of missingness is almost perfectly collinear, leading to instability in the imputation algorithm. The position of the Council is always based on the information that is available. Thus, I avoid list-wise deletion.

I impute reference points but do not force their estimates to lie within the 101-point policy scale of the DEUII. For every possible actor constellation, this allows the estimate of the reference point to be sufficiently distant from all actors that the policy environments can remain unconstrained. In addition, I estimate a very large amount of imputation data sets to account for the uncertainty in the estimates.

1,000 data sets have been imputed. The imputation uncertainty is accounted for by running all of the following estimations on each of the 1,000 data sets separately. Finally, simulation is used to obtain correct estimates and to quantify their uncertainty.

The missingness assumption is ‘missing at random’ (MAR), i.e., missing values are random conditional on the imputation model.² Furthermore, the complete data is assumed to be multivariate normal. Amelia II relies on the expectation maximization algorithm with bootstrapping.

The following imputed variables were used for the main analysis: policy positions of the European Commission (pcom) and the European Parliament (pep). The reference point (rf) and the outcome (out). The full imputation model follows.

From the DEUII

Policy positions of: the Commission (pcom), the Parliament (pep), Austria (pat), Belgium (pbe), Denmark (pdk), Finland (pfi), France (pfr), Germany (pde), Greece (pel), Ireland (pie), Italy (pit), Luxembourg (plu), the Netherlands (pnl), Portugal (ppt), Spain (pes), Sweden (pse), the UK (puk)

Saliency scores of: the Commission (scom), the Parliament (sep), Austria (sat), Belgium (sbe), Bulgaria (sbu), Cyprus (scy), the Czech Republic (scz), Denmark (sdk), Estonia (see), Finland (sfi), France (sfr), Germany (sde), Greece (sel), Ireland (sie), Italy (sit), Luxembourg (slu), the Netherlands (snl), Portugal (spt), Spain (ses), Sweden (sse), the UK (suk), the reference point (rp), the outcome (out)

Variables coded from information in the DEUII

EU enlargement indicator (post04), the position of the Council as (1) a weighted average of the member state positions (weights are either the Banzhaf power index or the Shapley-Shubik index and the saliency scores), (2) where the Council position is the position of the pivotal

¹Previous research imputed the DEUII data (see e.g., König et al., 2005; Slapin, 2014).

²The missingness assumption of list-wise deletion is ‘missing completely at random’, i.e., missing values are completely unrelated to any other features. If the missingness assumption of Amelia II is violated, so is the missingness assumption of list-wise deletion.

actor (pcou), the average salience score of the Council (scou).

Estimation Section

Table 5 shows the summary statistics of all relevant variables. To account for varying estimates due to the imputation, all values were averaged over the 1,000 imputation data sets.

Table 5: Summary Statistics

Variable	Min	Max	Mean	Median
Relative Influence	0	1	0.39	0.25
EP Position Opaque	0	1	0.50	0.50
Informal & Known EP Position	0	1	0.07	0
EU Enlargement	0	1	0.93	1
Commission for EP	0	1	0.44	0
Relative Salience	0	0.71	0.52	0.52
Salience Commission	0.01	100	62.40	70
2 nd Principle	0	1	0.17	0
Committees Asked	0	1.78	1.21	1.19
Length of Proposal	1.99	2.31	2.17	2.16
Recitals	1.50	2.96	2.09	2.06
Directive	0	1	0.37	0
Time Trend	16.59	450.57	333.64	348.96

Notes: Averaged over the 1,000 imputation data sets and based on the matched sample.

In my analysis, I relied on a matched sample. Table 6 presents the results, when the regression is run on the full unmatched sample. The effect of opacity remains significant at the $p < 0.01$ threshold. The model includes the variables that I matched on as control variables. Furthermore, committee fixed-effects are estimated.

Council Salience Weighted by Member State Power

The DEUII data provides a measure of salience for each individual member state. I aggregate Council salience as the mean over all member states. Measuring Council salience as a simple average disregards that larger member states wield more influence in the Council. Arguably, an aggregate salience measure for the Council should reflect the size of the member states because an issue may be more salient to the Council overall if it is salient to France than if it is equally salient to Luxembourg. To account for size, I compute a weighted average where each individual member states' salience is weighted by the respective Shapley-Shubrik power index score (population size is reflected in the weights) like so:

$$\text{Weighted Council Salience} = \frac{\sum_{i=1}^j \text{Member State Salience}_i \times \text{Shapley-Shubrik Weight}_i}{\sum_{i=1}^j \text{Shapley-Shubrik Weight}_i}$$

The weighted Council salience measure is then combined with EP salience, included in the

Table 6: Effect of Opacity in the Unmatched Sample: Fractional Logit Regression

	β	se
EP Position Opaque	1.42***	0.41
EU Enlargement	-1.43	1.28
Commission Supports EP	0.77	0.40
Relative Saliency	1.36	1.45
Saliency Commission	0.00	0.01
2 nd Principal	0.39	0.37
Committees Asked	-0.36	0.33
Length of Proposal	0.37	0.24
Directive	-0.16	0.38
Time Trend	0.00	0.00
Constant	-3.54	2.17
N	140	
R^2 (correlation squared)	0.18	

Notes: The models uses the proposed measure of relative influence, Banzhaf power weights, status quo constraints are accounted for, and missing reference points are imputed. Standard errors clustered by legislative file and committee fixed-effects are included. ** $p < 0.01$, *** $p < 0.001$.

DEUII data, into relative saliency as:

$$\text{Relative Saliency} = \frac{\text{EP Saliency}}{(\text{EP Saliency} + \text{Council Saliency})}$$

where Council Saliency is the weighted average of the individual member states. The resulting relative saliency measure varies from 0 to 1 where values below 0.5 indicate that an issue is more salient to the Council than the EP and values above 0.5 indicate that an issue is more salient to the EP. Table 7 illustrates the results of the analysis using this alternative saliency measure.

Table 7: Treatment Effect of Opaque EP Position: Fractional Logistic Regression

	Treatment Only	Parametric Propensity Score	Non-Parametric Propensity Score
EP Position Opaque	1.768** (0.606)	1.913*** (0.614)	1.287** (0.465)
Propensity Score		-0.909 (1.266)	3.862 (3.329)
Constant	-1.258 (0.606)	-0.765 (0.915)	-2.591 (1.600)
N	92	92	92
R^2 (correlation squared)	0.29	0.29	0.29

Notes: Standard errors are clustered by file and listed in parentheses. Committee fixed-effects are included. ** $p < 0.01$, *** $p < 0.001$. The parametric propensity score was estimated using logistic regression. The non-parametric propensity is based on a classification-tree ensemble, estimated using gradient boosting.

Using relative saliency where the aggregate Council saliency is weighted by the Shapley-

Shubik power index leads to the same conclusions as the model using the simple average to aggregate Council salience. The EP gained power when it was more opaque.

Informal Negotiations—Rule Changes within the EP

In the period under investigation (1999–2009) informal inter-institutional negotiations between the Council and the EP were governed by relatively little regulation. The practice of early conclusion and informal inter-institutional negotiation drew criticism from scholars and practitioners alike, mainly for the lack of transparency (Farrell and Héritier, 2003; Shackleton and Raunio, 2003; Farrell and Héritier, 2004; Corbett et al., 2011; Héritier and Reh, 2012; Reh, 2014; Roederer-Rynning and Greenwood, 2015; Kluger Dionigi and Koop, 2017). Practice and regulation with respect to informal inter-institutional negotiation and early conclusion have changed over time. In the following, I discuss key changes and the expected effect that these changes have had with respect to the inter-institutional balance of power in informal early negotiations.

In 2004, the EP adopted the “Guidelines for First and Second Reading Agreements under the Codecision Procedure” (Kluger Dionigi and Koop, 2017). The guidelines suggested a clearer mandate by the committee prior to informal negotiations. These changes had the character of a norm rather than a rule and were widely ignored (Roederer-Rynning and Greenwood, 2015, 2016). Therefore, I do not expect that the guidelines affected the balance of power between the EP and Council in informal and early negotiations.

A more serious attempt to regulate trilogues came with the EP’s adoption of the “Code of Conduct for Negotiating in the Context of the Ordinary Legislative Procedure” in 2008 which was then annexed to the EP’s rules of procedure in 2009 as “Rule 70” (Kluger Dionigi and Koop, 2017). The key change in the context of this study is that committee or plenary amendments were to form the mandate for the EP’s delegation (Ibid., 2017). Committee sessions as well as plenary sessions are public and usually attended by representatives from the Council Presidency. Consequently, the EP would have been less opaque and should have lost its newly acquired power in informal and early negotiations. However, criticism about the lack of transparency of the EP in inter-institutional negotiations persisted (Roederer-Rynning and Greenwood, 2016). Council officials, e.g., complained that it is hard to follow the preparatory work of the EP where it forms its position because some of the preparatory meetings are not public (Kluger Dionigi and Koop, 2017, p. 55). On balance, I therefore expect that the EP was still more powerful in informal and early negotiations.

In 2012, the code of conduct was again amended. The key revision in terms of transparency regarding the position of the EP was now that informal negotiations should start only after a committee report, which forms the mandate, has been adopted (Ibid., 2017). The position of the EP should have become more transparent to the Council with this reform and I expect that the EP does not gain much influence in informal and early negotiations compared to all other inter-institutional negotiations anymore.

The most recent change to the EP’s rules of procedure came into effect in 2017. Previously informal negotiations could, under exceptional circumstances, commence before a committee report had been adopted. A committee report was now required under all circumstances (Ibid., 2017). Moreover, the EP plenary is now required to vote on the committee report,

providing the mandate. Thus, the EP position is now common knowledge in informal and early negotiations with the Council and I do not expect the EP to gain power in informal and early negotiations nowadays.

Following persisting concerns about transparency in trilogues the European Ombudsman, Emily O'Reilly, made recommendations for improvement in her strategic inquiry. Key among these is that the Council publishes its negotiating position before informal inter-institutional negotiations commence (European Ombudsman, 2016). If this recommendation is implemented and assuming that the published position is genuine, which could be confirmed by the Commission, this would level the playing field between the Council and the EP. Informational asymmetry between both institutions would be eliminated.

Relative Influence Measure—Including Additional Information

I propose a measure of relative influence that defines the counterfactual expectation first and then sets actual deviations from that expectation in relation to the maximum potential deviation from the expectation. By making the expectation explicit, the researcher is required to more precisely theorize why actors are more or less influential. An advantage of this approach is that including additional factors—besides the preferences of the actors—into the formation of the counterfactual, becomes more straightforward. Researchers may, e.g., wish to include salience into the counterfactual expectation while at the same time also accounting for status quo constraints. In the following, I illustrate how to do so.

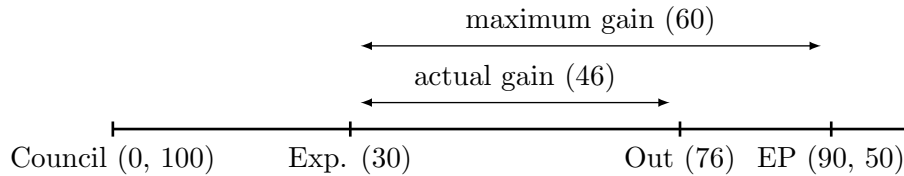
The first step in determining relative influence is to formulate the counterfactual expectation. This is where salience would be included. The counterfactual expectation can be formulated as a salience weighted average of the legislators' preferences like so:

$$Cf = \frac{\text{Council Preference} \times \text{Council Salience} + \text{EP Preference} \times \text{EP Salience}}{\text{Council Salience} + \text{EP Salience}}$$

where Cf is the counterfactual expectation. To account for the policy environments as described in the main text, one would assess whether Cf is included in the winset. If the status quo is in between the Council and the EP (policy environment 2), the expectation would be the status quo. If both actors are to the left/right of the status quo, but one actor is constrained, the expectation would be the point that sets the constrained actor indifferent between policy change and the status quo. The next steps are equivalent to the procedure described in the main text. Figure 7 below illustrates the procedure in an unconstrained environment.

The issue at hand was twice as salient to the Council than to the EP (Council salience = 100; EP salience = 50). Accordingly, the counterfactual expectation is closer to the Council than the midpoint between the institutions. Contrary to the expectation, the EP won in the negotiations because the actual outcome was closer to it than the counterfactual expectation. The maximum the EP could have gained is 60 and it got 46. Its relative influence on the issue was $0.5 + \frac{46}{60} \times 0.5 = 88\%$.

Figure 7: Relative Influence with Saliency Weighted Expectation



Notes: Exp. is the counterfactual expectation, Out is the actual outcome. The positions are in brackets followed by the respective saliency weights. The policy environment is unconstrained.

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