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**How Formal and Informal Institutional Factors Affect the
Bargaining Strategies of the Co-legislators in the European
Union**

A Case Study on the Negotiation Process of the Directive on Unfair Trading Practices
in Business-to-Business Relationships in the Food Supply Chain

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Abstract

Since the introduction of the co-decision procedure in the European Union (EU), the Council of the EU and the European Parliament have become more interdependent in order to reach an agreement on a legislative file. The interdependence has led to a significant increase in the number of trilogues, which is problematic as these informal meetings are secluded and have no references to the treaties. During the autumn of 2018, the two institutions negotiated and concluded the directive on unfair trading practices (UTPs) in the food supply chain faster than the average legislative file in the EU. It also included more trilogues than the average file, which is why it was chosen as a case study for this thesis. The aim of the study is to understand how formal and informal institutional factors affect the bargaining strategies of the co-legislators in the intra- and inter-institutional negotiation process as well as the role of the trilogues. After having performed seven interviews with representatives in Brussels, and having analysed reports and committee meetings, the findings show that the factors chosen had a mixed impact on the co-legislators' bargaining strategies. The findings also show that the trilogues were used as a negotiation tool by the Rapporteur in situations where hard bargaining strategies were apparent.

Key words: European Union, Co-decision Procedure, Trilogues, UTP Directive, New Institutionalism, Relais Actors, Soft and Hard Bargaining Strategies

Words: 19 903

List of Abbreviations

AGRI	Agriculture
AMTF	Agricultural Market Task Force
AGRIFISH	Agriculture and Fisheries Council Meetings
CAP	Common Agricultural Policy
CJEU	Court of Justice of the European Union
COMAGRI	European Parliament Committee on Agriculture and Rural Development
COMP	Competition
DEVE	European Parliament Committee on Development
DG	Commission Directorate-General
ENVI	European Parliament Committee on Environment, Public Health and Food Safety
EU	European Union
EP	European Parliament
GSC	General Secretariat of the Council
IMCO	European Parliament Committee on Internal Market and Consumer Protection
MEP	Member of the European Parliament
MS	Member State(s) in the European Union
OJ	Official Journal of the European Union
SCA	Special Committee on Agriculture
SMEs	Small and medium-sized enterprises
TFEU	Treaty on the Functioning of the European Union
UTPs	Unfair trading practices

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1. Introduction

The co-decision procedure in the European Union (EU) was introduced in the beginning of the 1990s and has since the Lisbon Treaty in 2009 been referred to as the Union's ordinary legislative procedure. The co-decision procedure requires the Council of the EU (hereinafter referred to as the Council) and the European Parliament (EP) to reach a joint agreement on a legislative proposal from the European Commission in order for it to pass and be published in the Official Journal of the EU (OJ). The requirement of having a joint agreement between the Council and the EP have made the two institutions highly dependent on each other, which in turn have led to the development of somewhat informal working methods, such as trilogues. Trilogues are informal meetings between the co-legislators and the Commission and have contributed to the possibility of reaching early agreements. Even though there are no references to trilogues in the treaties, it has become an essential part of the co-decision procedure (EP, 2017a, p. 19; Roederer-Rynning and Greenwood, 2015, p. 1148). Today, a legislative proposal takes on average 17 months, a political agreement takes approximately 14 months and each legislative file involves on average just below four trilogues (Brandsma, 2015, pp. 303–304; EP, 2017a, pp. 12, 19–20; Roederer-Rynning and Greenwood, 2015, p. 1148).

On 12 April 2018, the Commission presented a proposal for a directive on unfair trading practices (UTPs) in business-to-business relationships in the food supply chain. The proposal suggested that small and medium-sized enterprises (SMEs) in the food supply chain would be protected against UTPs performed by larger buyers (Commission, 2019). The proposal aimed for a minimum harmonisation on an EU level in accordance to the principle of subsidiarity and proportionality and was based on Article 43 in the Treaty on the Functioning of the European Union (TFEU). The co-legislators have been requesting a directive addressing UTPs in business-to-business relationships, particularly in the food supply chain, for a number of years and once the proposal was presented some actors were rather disappointed in its level of ambition. Since the proposal concerns the Common Agricultural Policy's (CAP) special treatment with regard to the EU's internal market, the proposal led to some controversy both within the institutions and among the stakeholders where the main

disagreements concerned the scope of the directive and the number of UTPs included on the list of prohibited practices.

The negotiation process of the UTP Directive during the autumn of 2018 was intense and included six trilogues within a period of two months, of which the final three trilogues were held within a period of two weeks. The Council had a more conservative position on the scope of the directive and the number of UTPs. Meanwhile, the EP had a more ambitious position where it wanted to include all actors regardless of its size and increase the UTP list from 8 to 58 practices. A political agreement between the co-legislators was reached on 19 December 2018, which in turn means that both the number of trilogues was higher than the average number of trilogues in a legislative process and the length of the legislative process was shorter than the average for a legislative file in the EU (Brandsma, 2015, pp. 303–304; EP, 2017a, pp. 12, 19–20). The negotiation process of the UTP Directive is puzzling and has therefore been chosen as a case study for this thesis in attempt to contribute to an understanding on how formal and informal institutional factors affect the bargaining strategies of the co-legislators in the intra- and inter-institutional negotiation process in the EU as well as the role of the trilogues.

This study will apply a broad institutionalist framework and use the dimensions developed by Bjurulf and Elgström (2005) (*agenda-shaping rules, voting rules, timetables and deadlines, informal norms and interventions by institutional actors*) in attempt to understand how the formal and informal institutional factors affected the bargaining strategies of the co-legislators in the intra- and inter-institutional negotiation process of the UTP Directive. The ideal types of *soft bargaining strategy* and *hard bargaining strategy* will serve as the basis for the analysis where a certain focus will be on the so-called *relais actors*, or in other words the Council Presidency (hereinafter referred to as Presidency) and the EP Rapporteur (hereinafter referred to as Rapporteur). Since various aspects of the co-decision procedure are not transparent to the public, in-depth interviews have been conducted with representatives from the Special Committee on Agriculture (SCA) and representatives from the EP. The interviews will be used as the main source for the analysis and the reports from the SCA meetings retracted from the Swedish Government and the public committee meetings in the EP

Committee on Agriculture and Rural Development (hereinafter referred to as COMAGRI¹) will serve as a supplement to the interviews.

The subsequent chapter will provide a literature review on the development and the complexities of the co-decision procedure in the EU as well as a brief overview of the UTP Directive. The third chapter will focus on the theoretical framework, in which new institutionalism, the concept of relais actors, and soft and hard bargaining strategies will be addressed and conceptualised. The fourth chapter will focus on the methodology of the thesis, where further motivations on various choices will be made as well as an operationalisation of the theoretical framework. The fifth chapter will concentrate on the analysis and the sixth chapter will conclude the thesis and answer the research questions below.

1.1. Purpose and Research Questions

The purpose of this study is to understand how formal and informal institutional factors, such as formal procedures and informal norms and ideas, affect the bargaining strategies of the co-legislators in the intra- and inter-institutional negotiation process in the EU as well as the role of the trilogues. The negotiation process of the directive on unfair trading practices (UTPs) in business-to-business relationships in the food supply chain has been selected as a case study in order to contribute to the understanding of the complexities of the co-decision procedure in the EU. Consequently, this thesis will aim to answer the following research questions:

- *How did the formal and informal institutional factors affect the bargaining strategies of the co-legislators in the intra- and inter-institutional negotiation process of the UTP Directive?*
- *What role did the trilogues have in the negotiation process of the UTP Directive?*

¹ The Committee on Agriculture and Rural Development will be the only Committee having a *COM* in front of its abbreviation, as it otherwise might be confusing for the reader when other AGRI abbreviations are used. COMAGRI is frequently used informally among stakeholders in Brussels.

2. Co-decision Procedure in the European Union

The co-decision procedure was first introduced in the Maastricht Treaty, which entered into force in 1993, in attempt to enhance the legitimacy of the legislative process in the Union by increasing the legislative powers of the EP. The EP's powers were further increased in the Amsterdam Treaty in 1999 and when the Lisbon Treaty entered into force in 2009, it became the EU's ordinary legislative procedure (Costello and Thomson, 2013, pp. 1025–1026; Crombez, 2000, pp. 41, 51–53; Häge and Kaeding, 2007, pp. 342–344; Maaser and Mayer, 2016, pp. 213–217; Shackleton, 2000, pp. 326–326; Shackleton and Raunio, 2003, pp. 171–172; Tsebelis and Garrett, 2000, pp. 9, 15). In the co-decision procedure, the Commission has the sole responsibility to present a legislative proposal on which the Council and the EP have to find a joint agreement during three readings. According to Article 294 TFEU, the EP first has to adopt a position on the proposal, which in turn is presented to the Council. If the Council does not approve the EP position, it has to adopt a Council position, which in turn is presented to the EP. If the EP does not approve the Council position in the first reading, the process enters the second reading. If the two institutions are still unable to reach an agreement in the second reading, they have to meet in a Conciliation Committee, where the Commission together with the members or representatives from the Council as well as an equal number of representatives from the EP meet in attempt to reach a compromise agreement. If they are unable to reach a compromise agreement in the Conciliation Committee, the proposal has failed (Art. 294 TFEU). In the Maastricht Treaty, the Council had the possibility to revert the process and adopt the Commission proposal if an agreement was not reached in the Conciliation Committee. However, this was no longer possible in the Amsterdam Treaty since the Council and the EP became considered as co-legislators in the areas subject to the co-decision procedure (Costello and Thomson, 2013, p. 1025; Crombez, 2000, pp. 51–53; Häge and Kaeding, 2007, p. 344; Maaser and Mayer, 2016, pp. 214, 216; Shackleton and Raunio, 2003, p. 172; Tsebelis and Garrett, 2000, p. 15).

Since the Amsterdam Treaty entered into force in 1999, the number of early agreements has increased significantly and consequently, the number of legislative files reaching the Conciliation Committee has decreased. Between 2009 and 2014, 90% of all legislative files

were adopted in the first reading and between 2014 and 2015, 97% of them were adopted in either the first or the second reading (Brandsma, 2018, p. 3; EP, 2017a, p. 9; Roederer-Rynning and Greenwood, 2015, p. 1148). These early agreements would not have been possible unless there were informal meetings between the Council, the EP and the Commission, or so-called trilogues. Trilogues developed as a way to facilitate the co-legislators' ability to reach a compromise agreement before entering the Conciliation Committee and have become somewhat formalised over time (Roederer-Rynning and Greenwood, 2015, pp. 1148–1149; Shackleton and Raunio, 2003, pp. 176–177).

There are a number of studies performed on the complexities of the co-decision procedure, however, since the procedure today is highly dependent on the trilogues to make the process efficient, which in turn do not have any written rules of conduct, there is certainly a research gap to be filled. Unless you have access to the trilogues or the participating representatives, it is difficult to know what happened during the informal meetings and therefore to analyse the effects of them. There have been some quantitative studies done where, for instance, Costello and Thomson (2013) show that the Council is significantly more powerful in the legislative process than the EP and that the EP only has 20% of the Council's power in the co-decision procedure (Costello and Thomson, 2013, p. 1037). Two of the explanatory factors of the power differences between the two institutions are that the Council tends to have a stronger bargaining position than the EP, as it is usually closer to the status quo, and because internal division in the EP has a larger effect on the institution's bargaining strategy than an internal division in the Council (Costello and Thomson, 2013, pp. 1036–1037). Brandsma (2015) has also conducted a quantitative study in which the frequency of trilogues is analysed. The findings show that 24% of the legislative files do not require any trilogue negotiations, meanwhile 76% of the files need one to four trilogues in order to reach a compromise agreement (Brandsma, 2015, p. 316). Furthermore, the likelihood of a file requiring trilogues is higher if it concerns a long proposal, whereas a short proposal might not require one at all. However, a short proposal is more likely to necessitate trilogues if the Rapporteur's draft report, which the EP's negotiation mandate is based on, is criticised by the Members of the EP (MEPs) (Brandsma, 2015, p. 316). The UTP proposal only consisted of 14 Articles (Commission, 2018), which arguably is a short proposal, and the Rapporteur's draft report received a large amount of support in the EP (EP, 2018). This somewhat contradicts Brandsma's (2015) findings. Another finding in Brandsma's (2015) study concerns the power of the relais actors. The concept of the relais actors was developed by Farrell and Héritier

(2004) and suggests that the Presidency and the Rapporteur are privileged in the co-decision procedure since they have several advantages in the intra- and inter-institutional negotiations. The concept has been challenged by some scholars (Costello and Thomson, 2013; Rasmussen and Reh, 2013), but has also been proven applicable by others (Bjurulf and Elgström, 2005; Brandsma, 2015; Farrell and Héritier, 2004). A study conducted by Bjurulf and Elgström (2005), for example, confirms that the relais actors indeed can take advantage of the position. The Presidency's incentives for taking advantage of the privileges connected to the position could, according to the study, partly be explained by the formal and informal institutional factors within the Council (Bjurulf and Elgström, 2005). This concept will be further elaborated in the subsequent chapter.

The lack of transparency in the trilogues has led to a number of studies addressing a democratic deficit in the EU's legislative process as well as an accountability and legitimacy problem of the legislation produced in the Union (Brandsma, 2015; Lewis, 2015; Rasmussen, 2012; Rasmussen and Reh, 2013; Roederer-Rynning and Greenwood, 2015; Shackleton, 2000; Shackleton and Raunio, 2003; Wessels et al., 2015). Shackleton and Raunio (2003) have conducted a qualitative study on the institutional development of the co-decision procedure since the Amsterdam Treaty entered into force in 1999. One aspect that they emphasise is the trilogues' effect on the EP's openness. The EP is a transparent institution where the committee meetings are broadcasted and the votes are public, meanwhile most of the Council meetings are confidential. The Council's non-transparent processes have affected the EP's openness, especially as the trilogues have become an essential part of the co-decision procedure. Consequently, one could interpret the EP as constituting an additional Member State (MS), especially since it has adopted some of the norms and ideas that are a part of the Council's working methods (Shackleton and Raunio, 2003, pp. 184–185).

The EP received increased legislative powers in an attempt to increase the legitimacy and accountability of the Union's legislative process. However, the trilogues have led to enhanced efficiency of the legislative process at the expense of democracy (Shackleton and Raunio, 2003). Since the Rapporteur and the Presidency are required to debrief their colleagues after a trilogue has taken place, there is a slight possibility for the public to receive information on what has been said in the informal meetings. However, Brandsma (2018) has performed another study in which the level of debriefings of the trilogues in the different committees in the EP is analysed. The findings show that the Rapporteurs are not living up to their

responsibilities since the feedback tends to be of poor quality or not happen at all (Brandsma, 2018), which in turn supports Shackleton and Raunio's (2003) conclusion that there in fact is a democratic deficit in the Union's legislative process.

Trilogues have been referred to as a "black box" since there are no written rules or references to the treaties concerning how a meeting is supposed to proceed (Brandsma, 2018, p. 8; EP, 2017a, p. 19; O'Keeffe et al., 2016, p. 219; Roederer-Rynning and Greenwood, 2015, p. 1148). The informal meetings only allow a limited number of participants from the Council, the EP and the Commission, which in turn have the responsibility to debrief their colleagues on what has been negotiated. The MS holding the position of the Presidency represents the Council in the trilogues and is accompanied by a delegation consisting of the General Secretariat of the Council (GSC) and the Council Legal Services (Roederer-Rynning and Greenwood, 2015, pp. 1153–1156). The Rapporteur of the legislative file, or in other words the MEP responsible for the legislative file, represents the EP in the trilogues and is also accompanied by a delegation. The EP's delegation tends to be the largest one and consists of the Shadow Rapporteurs (hereinafter referred to as Shadows), which are MEPs representing each political group in the EP, the Chair or Vice-Chair of the responsible committee, the EP Secretariat, and the political assistants and policy advisors (EP, 2017b; Roederer-Rynning and Greenwood, 2015, pp. 1153–1156). The Commission is also present in these informal meetings and tends to be represented by high level civil servants from the relevant Directorate-General (DG) (EP, 2017b; Roederer-Rynning and Greenwood, 2015, pp. 1153–1155). The Council has the smallest delegation in the trilogues and is represented by either a civil servant, an EU Ambassador from Coreper I or II, or a Minister from the MS holding the Presidency position. Since the Presidency rotates between the MS on a six-month basis, the informal contacts between the co-legislators are of essence (Roederer-Rynning and Greenwood, 2015, pp. 1153–1156). Roederer-Rynning and Greenwood (2015) have performed a qualitative study on the culture of trilogues where they divide the informal meetings into three so-called layers: political trilogues; technical trilogues; and bilateral contacts. Political trilogues refer to meetings where the Presidency, the Rapporteur and the Commission meet together with their delegations in attempt to reach a compromise agreement on a more political level. Political trilogues do not produce any formal decisions and usually confirm what has been agreed on in the technical trilogues. Technical trilogues are informal meetings between the three institutions where the technical staff meet to "prepare the ground" for the political trilogues (Roederer-Rynning and Greenwood, 2015, p. 1155). Bilateral

contacts refer to the informal contacts required between the co-legislators due to the rotating Presidency position in the Council, which is of importance as a legislative file generally covers 3 Presidencies (EP, 2017a, p. 12; Roederer-Rynning and Greenwood, 2015, p. 1156). The political agreement reached in the informal meetings has to be adopted by the formal voting rules of each institution (EP, 2017a). Due to the limited time for conducting this study, this thesis will mainly focus on the political trilogues since the UTP Directive was difficult on a political rather than a technical level.

2.1. Directive on Unfair Trading Practices in the Food Supply Chain

The Commission presented the UTP proposal on 12 April 2018. It was the first EU legislation addressing UTPs in business-to-business relationships and was considered to be necessary for the food supply chain, as the “agricultural producers are particularly vulnerable to UTPs as they often lack bargaining power that would match that of their downstream partners that buy their products” (Commission, 2018). There was a voluntary initiative called the *Supply Chain Initiative* (SCI) in the MS, however, it was not considered to be sufficient to tackle the use of UTPs. Consequently, the EP adopted a resolution in June 2016 where the MEPs called for a legal framework on an EU level. Shortly thereafter, the Council encouraged the Commission to initiate an impact assessment, which in turn could evolve into a legal framework or other non-legislative measures tackling UTPs (Commission, 2018). The DG for Agriculture and Rural Development (DG AGRI) presented its impact assessment in February 2018 and constituted, together with the recommendations from the Agricultural Market Task Force (AMTF), the basis of the UTP proposal (Commission, 2018).

The Commissioner for Agriculture and Rural Development, Phil Hogan, presented the proposal to the EP on 12 April 2018 and to the Council on the Agriculture and Fisheries Council (AGRIFISH) meeting on 16 April 2018 (*COMAGRI 12 April*, 2018; EU Council, 2019a). COMAGRI elected its Rapporteur, Paolo De Castro, on 17 April 2018 and his draft report was published on 18 June 2018 (De Castro, 2018). The Committee on Internal Market and Consumer Protection (IMCO) was appointed to Associated Committee and the Committees on Environment, Public Health and Food Safety (ENVI) and Development (DEVE) were assigned to produce opinions on the draft report. The draft report was approved

by COMAGRI on 1 October 2018 and in plenary in Strasbourg on 25 October 2018 (EP, 2018; EU Council, 2019b). On the Council side, Bulgaria held the Presidency when the proposal was presented, Austria held it throughout the negotiation process as well as when a political agreement was reached, and Romania held the position when the political agreement was signed. The UTP file was mostly negotiated in the SCA and only had four meetings in the Working Party. The Council's first negotiation mandate was established in the SCA on 1 October 2018 (EU Council, 2019b).

The Commission proposal included eight UTPs, of which four were prohibited and four were prohibited unless the parties involved had agreed otherwise in the supply agreement. The UTPs in the proposal addressed practices such as late payments, cancellation of orders, changes to an agreement retroactively or unilaterally and costs that occur on the buyer's premises that the supplier is expected to pay (Commission, 2018). The proposal also included definitions, the powers and responsibilities of the enforcement authorities, reporting responsibilities of the MS and a timeline for evaluating the directive, among other things (Commission, 2018). The UTP Directive initially contained 14 articles and was based on Article 43 TFEU, which enables the EU institutions to create "a common organisation of agricultural markets in the EU" (Art. 43.2 TFEU). However, the legal basis was also somewhat based on the Common Agricultural Policy's (CAP) responsibility to "ensure a fair standard of living for the agricultural community" (Article 39 TFEU) and to "exclude discrimination between producers" (Article 40 TFEU) (Commission, 2018; EU Council, 2019b). Consequently, CAP has an exception from the competition rules of the internal market, which in turn created some controversy with regards to the UTP Directive. Since 20 of the 28 MS already have national legislation on UTPs, it was proposed as a directive and not a regulation. A directive would allow the MS to adapt the national legislations to the new provisions in the directive and even go further if needed (Commission, 2018).

The first trilogue was held on 25 October 2018 in Strasbourg, which is the same day that the plenary vote on the draft report took place. The second trilogue was held on 7 November 2018, the third on 21 November 2018, the fourth on 6 December 2018, the fifth on 12 December 2018 and the sixth and final trilogue was held on 19 December 2018. The final compromise agreement, or the political agreement, that was reached in the final trilogue included 16 UTPs as well as services ancillary to the sale of agricultural and other food products, and a dynamic approach as regards the definitions and the scope of the directive,

among other things (EU Council, 2019b). The dynamic approach divides the actors in the food supply chain into five categories (*micro, small, medium, mid-range and large*) based on their turnover. Instead of limiting the protection to actors with a turnover of 50 million euro, as was the case in the Commission proposal, the dynamic approach instead allows protection to actors with a turnover of 350 million euro. The approach states that an actor is protected against another actor that belongs to a category larger than itself (EU Council, 2019b).

3. Theoretical Framework

The purpose of this chapter is to present the theoretical framework for this study. Firstly, the theory of new institutionalism will be presented. Secondly, the concept of relais actors will be further elaborated, as the Presidency and the Rapporteur are considered to be influential in the intra- and inter-institutional negotiation process. Thirdly, the strategies chosen for this study, soft and hard bargaining strategies, will be presented and conceptualised.

3.1. New Institutionalism

The *new* institutionalist framework was introduced by March and Olsen (1984) in the 1980s as a response to the revolution of behaviourism and rational choice in the 1960-70s (Hall and Taylor, 1996, p. 936; Lowndes, 2018, pp. 54, 57; March and Olsen, 2008, 1984). The *old* institutionalism had a focus on the formal institutional factors, such as the legislative procedure and formal rules, and was criticised for not including different social dimensions, informal structures and the effects of the human behaviour in its studies. Consequently, a new branch of institutionalism was developed where both the formal and the informal institutional factors, such as norms, ideas and rules, were taken into account (Lowndes, 2018, pp. 55–56; March and Olsen, 2008, p. 17).

There are approaches within new institutionalism that emphasise different aspects of the formal and informal institutional factors, where the most prominent approaches are social, historical and rational choice institutionalism (Lowndes, 2018, p. 60). Social institutionalists (SI) believe that the institutions form the human behaviour and that the actors' preferences are "context-driven rather than goal-driven" (Aspinwall and Schneider, 2000, p. 7). SI tends to focus more on the informal practices and the *logic of appropriateness* rather than the formal procedures (Aspinwall and Schneider, 2000, pp. 7, 27; Goodin, 1996, pp. 6, 19–20; March and Olsen, 2008, pp. 9–10). Historical institutionalists (HI) share some beliefs with SI, for instance that the actors' preferences are shaped endogenously and are *path dependent*, or in other words that the historical context has an impact on how the actors' behave and strategise (Aspinwall and Schneider, 2000, pp. 7–8, 16; Goodin, 1996, p. 6; Hall and Taylor, 1996, pp.

938–942). HI also shares some similarities with rational choice institutionalists (RCI), for instance the emphasis on the formal institutional factors' impact on the actors' behaviour. HI and RCI are also more focused on the *logic of consequences* rather than the logic of appropriateness, where history has a certain impact on the establishment of institutions, which in turn creates *the rules of the game* (Aspinwall and Schneider, 2000, p. 12; Lowndes, 2018, p. 64; March and Olsen, 2008, pp. 9–10). RCI derives from the neo-classical economic view, which assumes that the human is a utility-maximiser and that institutions have been created in attempt to avoid *a tragedy of the commons* and other collective issues (Aspinwall and Schneider, 2000, pp. 10–12). Although the three approaches within new institutionalism emphasise different aspects of the institutional factors and their relevance to the human behaviour, a combination of them is often encouraged by scholars in order to provide a comprehensive understanding of the role of the institutional factors (Aspinwall and Schneider, 2000; Bjurulf and Elgström, 2005; Hall and Taylor, 1996; Lowndes, 2018; March and Olsen, 2008). For instance, depending on the stage of a negotiation process and the importance of the outcome, the actors could use both the logic of appropriateness and the logic of consequences in terms of strategising (Aspinwall and Schneider, 2000, p. 27; March and Olsen, 1989, pp. 160–162). Consequently, this study will focus on the similarities between the approaches in order to allow a comprehensive understanding of the bargaining strategies of the co-legislators.

Institutional factors in this case refer to the formal procedures and informal norms and ideas that affect the daily work of the actors as well as the legislative processes and the intra- and inter-institutional relations. The formal institutional factors concern the legislative procedures, voting rules, speaking rights, agenda-shaping rules, and other practices that are regulated in the EU (Aspinwall and Schneider, 2000, p. 4; Bjurulf and Elgström, 2005, pp. 45–46; March and Olsen, 2008, p. 12). These procedures could be considered to provide a stable element to the definition of institutional factors as they are rather difficult to change (March and Olsen, 2008, p. 12, 1989, pp. 166–171, 1984, p. 739). Meanwhile, the informal institutional factors refer to the norms, ideas, practices and rules that have been socially constructed over time and are recognised by the actors as something *normal* (Aspinwall and Schneider, 2000, p. 4; Bjurulf and Elgström, 2005, pp. 45–46; Elgström, 2005; March and Olsen, 2008, pp. 8, 12). For instance, the consensus norm in the Council could be considered an informal norm in the Council's voting rules or an appropriate way to behave. Another informal idea in the Council is that the Presidency is expected to act as an unbiased mediator throughout the intra- and

inter-institutional negotiation process (Bjurulf and Elgström, 2005, pp. 47–55; Brandsma, 2015, p. 307). In the EP, the Rapporteur is expected to act as a mediator that “represent institutional interests” (Brandsma, 2015, p. 307; Reh, 2014, p. 830), which could be seen as an informal norm in terms of the appropriate way to behave as a Rapporteur. The informal institutional factors could be assumed to contribute with a more dynamic element to the definition of institutions since these norms and ideas could be adapted and modified over time (March and Olsen, 2008, p. 12, 1989, pp. 166–171, 1984, p. 739). However, one could also argue that the informal norms and ideas are difficult to change as these have become formalised over time.

The formal and informal institutional factors distribute the power between the actors, which in turn “empower” or “constrain” the actors’ abilities to act (Aspinwall and Schneider, 2000, pp. 3–4; Bjurulf and Elgström, 2005, pp. 45–47; March and Olsen, 2008, p. 4, 1989, pp. 162–163, 1984, p. 739). For instance, the access to information varies between the Council and the EP, where the committee meetings in the EP are broadcasted and open to the public meanwhile the meetings and processes in the Council are restricted to the public. The access to information could therefore be considered to constrain the EP and empower the Council in the co-decision procedure. The Council has the possibility to follow the discussions in the EP, whereas the EP has limited access to the negotiations in the Council. Consequently, the formal and informal institutional factors constitute the rules of the game in the intra- and inter-institutional negotiations and could thus be assumed to affect the behaviour and bargaining strategies of the co-legislators (Aspinwall and Schneider, 2000, p. 4; Bjurulf and Elgström, 2005; Lowndes, 2018, p. 64; March and Olsen, 2008, p. 9, 1989, pp. 162–166, 1984, p. 739).

In *Negotiating Transparency: The Role of Institutions*, Bjurulf and Elgström (2005) present a study on the EU’s negotiation process of the public access to EU documents in the beginning of the 2000s from a broad institutionalist perspective. The study focuses on the intra-institutional dynamics in the Council and analyses how the formal and informal institutional factors affected the actors’ bargaining strategies in the negotiation process in the Council. The theoretical framework applied by Bjurulf and Elgström (2005), allowed them to understand how the institutional factors empowered or constrained the actors’ behaviour and consequently their bargaining strategies. The institutional factors or dimensions in their theoretical framework included the following: *agenda-shaping rules*, *decision-making*

procedures and voting rules, timetables and deadlines, informal norms, and interventions by institutional actors (Bjurulf and Elgström, 2005, p. 46). This study will use all the dimensions mentioned above, apart from the outdated *decision-making procedures*, as the co-decision procedure is the ordinary legislative procedure today. By applying the same dimensions as Bjurulf and Elgström (2005) but on a different policy area, taking into account both the intra- and inter-institutional negotiations, over a decade later, this study will contribute to the theoretical framework and to the understanding on how formal and informal institutional factors affect the bargaining strategies of the co-legislators.

The first dimension, *agenda-shaping rules*, refers to the Presidency's and the Rapporteur's ability to shape the agenda in the intra- and inter-institutional negotiations and their ability to initiate trilogues (Bjurulf and Elgström, 2005). The second dimension, *voting rules*, concerns the formal and informal voting rules in the Council, such as the strive for consensus-based decisions or qualified majority voting (QMV). It also refers to the formal voting rules in the EP, which are simple majority voting in first reading agreements and absolute majority voting once the procedure enters the second reading (EP, 2019a). The third dimension, *timetables and deadlines*, concerns the rotating Presidency in the Council, the AGRIFISH meetings where the formal decisions are made in the Council, the upcoming elections in the EP and the plenary weeks in Strasbourg where the formal decisions are taken in the EP. The fourth dimension, *informal norms*, refers to the consensus norm in the Council as well as the idea that the Presidency is an unbiased mediator and the Rapporteur is a mediator throughout the process (Bjurulf and Elgström, 2005, pp. 51–55; Brandsma, 2015, p. 307; Reh, 2014, pp. 830–835). The fifth and final dimension, *interventions by institutional actors*, addresses the interventions of the Commission, the Council Legal Services, the EP Secretariat as well as the shadow of the Court of Justice of the EU (CJEU) (Bjurulf and Elgström, 2005, pp. 51–55). The negotiation process of the UTP Directive will be analysed through these dimensions.

3.2. Relais Actors

The concept of relais actors, developed by Farrell and Héritier (2004), concerns the actors representing its institution in negotiations with external actors. In the EU's decision-making process, the Presidency and the Rapporteur would be considered to be the relais actors since they represent their institutions in the inter-institutional negotiations as well as in the

trilogues. Farrell and Héritier (2004) argue that the development of the co-decision procedure and the increased number of early agreements have not only increased the actors' power to influence the inter-institutional negotiations but also in the intra-institutional negotiations because of the advantages connected to the positions. Due to the non-transparent aspect of the trilogues and the limited number of representatives allowed in the meeting rooms, the relais actors have advantages in terms of access to information, responsibility to report on that information to their colleagues and to negotiate on behalf of their institutions (Farrell and Héritier, 2004, p. 1188). As mentioned in the second chapter, there are some disagreements as regards the beneficial aspects of the relais actors (Bjurulf and Elgström, 2005; Brandsma, 2015; Costello and Thomson, 2013; Farrell and Héritier, 2004; Rasmussen and Reh, 2013; Reh, 2014). One of the studies demonstrating that the position of the relais actors in fact is beneficial is the one performed by Bjurulf and Elgström (2005). The study demonstrates that the Presidency, regardless of the MS's size, could take advantage of the benefits connected to the position with the assistance of the formal and informal institutional factors that will serve as the dimensions for this study. The position of the Rapporteur is more transparent in comparison to the Presidency, especially since the introduction of the Shadows. The EP decided to introduce the Shadows in attempt to prevent the Rapporteur from taking advantage of the benefits connected to the position, which in turn would enhance the risk of manipulation of information and biased outcomes (Brandsma, 2018, p. 3; Rasmussen and Reh, 2013, p. 1020). However, neither the Council nor the EP tend to have fixed positions early on in the decision-making process, which would indicate the possibility for the relais actors to take advantage of its privileges (Brandsma, 2015, pp. 304–305; Farrell and Héritier, 2004, p. 1199).

It is important to include the concept of relais actors in the theoretical framework in this thesis, as there are some formal and informal institutional factors that indeed provide them with certain advantages. It is assumed that the relais actors receive a higher level of support from its colleagues if the position is rotated in an unbiased way, similar to the Presidency position in the Council (Farrell and Héritier, 2004, p. 1189). Since the Rapporteur does not rotate at all in a legislative file, unless there is an election before concluding a certain file, the level of support might not be as high. Nevertheless, the formal and informal institutional factors could either have an empowering or limiting effect on the relais actors, which is why the concept is included in this study.

3.3. Soft and Hard Bargaining Strategies

When entering a negotiation process, the actors tend to have an initial offer and “an undisclosed point of minimal acceptable agreement” (Hopmann, 1995, p. 43). If the negotiators are able to reach an agreement that is considered to be better than “the best alternative to a negotiated agreement” (BATNA), the negotiators will agree (Bjurulf and Elgström, 2005; Elgström and Jönsson, 2000; Fisher and Ury, 1999; Hopmann, 1995). However, there is a number of factors that can affect an actor’s choice of a bargaining strategy, for instance the possible gains and losses for itself or the others in its environment (Lebrow, 1996, pp. 26–30). This study assumes that these factors are the formal and informal institutional factors, which in turn either empower or limit the actors’ ability to act (Aspinwall and Schneider, 2000, p. 3; Bjurulf and Elgström, 2005, pp. 45–47; March and Olsen, 2008, p. 4, 1989, pp. 162–163, 1984, p. 739). Soft bargaining strategies are, for instance, expected to exist in more institutionalised contexts where the actors meet on a continuous basis and where the long-term benefits of cooperation are recognised by the actors. One could identify this as a *shadow of the future*, which enables a diffuse reciprocity of cooperative efforts to emerge as a sense of “belonging together” (Dür and Mateo, 2010, pp. 681, 687; Elgström and Jönsson, 2000, pp. 687–688; Hopmann, 1995, pp. 34, 38). Soft bargaining strategies are therefore characterised as friendly methods and include tactics such as showing high levels of flexibility, willingness to compromise, sharing information, suggesting proposals on possible compromises and giving the other side compliments on its efforts (Dür and Mateo, 2010, pp. 682–683; Elgström and Jönsson, 2000, p. 685; Hopmann, 1995). Some scholars have referred to these soft strategies as value-creating, problem-solving and integrative bargaining (Elgström and Jönsson, 2000; Hopmann, 1995; Lax and Sebenius, 1986). However, this study will use the ideal type classification of soft bargaining strategies, as it allows a more comprehensive understanding of the friendlier methods used by the actors (Dür and Mateo, 2010, pp. 682–683). In contrast to the soft bargaining strategies, the hard bargaining strategies are characterised by more aggressive methods, such as low levels of flexibility, making firm commitments, manipulating information, being critical and issuing threats (Dür and Mateo, 2010, pp. 682–683; Elgström and Jönsson, 2000, p. 685; Hopmann, 1995, p. 30). These methods could be expected where the actors have a more individualist approach to the outcome and seek to maximise their gains, for instance in situations where the actors only meet once or during a short period of time. Some scholars have referred to these hard

strategies as value-claiming, bargaining and distributive bargaining (Dür and Mateo, 2010, pp. 682–683; Elgström and Jönsson, 2000; Hopmann, 1995; Lax and Sebenius, 1986). However, this study will use the ideal type classification of hard bargaining strategies for the same reason as mentioned for the choice of soft bargaining strategies. The actors using these hard methods tend to not be concerned with the possible consequences for their counterparts and rather take advantage of an actor's attempt to cooperate and compromise (Elgström and Jönsson, 2000, p. 685; Hopmann, 1995, pp. 33, 38).

The ability to recognise a certain bargaining strategy could be challenging since the actors involved might use a combination of the two ideal types (Dür and Mateo, 2010, p. 690). Nevertheless, this study will on the basis of the two ideal types attempt to understand how the formal and informal institutional factors affected the bargaining strategies of the co-legislators in the intra- and inter-institutional negotiation process of the UTP Directive. This in turn will contribute to an understanding of the role of the trilogues, for instance if the trilogues were part of a certain strategy of the actors. In order to increase the study's validity and reliability, further operationalisation of the theoretical framework and explanation on how the empirical material will be analysed will be made in the following chapter.

4. Methodology

This chapter will first present the chosen method and research design, where philosophical issues will be raised and justified. Secondly, it will elaborate on the data collection methods, where a special emphasis will be on the in-depth interviews that have been conducted with representatives in the SCA and the EP. Thirdly, issues related to generalisation, validity and reliability will be addressed. Lastly, an operationalisation of the theoretical framework will be made in order to be transparent and increase the validity and reliability of the study.

4.1. Qualitative Case Study

A qualitative research method with the research design of a case study will be applied in this study, where the negotiation process of the UTP Directive will serve as the case. A case study is a suitable design since the data usually is collected by multiple techniques in order to acquire several perspectives on a certain process, which in turn will provide an in-depth understanding of the chosen case (Creswell and Creswell, 2018, pp. 14, 180–182; Lewis and McNaughton Nicholls, 2014, pp. 66–67). The study will be descriptive in nature as it aims to understand the bargaining strategies of the co-legislators and the role of the trilogues (Ritchie and Ormston, 2014, p. 32).

In order to perform a qualitative case study, it is important to define the *real* and *social* world and how knowledge on that world could be achieved, or in other words the researcher's ontology and epistemology (Ormston et al., 2014, pp. 4–6). This study has a foundationalist ontology that assumes that the so-called social world exists regardless of the actors' interpretation and understanding of it, however, this study also recognises that there are underlying structures in the society that are not visible (Marsh et al., 2018, pp. 189–194; Ormston et al., 2014, pp. 21–22). The epistemological approach is therefore critical realism, or a broad interpretivist approach, as the study partly seeks to understand the actors' interpretation and understanding of different structures, both formal and informal, which in turn affect their behaviour. Critical realists tend to use a combination of quantitative and qualitative methods, however, due to the limited period of time for conducting this study as

well as the aim, which is to understand the bargaining strategies of the actors in the selected case, this study will only use a qualitative method to retrieve the data and then to analyse it (Creswell and Creswell, 2018, pp. 7–8; Marsh et al., 2018, pp. 182–194; Ormston et al., 2014, pp. 12, 22). Furthermore, this study will use a deductive-inductive approach where the theoretical framework will be tested on the collected data, which in turn will lead to new conclusions (Ormston et al., 2014, p. 22). Since the point of departure for the entire study is that institutional factors affect the actors' behaviour and therefore their bargaining strategies, the ambition is that the findings will contribute to the theoretical framework and the knowledge on the intra- and inter-institutional dynamics in the co-decision procedure following the adoption of the Lisbon Treaty.

4.2. Data Collection Methods

As mentioned in the previous section, case studies tend to include several techniques for collecting the empirical material in order to acquire different perspectives on a certain process (Creswell and Creswell, 2018, p. 14; Lewis and McNaughton Nicholls, 2014, pp. 66–67). Consequently, this study will retrieve its empirical material from the SCA and the Working Party reports from the Swedish Government, broadcasted COMAGRI meetings in the EP as well as in-depth interviews with representatives from the Council and the EP. Since the negotiation process of the UTP Directive mainly took place in the SCA, an emphasis will be on those meetings rather than the ones in the Working Party. The interviewees with access to the SCA meetings will be referred to as *SCA Repr.* and interviewees with access to the COMAGRI meetings will be referred to as *EP Repr.* However, Rapporteur De Castro kindly agreed to not be anonymous and consequently his interview will be referred to as *De Castro*. Representatives from the Commission will not be interviewed due to the limited time for conducting this study and also because of the lack of any formal legislative powers in the actual negotiation process following the presentation of its legislative proposal (EP, 2019b). Since not all aspects of the intra- and inter-institutional dynamics in the co-decision procedure are transparent, it is essential to use a combination of this material to get a comprehensive understanding of the negotiation process, the bargaining strategies of the co-legislators and the role of the trilogues.

In order to be as transparent as possible with regards to any possible bias of the researcher, it is of essence to mention that the researcher had an internship in the agricultural section at the Permanent Representation of Sweden to the EU during the autumn semester of 2018. Consequently, the researcher attended all SCA meetings and was included in the production of the reports, on which the analysis is partly based on. The researcher also attended most COMAGRI meetings concerning the UTP Directive. The study does not aim to include aspects from the researcher's participatory observations. However, it has provided the researcher with an insight as regards the dynamics in the intra-institutional negotiations, which in turn might have had an impact on the questions asked during the interviews.

4.2.1. In-Depth Interviews

In-depth interviews are widely used as a technique for collecting empirical material in qualitative studies since they are very useful in attempt to understand complex systems and processes where underlying structures and power relations exist (Lewis and McNaughton Nicholls, 2014, pp. 56, 58–59). Interviews, as a data collection method, have been criticised for its ability to produce objective facts since the data is generated from interpretations and experiences (As mentioned by Seidman, 2013, pp. 7–8; and Yeo et al., 2014, pp. 181–182). Nevertheless, since the negotiation process on the UTP Directive is rather non-transparent with limited possibilities of retaining information, in-depth interviews with the representatives are of essence to understand how the formal and informal institutional factors affected the bargaining strategies of the co-legislators, which in turn would generate a detailed understanding of the role of the trilogues (Lewis and McNaughton Nicholls, 2014, pp. 56, 58–59). The interviews will be supplemented by the reports and the public committee meetings.

The interviewees were selected based on their insight into the negotiation process of the UTP Directive from either a Council or an EP perspective. Seven face-to-face interviews were conducted in Brussels, of which four had an insight into the SCA meetings and three had an insight into the COMAGRI and the EP meetings. Face-to-face interviews are valuable as it allows the researcher and the interviewee to take into account the non-verbal signals and the body language, which in turn assist to create a good environment between the researcher and the interviewee (Yeo et al., 2014, p. 182). Some of the representatives had access to the trilogues of the UTP Directive, a few representatives had experience of other trilogues and some had never participated in a trilogue in the past. The reason for the lower number of

interviews from the EP is the institution's timetable, especially with regard to the upcoming EP elections in May 2019. However, since the EP is a rather transparent institution with public access to the COMAGRI meetings, this is not considered to be an issue. The interviews are considered to provide a more detailed and an in-depth knowledge on the informal practices and structures within the institutions and an understanding of how the formal and informal institutional factors affected the bargaining strategies of the co-legislators (Lewis and McNaughton Nicholls, 2014, pp. 56, 58–59).

When conducting in-depth interviews, especially with elite decision-makers and civil servants, it is important to ensure the confidentiality and anonymity of the interviewees. It is, for instance, the researcher's responsibility to not present the collected material in ways that could identify the participant (Webster et al., 2014, pp. 96, 101). Before conducting the interviews in this study, the interviewees were informed about the researcher, the purpose of the study and that the expected time for the interviews would be approximately 30-45 minutes. The interviewees were also informed about their right to be anonymous and that the names of the participants would be confidential unless they would prefer otherwise (Seidman, 2013, pp. 72–73; Webster et al., 2014, p. 88). The interviews were audio recorded in order to transcribe them afterwards. Thereafter, the transcriptions were analysed based on the dimensions presented in the theoretical framework in the previous chapter. The researcher also noted down keywords throughout the interviews to follow the interviewees' deliberations as well as asked follow-up questions, prompts and probes. Prompts refer to open questions that leads the interviewee to a certain issue or situation and probes encourage elaborations, such as *could you elaborate what you mean by that* or *why* questions (Arthur et al., 2014, pp. 171–172; Creswell and Creswell, 2018, pp. 189–190; Yeo et al., 2014, pp. 194–198).

Before conducting the interviews, a topic guide was created in order to ensure that the relevant questions were asked. The topic guide was 6 pages and included questions such as: *How would you describe the Presidency's role in the negotiation process of the UTP Directive?; How would you describe the Rapporteur's role in the negotiation process of the UTP Directive?; What were the main conflicting issue areas in the negotiation process?; How would you describe the environment between the actors involved in the trilogues?* (See Appendix I). Open questions were prepared as it would encourage a more flexible communication between the researcher and the interviewee and that it would feel more like a conversation rather than an interview (Yeo et al., 2014, pp. 191–192). In order to maintain a

red line throughout the interview and ensure that all essential issues had been covered, the topic guide was divided into 7 stages (Arthur et al., 2014, pp. 149–159; Yeo et al., 2014, pp. 186–190). The first stage involved the introduction to the study and its aim, information about the interviewee’s ability to be anonymous, the interviewee’s ability to withdraw from the interview at any stage and that the interview would be recorded and transcribed. The second stage included so-called opening questions where the interviewee was asked about its background, job and connection to the UTP Directive. This stage was included in attempt to create a good atmosphere in the room and was not taken into account in the analysis. The third stage addressed the main conflicting issues or the main disagreements in the intra- and inter-institutional negotiation process. The fourth stage concerned the relais actors and how some of the institutional factors affected their bargaining strategies. The fifth stage focused on attitudes in the intra- and inter-institutional negotiation process. The sixth stage concerned the trilogues and how the meetings affected the negotiation process and the bargaining strategies. The final stage concluded the interview by repeating the ethical codes mentioned in the first stage and thanking the interviewee for its participation. In addition, each stage included an element of flexibility where suggestions on possible follow-up questions were stated.

4.3. Generalisation, Validity and Reliability

The generalisation of a study refers to the ability to generalise the findings to other similar processes or contexts (Lewis et al., 2014, pp. 348–350). Qualitative case studies tend to be rather difficult to generalise, especially single case studies. Thus, the conclusions reached in this particular study could perhaps not be generalised to all other negotiation processes in the co-decision procedure. However, the findings will contribute to the theoretical framework and to an understanding of how formal and informal institutional factors affect the bargaining strategies of the co-legislators in the co-decision procedure (Creswell and Creswell, 2018, p. 202; Lewis et al., 2014, pp. 348–350, 352–354; Marsh et al., 2018, p. 235). Within the concept of generalisation, there are also the aspects of a study’s validity and reliability, or in other words the credibility and accuracy as well as the consistency of the researcher (Creswell and Creswell, 2018, pp. 183–184, 199–202; Lewis et al., 2014, pp. 354–359; Ormston et al., 2014, pp. 7–8). These two aspects could be ensured by collecting empirical material from different sources, being transparent about possible bias of the researcher, using comprehensive descriptions on why a specific aspect of a behaviour could be interpreted in a

certain way and being consistent as regards to the interpretation of the empirical material (Creswell and Creswell, 2018, pp. 183–184, 199–202; Lewis et al., 2014, pp. 354–359; Ormston et al., 2014, pp. 7–8). Possible bias of the researcher was presented in the section *Data Collection Methods* and an operationalisation table will be presented in the next section in an attempt to be as transparent and consistent as possible throughout the analysis. Furthermore, comprehensive descriptions will be made in the subsequent chapter in order to increase the validity and reliability of the study. In addition, since this study only has one researcher performing the analysis, it will be consistent with the interpretations (Creswell and Creswell, 2018, pp. 199–202).

4.4. Operationalisation

The table below is based on Bjurulf and Elgström's (2005) dimensions on institutional factors and on Dur and Mateo's (2010) ideal type classifications on soft and hard bargaining strategies. The empirical material will be analysed based on these dimensions and each dimension will analyse the negotiations in the Council, the EP and the trilogues separately. Friendly methods would indicate an actor's use of soft bargaining strategies and aggressive methods would suggest the use of hard bargaining strategies (Dür and Mateo, 2010, pp. 682–683; Elgström and Jönsson, 2000, p. 685; Hopmann, 1995, p. 30). Once the strategies used are recognised, it will contribute to an understanding on how the formal and informal institutional factors affected the bargaining strategies of the co-legislators and what role the trilogues had in the negotiation process of the UTP Directive, for instance, if it was used as a negotiation tool in any of the strategies. The table below will be applied when analysing the empirical material for this thesis.

	<i>Soft Bargaining Strategies</i>	<i>Hard Bargaining Strategies</i>
<i>Agenda-Shaping Rules (Relais actors' ability to shape the agenda in intra- and inter-institutional negotiations, ability to initiate trilogues)</i>	High levels of flexibility High levels of openness Willingness to compromise Positive attitude towards the counterparty Relais actors acting as mediators	Low levels of flexibility Low levels of openness Firm commitments Negative attitude towards the counterparty Relais actors pursuing its own agenda
<i>Voting Rules (QMV or consensus-based decisions in the Council, simple/absolute majority vote in the EP)</i>	Striving for consensus-based decisions in the Council Voting when the number of conflicting issues is low in the EP, leading to a strong mandate	QMV in the Council when the number of conflicts is high Voting when the number of conflicting issues is high in the EP, leading to a weak mandate
<i>Timetables and Deadlines (Rotating Presidency in the Council, AGRIFISH meetings, elections in the EP, plenary weeks in Strasbourg)</i>	Sharing information Striving for a compromise Suggesting solutions/proposals	Manipulating information Making firm commitments Issuing threats
<i>Informal Norms (Presidency acting as an unbiased mediator, consensus norm, Rapporteur acting as a mediator, other possible informal norms)</i>	Relais actors following the informal norms Actors behaving <i>appropriately</i> according to the informal norms	Relais actors not following the informal norms Actors behaving <i>inappropriately</i> according to the informal norms
<i>Interventions by Institutional Actors (Commission, Council Legal Services, EP Secretariat, shadow of the CJEU)</i>	Sharing information Striving for a compromise Suggesting solutions/proposals	Manipulating information Making firm commitments Issuing threats

Table 1: Operationalisation based on Bjurulf and Elgström's (2005) and Dur and Mateo's (2010) theories on institutionalism and bargaining strategies.

5. Analysis

The purpose of this chapter is to analyse how the formal and informal institutional factors affected the bargaining strategies of the co-legislators in the intra- and inter-institutional negotiation process of the UTP Directive, as well as the role of the trilogues. The analysis chapter is divided into six sections, of which the first five concern the theoretical dimensions and thus the first research question. These theoretical dimensions are divided into the Council, the EP and the trilogue negotiations in an attempt to enhance the comprehensiveness of the collected empirical material as well as the analysis of it. The sixth and last section of the analysis is called *The Role of the Trilogues* and will address the second research question.

5.1. Agenda-Shaping Rules

The agenda-shaping rules refer to the relais actors' ability to shape the agenda in the intra- and inter-institutional negotiations as well as their ability to initiate trilogues.

5.1.1. Council Negotiations

The Presidency chairs all meetings in the Council and thus has some power over the agenda-shaping rules. Although the UTP Directive was a priority for the Austrian Minister for Sustainability and Tourism (Agriculture included), Elisabeth Köstinger, the Austrian Presidency was perceived to act as an "honest broker" (SCA Repr. 1, 2019; SCA Repr. 2, 2019; SCA Repr. 3, 2019; SCA Repr. 4, 2019). The Austrians worked transparently towards their European colleagues and were keen on providing the MS with information throughout the process, either formally or informally (SCA Repr. 1, 2019; SCA Repr. 2, 2019; SCA Repr. 4, 2019). Even though it is impossible for the SCA representatives to fully comprehend what happened in the trilogues, the information provided from the Presidency was considered to be fair, or as one SCA representative said: "what is clear is that they informed us enough to get the deal through and that's [...] probably what counts in the end." (SCA Repr. 1, 2019). Normally, the Presidency would describe the atmosphere in the trilogues as good and

constructive, which could be interpreted as complimenting the efforts of its counterparty (Perm Rep, 2018b, 2018c). However, during the breaks of the SCA meetings, the representatives attending the trilogues would “gossip” to their European colleagues that the atmosphere at times was the opposite (SCA Repr. 2, 2019). This would suggest that the Presidency manipulated the information to its colleagues. This will be further discussed in the dimension *Informal Norms*.

An important factor for a successful Presidency, and perhaps an opportunity to take advantage of the agenda-shaping rules, is the level of trust for the MS holding the Presidency. Unless the Presidency has a certain degree of trust from the other MS, the process will most likely be exhaustive and more complex (SCA Repr. 1, 2019). The level of trust for the Austrian Presidency could be interpreted as high and the fact that it frequently asked the MS for guidance in the SCA meetings, would indicate that it had an ambition to find a compromise acceptable to the majority of the MS (Perm Rep, 2018a, 2018b, 2018c). The Austrian Presidency summoned the SCA attachés twice in order to establish a negotiation mandate for a trilogue, which in turn would be formally approved in the following SCA meeting (Perm Rep, 2018b, 2018c, 2018e; SCA Repr. 1, 2019). This would suggest that the Austrians used the agenda-shaping rules to their advantage to push the file forward, but also that they acted as a mediator.

The level of flexibility among the MS in the SCA was rather high, with the exception of some MS. A low number of MS at times used firm commitments and somewhat aggressive methods, such as opposing a negotiation mandate ahead of an upcoming trilogue (Perm Rep, 2018d). Nevertheless, the majority of the findings showed that the soft bargaining strategies were dominant in the SCA, especially as regards to the aspects surrounding the Presidency. The Presidency was perceived as both an unbiased mediator and a creative problem-solver, which is related to the fact that they developed the dynamic approach to solve the deadlock situation on the scope of the directive (Perm Rep, 2018c; SCA Repr. 3, 2019). Some MS wanted to extend the scope to include all actors regardless of the actors’ size, whereas others wanted to maintain the suggested scope in the Commission proposal. The Austrian Presidency’s successful attempt to solve the difficult situation would suggest that it was willing to compromise and cooperate with its European colleagues, which in turn would indicate a high level of openness and flexibility.

The main objective for a Presidency is to conclude a legislative file in the first reading. Therefore, the Presidency calculates how many meetings and trilogues that are required in order to conclude a certain file during their term (SCA Repr. 1, 2019; SCA Repr. 3, 2019; SCA Repr. 4, 2019). The trilogues are scheduled based on consensus between the three institutions and therefore, it is difficult to determine whether or not an institution is flexible in this regard. However, the consensus-based decision would indicate friendly methods in terms of scheduling the inter-institutional informal meetings and the high number of trilogues in the UTP negotiation process could be interpreted as all parties showing high levels of flexibility.

5.1.2. EP Negotiations

The Rapporteur is responsible for a certain legislative file in the EP and drafts a report on which the negotiation mandate for the trilogues is based. Once a negotiation mandate is approved in plenary, the Rapporteur has the support of the EP to begin the trilogue negotiations. As mentioned above, the trilogues are scheduled on a consensus-based decision between the three institutions and therefore, the same interpretation of friendly methods and high levels of flexibility could be done here.

Ahead of each trilogue, the Rapporteur arranges a meeting with the Shadows and the other members of the negotiation team in order to establish a strategy. The Rapporteur is the main negotiator during the trilogues and should not be interrupted by the Shadows. Thus, it is essential that the negotiation team establishes a strategy to enter the negotiations with “one voice” (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019). The Rapporteur decides on when and where these so-called Shadow meetings are held and what they will discuss (EP Repr. 1, 2019; EP Repr. 3, 2019). One could interpret this as the Rapporteur having a great deal of opportunity and perhaps incentive to influence the agenda, especially since the MEP holding the position is a politician and “no politician is unbiased” (EP Repr. 1, 2019). However, since the Rapporteur is accompanied by the Shadows in the trilogues, “he cannot impose his position, it is out of question” (EP Repr. 1, 2019). Consequently, in order to be able to enter a trilogue negotiation with one voice, the level of information sharing could be interpreted as high, especially between the Rapporteur and the Shadows. Since the Shadows represent each political party in the EP, the level of information sharing could also be assumed to be high in the EP.

The Rapporteur himself perceived his position to be of a mediating character, especially since the MEP holding it has “to understand when [the] idea is too much and when [the] idea is too weak” and to have a clear idea of what is achievable in the EP and in the trilogues (De Castro, 2019). Since the main ambition for the EP was to conclude the UTP file before the end of the term, the level of flexibility and thus the level of trust from the MEPs was important. The Rapporteur has previously been the Agricultural Minister in Italy three times, the Chair of COMAGRI and the Shadow for the important Omnibus Regulation, which in turn made him very respected in both COMAGRI and the EP (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019). Like the Rapporteur himself said: “if you trust, you can save a lot of time” (De Castro, 2019). The Rapporteur received a large amount of support in COMAGRI and one Shadow, Marco Zullo (who is on the other side of the political spectrum), mentioned during a COMAGRI meeting that the Rapporteur had been attentive to him and his colleagues and that he had incorporated their views in the draft report (*COMAGRI 10 July, 2018*). Consequently, the Rapporteur could be interpreted as being flexible and willing to compromise with his colleagues as well as having an ambition to be a mediator in attempt to reach a compromise agreement in time.

The debriefings following the trilogues tended to emphasise the positive aspects of the informal meetings, such as describing the environment as good and constructive and the counterpart as showing high levels of flexibility (*COMAGRI 3 December, 2019*; EP Repr. 1, 2019). However, the reality was sometimes the opposite. This would either imply aggressive methods, such as manipulation of the information, or friendly methods, for instance giving the counterpart compliments. Similar to the previous section, this will be further elaborated in the dimension *Informal Norms*.

5.1.3. Trilogue Negotiations

There are no written rules or references to the treaties as regards to the trilogues, for example who has the right to attend, how the meetings are supposed to proceed and so on (EP Repr. 3, 2019; SCA Repr. 3, 2019). However, there is one unwritten rule that states that the Presidency chairs the trilogue if the meeting is held on the Council premises and that the Rapporteur chairs the trilogue if it is held on the EP premises (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019; SCA Repr. 3, 2019; SCA Repr. 4, 2019). There are some advantages of chairing the informal meetings since the chair has the responsibility to open the meetings,

manage the agenda, decide when to take breaks and when to conclude the meetings (De Castro, 2019; SCA Repr. 4, 2019). The EP tends to have more trilogues on their premises because of logistical reasons, for instance that the EP has more rooms and interpreters available. This was also the case for the UTP file where four of the meetings were held in the EP and two in the Council. Interestingly, the Rapporteur used this to his advantage, especially in the fifth trilogue that was held on 12 December 2018. During the fifth trilogue, the Rapporteur was able to convince the Shadows to conclude the meeting without having an agreement as a strategic move since he knew that the Austrian Presidency wanted to reach a rapid political agreement. This could also be related to the fact that the Rapporteur and the MEPs in COMAGRI used social media to politicise the important issues and use it as leverage in the negotiations (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019; SCA Repr. 2, 2019). According to the Rapporteur, this would most likely not have been possible unless he was chairing the meeting (De Castro, 2019). If he did not chair the meeting, he would have been encouraged to take a break and “reflect” on the issue together with the Shadows instead of concluding the meeting (De Castro, 2019). One could interpret this as a threat or a firm commitment, which would indicate the use of hard bargaining strategies during the fifth trilogue. The Presidency, on the other hand, was keener to conclude the file before Christmas than to chair the meetings. As one of the SCA representatives said: “if you have a friendly atmosphere, it doesn’t matter so much where the trilogue takes place” (SCA Repr. 4, 2019). This would indicate a high level of flexibility and willingness to reach a compromise from the Presidency.

5.2. Voting Rules

The voting rules refer to the formal and informal voting rules in the Council and the formal voting rules in the EP.

5.2.1. Council Negotiations

There was some internal division in the Council before the Commission proposal was presented since a number of MS did not consider a legislation addressing UTPs on an EU level necessary. However, once the proposal was presented to the Council, it was difficult politically for the MS to oppose a directive aiming to prevent UTPs and protect the weaker

part of the food supply chain (SCA Repr. 1, 2019). According to one SCA representative, it would be close to a political suicide and “[...] you get damaged, definitely, in the Council I think” if you would oppose a legislation like this one (SCA Repr. 1, 2019). The main disagreements on the directive in the Council concerned the scope and the number of UTPs, where there were two or three blocks in relation to the level of ambition. Some MS either opposed or were sceptical of the negotiation mandate ahead of the fourth trilogue during the SCA meeting on 5 December 2018, which forced the Presidency to approve the mandate by a QMV (Perm Rep, 2018e; SCA Repr. 4, 2019). The QMV would suggest a somewhat hard bargaining strategy from the Presidency’s side.

The consensus norm in the Council is very strong and the MS tend to not oppose something unless it is supported by a heavy political decision in the capital (SCA Repr. 1, 2019; SCA Repr. 2, 2019). One SCA representative said: “we didn’t need the legislation so for us it would’ve been fine if it didn’t pass, no problem, but if it passes, we wanted to be onboard” (SCA Repr. 1, 2019). This was repeated by other representatives where one said: “you work for a long time to get as many as possible onboard” (SCA Repr. 2, 2019). The Presidency might not have strived for a consensus-based decision on the UTP file, but the consensus norm was too strong to circumvent by the actors involved. Even though some MS used aggressive tactics, such as stating “we demand this, we must have that” (SCA Repr. 2, 2019), all but one MS approved the final compromise text in the end. The UK submitted a parliamentary scrutiny that could not be lifted (SCA Repr. 3, 2019; SCA Repr. 4, 2019). One could argue that there were some factors having an impact on the UK’s decision to abstain from voting in the end, which would be the fact that they will soon leave the EU and therefore not be subject to the so-called shadow of the future or the UTP Directive (SCA Repr. 3, 2019; SCA Repr. 4, 2019). Nevertheless, the fact that the UK did not oppose the final compromise agreement could be interpreted as supporting the existence of a strong consensus norm as well as an unwillingness to be in opposition of a proposal.

Since the negotiation mandate was approved by QMV ahead of the fourth trilogue, one could argue that the Presidency used aggressive methods to receive a mandate from the MS. However, since all but one MS could get onboard and support the final compromise agreement, the Presidency was able to mediate and reach an agreement acceptable to most MS. Consequently, one could interpret the dynamics in the Council to be dominated by soft tactics, however, with some tendencies of hard tactics.

5.2.2. EP Negotiations

There have been some internal conflicts in relation to the UTP file in the EP before the draft report was approved in plenary in Strasbourg on 25 October 2018. The Rapporteur's draft report was presented in July 2018 and approved by COMAGRI with approximately 85% on 1 October 2018, which provided the Rapporteur with a strong mandate from the COMAGRI members (*COMAGRI 1 October*, 2018; De Castro, 2019; EP Repr. 1, 2019). The first internal conflict concerned the dispute of competence, or in other words which committee that would be responsible for the file after it was presented by the Commission. IMCO opposed the decision to assign the file to COMAGRI, which in turn led to a debate in the EP (*COMAGRI 16 May*, 2018). The MEPs in COMAGRI were determined to keep the file in their committee and therefore encouraged the MEPs to maintain a discussion with the members of IMCO (*COMAGRI 10 July*, 2018; *COMAGRI 16 May*, 2018). The Rapporteur together with some of the Shadows also urged the members to not submit too many amendments or to not be too ambitious as regards the scope of the draft report if they wanted the file to pass in plenary (*COMAGRI 10 July*, 2018; *COMAGRI 16 May*, 2018). This would suggest that the COMAGRI members were willing to compromise and be flexible in order to conclude the legislative file before the end of their term.

The second internal conflict concerned the vote on the draft report in plenary. The vote was scheduled on the 24 October 2018 but was postponed due to a motion tabled by some MEPs from IMCO (EP Repr. 1, 2019). The MEPs were able to collect enough signatures to table a motion to reject the mandate last minute, which was on Tuesday evening on 23 October 2018. The motion led to an extra day of reflections for the MEPs with regard to the draft report and the report was therefore voted on and approved in plenary on Thursday, 25 October 2018 (De Castro, 2019; EP Repr. 1, 2019). Once the mandate was approved in plenary, the Rapporteur's mandate did not have to be revised in Strasbourg. Instead, the Shadows functioned as a "mini-plenary" that could revise the negotiation mandate during the trilogues (EP Repr. 1, 2019; SCA Repr. 3, 2019). Since IMCO was an Associated Committee in the UTP file, it also appointed a Rapporteur, which was Mark Tarabella. Tarabella was also a member of COMAGRI and therefore had an understanding of the concerns of its members. IMCO attempted to select another Rapporteur on the file but without success. Consequently, Tarabella's opinion on the UTP file heavily overlapped with the Rapporteur's draft report,

which reduced the level of conflicts between the committees following the approval of the Rapporteur's draft report (De Castro, 2019). The aggressive tactics in the EP before the approval of the draft report would suggest that the MEPs used hard bargaining strategies in terms of the voting rules. It would also imply that the plenary vote took place when the number of conflicting issues was high. However, once the draft report was approved, the friendly tactics became more dominant where a good atmosphere and cooperation between the main actors in the EP on this file, which were the Rapporteur and the Shadows, could be recognised. The final compromise agreement was approved by a large majority (428 MEPs voted in favour and 170 against) in the end, which was seen as a great victory for the Rapporteur (De Castro, 2019).

5.2.3. Trilogue Negotiations

Even though the trilogues are dynamic, it is rare that a trilogue is held on the same day a plenary vote has taken place on the EP's negotiation mandate in Strasbourg. One EP representative described it as "an unseen procedure" (EP Repr. 1, 2019). It is also unusual that a trilogue is held on a Thursday afternoon, on which one EP representative commented: "[...] the trilogue finally took place on Thursday afternoon, which is also unheard of because normally people go home from Strasbourg on Thursday afternoon" (EP Repr. 1, 2019). The fact that a trilogue was scheduled on the same day as the plenary vote took place and on a Thursday, would imply that all institutions had a high level of flexibility with regards to the schedule of the trilogues.

The voting rules in the trilogues are unclear since there are no formal decisions made in the informal meetings. The decisions taken in the trilogues are based on various trade-offs between the actors involved where compromises from each side are required (EP Repr. 1, 2019). Before entering a trilogue, both sides must have a negotiation mandate. However, the Presidency does not have as much flexibility as the EP has during the trilogues. The EP is accompanied by the Shadows, which in turn can revise the mandate during one of the breaks, whereas the Presidency must go back to the SCA and revise it. The Presidency would not enter a trilogue without a proper mandate as "[...] the most embarrassing thing you can ever do on the Council side is agreeing with the Parliament, or politically agreeing on something and then you don't get any kind of majority from your colleagues" (SCA Repr. 4, 2019).

Consequently, it is more complicated for the Presidency to show high levels of flexibility unless it has been given flexibility from the MS. Despite this, one EP representative perceived the Council to be more flexible than the EP during the trilogues (EP Repr. 3, 2019).

5.3. Timetables and Deadlines

The timetables and deadlines concern the rotating Presidency in the Council, the schedule for the AGRIFISH meetings where the formal voting procedures in the Council take place, the EP elections and the schedule for the plenary weeks in Strasbourg where the formal voting procedures in the EP take place.

5.3.1. Council Negotiations

The Presidency position rotates between the MS on a six-month basis, which means that Bulgaria held the position when the proposal was presented, Austria held the position throughout the negotiation process until a political agreement was reached, and Romania held the Presidency when the political compromise agreement was signed (SCA Repr. 3, 2019). Austria has held the Presidency position in the past and therefore has the experience of everything that the position entails, such as the increased administrative burden for the civil servants and the negotiations in the trilogues. Consequently, a MS that does not have the experience of holding the position would probably require more time to adjust to both the intra- and inter-institutional procedures and rules. Romania held the Presidency position for the first time with start in January 2019 and even though it might take time for any MS to adjust to the role, the adjustment is more comprehensive for a MS that holds it for the first time (EP Repr. 3, 2019; SCA Repr. 1, 2019). Since the elections of the EP would require a political agreement by the end of December 2018 or the beginning of January 2019 the latest, it was questionable whether or not the Romanian Presidency had the ability to do it (SCA Repr. 1, 2019). Although the Romanians attended the last trilogues in case the negotiation process would have continued after December 2018, they co-signed a letter asking the EP to conclude the negotiations with the Austrian Presidency (De Castro, 2019; EP Repr. 1, 2019). Consequently, the rotating Presidency position did have a significant impact on the speed of the negotiation process as well as the bargaining strategies. The Austrian Presidency worked transparently both within the Council and towards the EP in attempt to reach an agreement

before the end of the year (SCA Repr. 4, 2019). It also developed the dynamic approach to get as many MS onboard as possible, which was interpreted as a very creative solution in a difficult situation by one SCA representative (SCA Repr. 2, 2019). This would suggest that the Presidency used friendly methods during the negotiation process in order to speed up the process. Germany also presented a model to solve the disagreements concerning the scope of the directive, where the dependency between two actors was taken into account rather than their turnover. However, due to the timetables and deadlines, it did not receive a lot of attention as it was “too late” (Perm Rep, 2018e; SCA Repr. 4, 2019). This could be interpreted as opposing or disregarding a solution to the deadlock situation on the scope and thus triggering a rather aggressive behaviour from the Presidency.

The last AGRIFISH meeting chaired by the Austrian Presidency was held on 17-18 December 2018, which means that it was the deadline for the Austrians to sign the UTP Directive. Since the political agreement was reached on 19 December 2018, the Austrians were unable to sign it. Nevertheless, even though the Romanian Presidency signed the agreement, “everyone [knew] that this file was done with the Austrians, it doesn’t matter who signed the letter” (SCA Repr. 3, 2019). The Austrian Presidency’s tactics could be interpreted as friendly, however, the pressure from the timetables and deadlines surrounding the rotating aspect of the position might have triggered some aggressive methods, such as pushing the agenda and disregarding a MS’s attempt to find a solution to a deadlock situation as mentioned above.

5.3.2. EP Negotiations

The EP elections had a significant impact on the speed of the negotiation process of the UTP Directive as well as the actors’ bargaining strategies. It was important for the MEPs running for another term to conclude the file in order to use it for their campaigns. It was also important for the legacy of the MEPs retiring from the EP, especially because it was the first legislation on UTPs in business-to-business relationships and would have a significant impact on the European farmers (EP Repr. 1, 2019). Since the last plenary session for the EP was scheduled in April 2019, a political agreement had to be reached in December 2018 or January 2019 the latest in order for the MEPs to vote on it (EP Repr. 3, 2019). Even though the file could have been passed on to the next EP, there was a chance that the political prioritisation might differ (EP Repr. 1, 2019). The Rapporteur urged the members of

COMAGRI to not be too ambitious with their amendments to the draft report since the objective was to reach a political agreement before Christmas and pass it in plenary before the end of their term (*COMAGRI 10 July, 2018; COMAGRI 24 September, 2018*). However, just before Christmas this changed as the Rapporteur stated that the EP would not accept a limitation on the application of the “unfair is unfair principle” (*COMAGRI 3 December, 2019*). This would suggest that the Rapporteur made a firm commitment on the directive’s scope and therefore pursuing a hard bargaining strategy towards the end of the process. This firm commitment was, however, dropped during the fourth trilogue on 6 December 2018 (Näringsdepartementet, 2018), which could question the level of firmness of the commitment.

The EP tends to have a rather ambitious position where a lot of amendments are included in the negotiation mandate ahead of the trilogues, which is an attempt to strengthen the EP’s position against the Council in the trilogues (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019). Consequently, one could question the level of flexibility of the EP since many of the amendments included in the mandate was somewhat “fake” (EP Repr. 3, 2019). With regards to the UTP Directive, one EP representative said: “[...] the Council was very very flexible on this and the EP too but less in the sense that they knew that the position approved in plenary was not the real position” (EP Repr. 3, 2019). The EP also used social media to politicise the important issues in attempt to increase the pressure on the negotiation process and the level of ambition in the UTP Directive.

The level of information sharing and openness in the EP could be considered to be rather high since the Rapporteur and the Shadows were active on social media, such as twitter, to inform the electorate on the process (De Castro, 2019). The slogan *unfair is unfair* was widely used by the MEPs and the pressure from stakeholders and the society was “enormous” (De Castro, 2019; EP Repr. 1, 2019). The active updates on social media and the politicisation of various issues could be interpreted as being hard bargaining strategies since firm commitments are made by various MEPs to the stakeholders and the society. However, according to the EP representatives themselves, they had to be pragmatic once the trilogues had begun in order to reach an agreement in time, which would indicate that the timetables and deadlines had a soft impact on the bargaining strategies, or in other words that it encouraged soft bargaining strategies and friendly methods.

5.3.3. Trilogue Negotiations

According to all interviewees, the EP elections had a significant impact on the speed of the legislative file, however, not all were convinced that the rotating Presidency scheme had an impact on it. The UTP file was a priority for the Austrians and they wanted to conclude the file before the end of their Presidency (SCA Repr. 3, 2019). Consequently, the EP representatives perceived the Austrians to be persistent in order to reach a compromise before the end of the year. One example of this is the first trilogue that was held on a Thursday afternoon in Strasbourg, on the same day as the plenary vote took place on the draft report, which was “unheard of” (EP Repr. 1, 2019). Another example is the letter sent by the Austrians, co-signed by the Romanians, to the Rapporteur requesting to conclude the file with the Austrian Presidency (De Castro, 2019; EP Repr. 1, 2019). Furthermore, Minister Köstinger negotiated on behalf of the Austrian Presidency in the last trilogues, which was a major advantage since she already knew the Rapporteur and the Commissioner from before. Minister Köstinger was previously a MEP and a member of COMAGRI, which was at the same time as when De Castro was the Chair of COMAGRI. She also had experience from negotiating in trilogue negotiations, as both a Rapporteur and a Shadow. Consequently, she had the ability to negotiate on the same level as the “full blood” politicians on the other side of the table (SCA Repr. 1, 2019; SCA Repr. 2, 2019; SCA Repr. 3, 2019; SCA Repr. 4, 2019). This created a “political momentum” that put pressure on the EP to reach an agreement (SCA Repr. 1, 2019; SCA Repr. 3, 2019).

The main objective for a Presidency is to reach an agreement by the end of the term but according to one SCA representative, the rotating aspect of the Presidency did not have an impact on the speed of the process (SCA Repr. 4, 2019). Instead it was the “principle of discontinuity”, which refers to the uncertainty of the new EP following its elections (SCA Repr. 4, 2019). The new EP could either decide to continue the old EP’s efforts on a certain legislation, to disregard its efforts and start over from status quo or “kick it back to the Commission” (SCA Repr. 4, 2019). The threat of having to restart the UTP negotiations with a new EP, increased the incentives for the Presidency to enhance its efforts. The Austrian Presidency aimed to be transparent with the other parties, share information with its colleagues in the SCA and was perceived to be pragmatic during the trilogue negotiations.

The Presidency also proposed a possible solution to the deadlock situation on the scope, which was the dynamic approach. This behaviour suggests that the Austrian Presidency was using soft bargaining strategies in attempt to reach a compromise agreement with the EP. The EP, on the other hand, could be interpreted as using a combination of hard and soft bargaining strategies. As mentioned in the dimension *agenda-shaping rules*, the Rapporteur used his position as Chair during the fifth trilogue to conclude the meeting, as he was not content with what was on the negotiation table. Arguably, this is a firm commitment and consequently a hard bargaining strategy. According the Rapporteur himself, he used the upcoming deadline since he knew that the Austrian Presidency was in a hurry to reach a compromise agreement (De Castro, 2019). The Rapporteur therefore took advantage of the deadlines and the counterparty's efforts to cooperate in order to enhance the EP's position. The Rapporteur was able to convince the Shadows that it was a good idea to continue the negotiations with the Romanian Presidency, which suggests that the EP supported the decision to take advantage of the deadlines (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019). One EP representative mentioned that the EP negotiation team wanted to conclude the file with the Austrian Presidency, partly because the Romanians were unexperienced in trilogues (EP Repr. 3, 2019). The EP representative also mentioned that the timing was wrong and that the expectations from the stakeholders and the society were too high in comparison to what was on the table (EP Repr. 3, 2019). Regardless of the reasons behind the decision, it could be interpreted as a "threat" in an attempt to have the other side concede to their demands.

The timetables and deadlines had a significant impact on the bargaining strategies in the trilogues. Both co-legislators were perceived as flexible and pragmatic by the interviewees but when analysing their methods, it became clear that the Council used more friendly tactics and the EP used rather aggressive ones. Since the Rapporteur's negotiation mandate was based on a maximalist list of demands to enhance the EP's position, or in other words manipulated information, the EP could have been perceived as being more flexible than it actually was.

5.4. Informal Norms

The recognised informal norms in the Council are that the Presidency is supposed to act as an unbiased mediator in the intra- and inter-institutional negotiations and that the overarching

ambition among the MS is to have a consensus-based agreement in the end. The known informal norm in the EP is that the Rapporteur is supposed to act as a mediator in the negotiation process, which is also required in order to get an approval in plenary.

5.4.1. Council Negotiations

All SCA interviewees perceived the Presidency as being unbiased and “an honest broker” throughout the negotiation process on the UTP Directive (SCA Repr. 1, 2019; SCA Repr. 2, 2019; SCA Repr. 3, 2019; SCA Repr. 4, 2019). The Presidency shared information with the other representatives and invented the creative and “very bureaucratic model [...] that is completely logical” (SCA Repr. 2, 2019), which in turn solved the issue of the scope. The Austrian Presidency also showed high levels of flexibility and had a pragmatic approach in the trilogues.

The trust of the SCA is of essence for the Presidency, as it otherwise will slow down the process and make it more complicated (SCA Repr. 4, 2019). The representatives in the SCA tend to come back to the committee in different functions, for instance as a spokesperson, an expert from the capital or even a minister, which in turn strengthens the personal ties between the representatives and increases the incentives to maintain a good relationship with the others (SCA Repr. 1, 2019; SCA Repr. 2, 2019). One SCA representative said the following about its colleagues: “I would not say that it is my closest colleagues, but it kind of is in practice. I meet them more often than I meet people in [the capital], but that does not mean that you have a loyalty towards them, but you have a very strong incentive to maintain a good relationship with your European colleagues” (SCA Repr. 2, 2019). Another SCA representative said that “the contact with the colleagues from the SCA is very important” and that “you have to keep everybody either officially or informally informed” in order to maintain the support of the MS (SCA Repr. 1, 2019). The SCA representatives always attempt to understand their counterparts in the negotiation process and to maintain a “positive vibe” in the room (SCA Repr. 4, 2019). One could interpret this as supporting the informal norm surrounding the Presidency position and also provide an understanding for the underlying factors to the consensus norm. It was demonstrated in the dimension *voting rules* that the consensus norm is strong and that it did have a soft impact on the actors’ bargaining strategies.

During the interviews, other informal norms were recognised, such as the appropriate way to argue during the SCA meetings. According to a SCA representative, it is inappropriate to do emotional proclamations during a negotiation in the SCA since it is seen to be unprofessional (SCA Repr. 2, 2019). Consequently, the appropriate way of arguing in the SCA is to be objective, especially since it is a “rather technocratic process” (SCA Repr. 2, 2019). Another informal norm that prevailed during the interviews concerned the debriefings from the trilogues. The debriefings tend to be diplomatic in the sense that you portray the trilogues to be constructive with a good atmosphere, which is also confirmed by the SCA reports (Perm Rep, 2018b, 2018c; SCA Repr. 2, 2019). Even though the trilogues were portrayed as being constructive with a good atmosphere officially, it was described as the opposite at times informally (SCA Repr. 2, 2019). However, it is “not a part of the norms and diplomatic behaviour that rules” to mention it in formal settings (SCA Repr. 2, 2019). The new informal norms presented above would suggest that the friendliness between the SCA representatives have created an appropriate behaviour where the norm is to use friendly tactics and to try to understand the reasons behind the arguments of their European colleagues. The formal debriefings could, however, be interpreted as the Presidency manipulating the information to its colleagues unless it is communicated to all of them informally. Nevertheless, both the known and unknown informal norms mentioned in this section have the effect on the actors to use more friendly and soft bargaining strategies during the SCA negotiations.

5.4.2. EP Negotiations

The Rapporteur is not supposed to act as an unbiased mediator, especially since the person holding the position is a politician and as mentioned before, “no politician is unbiased” (EP Repr. 1, 2019). The Rapporteur has to act as a mediator since the final compromise agreement has to be approved in plenary, which is not possible unless the Rapporteur listens to the other political groups’ concerns. Before the introduction of the Shadows, the Rapporteur had more power in terms of conducting informal negotiations in the corridors and the cafés in the EP (SCA Repr. 3, 2019). This was changed as it would end up in a “take-it-or-leave-it” deal in plenary, where the level of information sharing was low and no MEPs would know the reasons behind the political compromise agreement between the co-legislators (SCA Repr. 3, 2019). Consequently, the EP decided to introduce these Shadows to their Rules of Procedure (Rule 205a) (EP, 2019c; SCA Repr. 3, 2019). Since the introduction of the Shadows, the level

of information sharing has increased and the process has become more transparent, at least to the MEPs. In this particular file, the relationship between the Rapporteur and the Shadows was very good, even with the liberal MEP that had a different view on the scope than the others (EP Repr. 3, 2019). The informal norm surrounding the Rapporteur did have an impact on the Rapporteur's bargaining strategy in the UTP file as it became softer. For example, the increased level of information sharing with the other political parties and finding an agreement acceptable to the majority of the other MEPs. The informal norm that the Rapporteur is supposed to act as a mediator could be interpreted as an informal norm but also as a part of the political game. One could, however, argue that the Shadows' role is an informal idea that has become formalised over time, especially since the Shadows were introduced to increase the awareness of what was discussed in the trilogues, which in turn are informal.

During the interviews, additional informal norms were also recognised concerning the Rapporteur's negotiating team in the trilogues. According to all EP representatives, it is essential to speak with "one voice" in the trilogues in order to be perceived as united and strong in the negotiations as possible (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019). It is only the Rapporteur who negotiates on behalf of the EP in the trilogues and the Shadows are not allowed to interrupt unless they are given the word by the Rapporteur (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019). Any disagreements in the negotiation team should be settled before entering an informal meeting. If there are any disagreements prevailing in the trilogues, it should be discussed during the breaks (EP Repr. 1, 2019). In the UTP file, the Rapporteur gave the floor to the Shadows in the trilogues, which suggests that the negotiation team had a good collaboration and a high level of openness and flexibility. However, one or two Shadows interrupted the Rapporteur in the fifth trilogue, as they wanted to conclude the file meanwhile the Rapporteur preferred to continue the negotiations with the Romanian Presidency in January 2019 (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019; SCA Repr. 3, 2019). The interruption during the fifth trilogue would suggest somewhat aggressive tactics used by the Shadows.

Similar to the SCA, the trilogues are portrayed as constructive with a good atmosphere in the debriefings in the COMAGRI meetings (*COMAGRI 3 December, 2019; COMAGRI 7 January, 2019*; EP Repr. 1, 2019). The Shadows also tend to take the opportunity to thank the Rapporteur for his efforts and show their support in order to have a united front to the public

(COMAGRI 3 December, 2019; COMAGRI 7 January, 2019; EP Repr. 1, 2019). The dynamics in the trilogues and in the negotiation team can, however, differ from what is described in the official committee meetings (EP Repr. 1, 2019). This could, like the Council negotiations, be interpreted as the negotiation team manipulating the information from the trilogues to its colleagues, which would indicate tendencies to hard bargaining strategies. Nevertheless, the compliments to the other side could also be considered to be friendly tactics, which in turn would indicate soft bargaining strategies.

5.4.3. Trilogue Negotiations

Since the trilogues do not have any written rules or references to the treaties, one could interpret all procedures and rules as informal. Trilogues have been described by all interviewees as essential and a key component in order to reach an agreement in the co-decision procedure. Unless an actor has participated in a trilogue in the past, it is unclear who participates, how the meetings are structured, the length of them and so on. However, if you have participated in a trilogue, it is more or less clear how the meetings usually proceed. Before each trilogue, there is one or more technical meetings in order to prepare as much as possible before the more political decisions are made. Consequently, the assistants of the MEPs and the civil servants on a working party level in the Council have a lot of influence and power in the inter-institutional negotiations. One interviewee even said that “the key actor was not Paolo De Castro, it was his assistant” and that “you have the SCA Chair but the expert that knew the file and who know what to do was the Chair of the Working Party” (SCA Repr. 3, 2019). Even though the expert knowledge lies with the staff participating in the technical meetings, it is the Rapporteur and SCA Chair or Minister that confirm the results of the technical meetings and make the political decisions in the end (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3, 2019; SCA Repr. 3, 2019; SCA Repr. 4, 2019).

Most informal norms and rules concerning the actual trilogues have been addressed in the other sections, however, one aspect that most interviewees mentioned was the importance of the “social component” of the actors participating in the trilogues. One SCA representative said that “if they click, it is already less difficult than if they don’t click” (SCA Repr. 1, 2019). In the UTP file, the social component definitely had an impact on the process. The Rapporteur has previously been the Agricultural Minister in Italy and was the Chair of

COMAGRI in the previous EP (2009-2014). When De Castro was the Chair of COMAGRI, Minister Köstinger was a MEP and a member of COMAGRI (De Castro, 2019). The Rapporteur also emphasised the importance of the social component in his interview saying: “In the European institution[s], the personal confidence and the personal relationship is very important because you can trust somebody if you have experience with them. If you trust, you can save a lot of time. You can go directly to the point” (De Castro, 2019). The personal connections and the networking aspect of the EU bubble is vital to increase the efficiency and leverage in various negotiations, especially in the trilogues. Trilogues are essential to reach an agreement and since they are not transparent and do not have any formal rules, the social component and the friendly behaviour is important to reach a rapid and beneficial agreement for both parties. Consequently, the informal norms in the trilogues encourage the actors to use friendly tactics. The friendly tactics are not necessarily followed in all files but were for most parts in the UTP file (EP Repr. 3, 2019).

5.5. Interventions by Institutional Actors

The Commission attends all negotiations but has no formal powers in the co-decision procedure once the proposal has been presented, apart from the role as a mediator. It also provides information on its proposal throughout the negotiation process in both the intra- and inter-institutional meetings. The CJEU is not present in either the Council negotiations, the EP negotiations or the trilogue negotiations. However, the Council and the EP have their own Secretariats, where the Council has its own separate Legal Services, that assist and guide the co-legislators in the process from a legal point of view. However, there is always a shadow of the CJEU.

5.5.1. Council Negotiations

The Commission attended all Council meetings and was always given the word where the main purpose was to inform the MS about its proposal and possible consequences with certain modifications. The Commission had some internal conflicts regarding the UTP proposal since it not only concerned CAP but also the internal market. There would have been a UTP proposal in 2006 from DG COMP where all business-to-business relationships would have been included in the legislation. However, the proposal was unsuccessful and therefore not

presented or published anywhere (SCA Repr. 4, 2019). The UTP Directive was very important for Commissioner Hogan and he was keen on not expanding the scope in order to successfully present something to the European farmers before the end of his mandate (SCA Repr. 1, 2019).

The Commission has a lot of impact on the Council since the MS “need their support” and because “they are the ones then sitting on the other side when you have to do the implementation” (SCA Repr. 4, 2019). To disregard something opposed by the Commission would require an unanimity vote in the Council, which is rather difficult (SCA Repr. 4, 2019). In the UTP file, the Commission was perceived to be “convincing” and the Legal Services as “diplomatic” (SCA Repr. 1, 2019; SCA Repr. 4, 2019). Some MS used more aggressive tactics in an attempt to increase the number of actors included in the scope, such as “the level of ambition must be increased here” and “we demand this, we must have that” and so on (SCA Repr. 2, 2019). This could be seen as firm commitments and therefore hard bargaining strategies. These aggressive tactics might have been triggered by the Commission’s conservative stance on the scope.

The Council Legal Services were also given the floor a few times to assist the MS with legal issues. Even though the legal basis would have been jeopardised if the scope was extended to a wider extent, the Legal Services were able to guide the MS and provide good arguments and interpretations of the legal basis in case they considered it necessary. The Presidency and various MS frequently asked the Legal Services to assist them with this (Perm Rep, 2018a). It was not only the legal basis that the MS needed assistance with, but it was the issue requiring the most efforts. One of the SCA representatives mentioned that the Director of the Legal Services have a lot of power in the negotiations and could either make or break a deal (SCA Repr. 2, 2019). In this legislative file, however, the Legal Services were helpful and provided the MS with good arguments and interpretations, especially towards the end of the negotiation process (SCA Repr. 1, 2019). Similar to the interpretation of the Commission’s intervention, the Legal Services could have had an impact on the bargaining strategies of the MS aiming for a higher level of ambition of the scope. When provided with good arguments and alternative interpretations of the legal basis, it could have legitimised the demands of the MS wanting to extend the scope.

5.5.2. EP Negotiations

The Commission attended all COMAGRI meetings and was always given the opportunity to defend its proposal and inform the MEPs about various aspects of it. Since the MEPs had the ambition to extend the scope to include all actors regardless of its size (unfair is unfair), the Commission constantly emphasised the importance of not jeopardising the legal basis. The Commission also mentioned that the UTP Directive could fall in the CJEU in Luxembourg if the EP kept pushing for an agreement where all actors in the food supply chain were included (EP Repr. 1, 2019). The UTP Directive was very important for COMAGRI and it was considered to be the most important legislative file, together with the Omnibus Regulation, during their time in office and the same goes for the Commission. The Omnibus Regulation included all DGs and consequently all policy areas. The UTP Directive only concerned the agricultural sector and was therefore important for the legacy of both the MEPs and Commissioner Hogan.

There was an internal division within the Commission regarding the UTP Directive, especially between DG AGRI and DG COMP. The division made it difficult for Commissioner Hogan to pass it through the different DGs before presenting it to the co-legislators. Consequently, when presenting the proposal to COMAGRI, the Commissioner mentioned that the UTP list could be extended. When asked about why the Commissioner did not include more UTPs in the proposal from the start, he said that he had to give the MEPs “something to do” and that he had to make sure that it first passed in the Commission (*COMAGRI 12 April, 2018*). This could be interpreted as confirming the internal division in the Commission and to encourage the MEPs to extend the list of UTPs. One could, however, question whether that might have encouraged or even legitimised the EP’s list of demands and firm commitments in the trilogues.

In CAP 2021-2027, it is suggested that the budget for rural development and the direct payments will be cut. Consequently, both the Commission and the EP wanted to give the agricultural sector an “important political signal” with the UTP Directive where protection is provided for the vulnerable part of the food supply chain (EP Repr. 3, 2019). The Rapporteur for the UTP Directive was also the Shadow for the Omnibus Regulation that was adopted in the end of 2017. Therefore, the Rapporteur and the Commissioner had experience of working

together in the past (De Castro, 2019). The Commission's ambitions were well-known by the MEPs and so was the internal division between DG AGRI and DG COMP. It is rather unclear whether or not the Commission's intervention had an effect on the actors' bargaining strategies in the COMAGRI meetings. It did perhaps encourage firm commitments on certain areas to give a "political signal" to the agricultural community, which in turn would mean that it had a hard impact on the actors' bargaining strategies, or in other words that it triggered hard bargaining strategies and aggressive methods.

The EP Secretariat was not given the floor during the COMAGRI meetings and therefore it is difficult to analyse how it affected the actors' bargaining strategies. However, the shadow of the CJEU had a significant impact on the actors since it "scared the members that they risk to produce something that wouldn't work" (EP Repr. 1, 2019). Arguably, the shadow of the CJEU had a soft impact on the actors in the sense that it increased the level of willingness to compromise.

5.5.3. Trilogue Negotiations

The Commission is considered to play "a fundamental role" (SCA Repr. 3, 2019) in the trilogue negotiations and like one EP representative said: "that is why we call it a trilogue, we don't call it a dialogue" (EP Repr. 1, 2019). Even though the Commission is supposed to be a mediator between the co-legislators in the co-decision procedure, it "more and more takes a role also of intervening in the legislation" and in this particular file "the Commission was all the time next to the Council" (EP Repr. 3, 2019). One EP representative said: "the Commission is supposed to be independent and should be impartial but, in this case, it was not like this. The Commission was all the time next to the Council and backing the Council positions [...] and that weakened a little bit the demands in the EP" (EP Repr. 3, 2019). This could be interpreted as affecting the bargaining strategies of both the Council and the EP.

The level of flexibility of the Commission was limited and one of the reasons for that was DG COMP's presence in the trilogues. Only the DG responsible for the file, which in this case was DG AGRI, would attend the trilogues on behalf of the Commission. However, in the UTP file, DG COMP also attended in an attempt to closely monitor the negotiation process since they were against an extension of the scope (De Castro, 2019; EP Repr. 1, 2019; EP Repr. 3,

2019; SCA Repr. 3, 2019; SCA Repr. 4, 2019). DG COMP had “a critical eye on the process” (SCA Repr. 4, 2019) and “had to show that they were against the EP all the time” and “all the time they say no” (De Castro, 2019). However, in the technical meetings, the civil servants and the assistants clarified “when the no [was] a no 100% and when no [was] no 50%” (De Castro, 2019). DG COMP’s intervention in the trilogues strengthened the Council position and weakened the EP position, as “usually the EP is more ambitious than the Council, the Council tend to be more conservative in this regard” (EP Repr. 3, 2019). In the beginning of the negotiation process of the UTP Directive, the Rapporteur and his negotiation team were “very very tough” (De Castro, 2019). However, due to the internal division in the Commission as well as the shadow of the CJEU, the EP increased its level of flexibility and pragmatism towards the end (De Castro, 2019; EP Repr. 3, 2019).

The Council believed that the fifth trilogue would be the last one, as there was a political momentum and because all the ingredients were there (Näringsdepartementet, 2018; Perm Rep, 2018e; SCA Repr. 1, 2019). When the Rapporteur decided to conclude the meeting without having reached an agreement, Commissioner Hogan took the initiative to invite the Council and the EP to a sixth trilogue on 19 December 2018 on the Commission premises. However, this was unacceptable to the Council since it is “supposed to take place in the premises of one of the co-legislators” (SCA Repr. 3, 2019). The final trilogue was therefore held on the Council premises where a political compromise agreement was reached. Although the Commission does not have any formal powers in the legislative process, their informal powers “should not be underestimated” (SCA Repr. 1, 2019). The Commission’s initiative to have a sixth trilogue could have been the reason for having reached a compromise agreement, especially with regard to the advantages of chairing the informal meetings, which in this case was the Presidency. Consequently, one could argue that the intervention of the Commission and the shadow of the CJEU had a soft impact on the Presidency’s bargaining strategies, as it increased the level of information sharing and willingness to find compromises. The Commission’s interventions could also be interpreted as encouraging firm commitments from the EP and the shadow of the CJEU could be interpreted as pressuring the EP to increase its level of flexibility. The Council Legal Services and the EP Secretariat are usually not given the floor in trilogues and therefore it is difficult to analyse their interventions in the meetings (EP Repr. 1, 2019; SCA Repr. 1, 2019; SCA Repr. 3, 2019; SCA Repr. 4, 2019).

5.6. The Role of the Trilogues

The trilogues are considered to be essential to reach an agreement in the co-decision procedure today. This is problematic since they are dynamic in nature, consist of unwritten rules and do not have any references to the treaties (EP, 2017a, p. 19; Roederer-Rynning and Greenwood, 2015, p. 1148). When conducting the interviews with the SCA and the EP representatives, it became clear that the actors involved in the trilogues are important, both in relation to the social component and, particularly, to their experience of having participated in trilogue negotiations in the past. If an actor has not participated in a trilogue before, it is incredibly difficult to understand the dynamics and how the meetings are set up. Even if an incoming Presidency usually attends the last number of trilogues before beginning its term (SCA Repr. 1, 2019), “it takes a lot of time to explain to them how the procedure works” (EP Repr. 3, 2019). One EP representative also mentioned that “it is true that when you have a MS with more experience, everything is much better” (EP Repr. 3, 2019). Consequently, the trilogues are problematic, not only from a democratic point of view but also for the actors negotiating in them. One SCA representative mentioned that “the perspective of getting a second reading [...] does not exist anymore in the head of the people who are negotiating [and] then you have to do as many trilogues as necessary to conclude these in the first reading” (SCA Repr. 3, 2019). Therefore, the actors’ relationships with each other and their experience from previous trilogues are highly important in order to have a successful negotiation process.

Most aspects of the trilogues have already been analysed in the *trilogue negotiations* sections above and one aspect that seemed to have played an important role in the UTP negotiations is the location of the meetings. The majority of the trilogues were held on the EP premises, which means that the Rapporteur chaired the meetings and therefore had control over its pace. As demonstrated above, this was taken advantage of in the fifth trilogue. In the trilogue, the Rapporteur decided to conclude the meeting instead of, for instance, take a break and discuss with his negotiation team. The final trilogue was held on the Council premises and thus chaired by Minister Köstinger. This allowed the Presidency to take breaks instead of concluding the meeting, which might have been one of the reasons for reaching a political compromise agreement in the sixth trilogue. The personal ties between the key players in the final trilogue (Minister Köstinger, Rapporteur De Castro and Commissioner Hogan) could

also have been an important ingredient for reaching an agreement. Nevertheless, one could argue that the trilogues were used both in attempt to reach compromises and as a negotiation tool in situations where hard bargaining strategies prevailed. Consequently, the high number of trilogues in the UTP file could be interpreted as the result of firm commitments and unwillingness to compromise on certain issues.

6. Conclusion

The purpose of this study was to understand how formal and informal institutional factors affect the bargaining strategies of the co-legislators in the intra- and inter-institutional negotiation process in the EU as well as the role of the trilogues. A case study on the negotiation process of the UTP Directive was chosen in an attempt to contribute to a broader understanding of this phenomena. As regards the first research question, the findings showed that the formal and informal institutional factors indeed affected the bargaining strategies of the co-legislators in the UTP Directive. The institutional factors chosen for this study had, however, a mixed impact on the bargaining strategies used in the intra- and inter-institutional negotiations.

The *agenda-shaping rules* had a soft impact on the Presidency and the Rapporteur in the intra-institutional negotiations as it encouraged friendly methods, however, not in the trilogue negotiations. In the trilogues, the Rapporteur was able to use moderately aggressive tactics in order to enhance the EP's position and list of demands. The Rapporteur was able to do this because he was chairing the majority of the trilogues.

The *voting rules* had a soft impact on the actors' bargaining strategies in the intra-institutional negotiation process of the UTP Directive in the Council, which was related to the strong consensus norm. However, the Presidency called for a QMV when searching for a negotiation mandate ahead of the fourth trilogue, which would indicate some tendencies of aggressive methods. In the EP, IMCO attempted to reject the Rapporteur's draft report ahead of the plenary vote. After the draft report was approved, however, the soft bargaining strategies became more dominant. The voting rules in the trilogues are unclear. Nevertheless, the Council was perceived to be more flexible than the EP, despite the fact that the Council constantly had to renew its negotiation mandate in the SCA.

The *timetables and deadlines* had a significant impact on the co-legislators' bargaining strategies. These factors triggered friendly methods in the intra-institutional negotiations, such as increased level of information sharing and flexibility. They also had a soft impact on the

Presidency's bargaining strategies in the trilogues, whereas it had a hard impact on the Rapporteur's bargaining strategies as it triggered the use of aggressive tactics. The Rapporteur used, for instance, the timetables and deadlines as a "threat" in the fifth trilogue in an attempt to have the other side concede to his demands.

The *informal norms* had a soft impact on the co-legislators' bargaining strategies in both the intra- and inter-institutional negotiations. The informal norms pressured the actors to behave in a more friendly and diplomatic way, which in turn could be connected to the shadow of the future.

The last dimension, *interventions by institutional actors*, triggered somewhat aggressive methods in the Council, since it provided the more ambitious MS with good arguments and interpretations to extend the scope of the directive. However, it was only to a limited extent since the MS are dependent on the Commission once the legislation has passed and they have to implement it on a national level. Commissioner Hogan encouraged the COMAGRI members to broaden the list of UTPs and to increase the level of ambition in the UTP file when he presented it to the EP, which could be interpreted as an encouragement of firm commitments in the EP. The shadow of the CJEU had the opposite effect because the MEPs did not want to produce a legislation that would end up in the CJEU in Luxembourg. Consequently, the shadow of the CJEU pressured the EP to be more flexible in the negotiations. The institutional actors had the same impact on the actors in both the intra- and inter-institutional negotiations.

As regards the second research question, the trilogues had an essential role in the negotiation process of the UTP Directive. It is considered to be a key component in the co-decision procedure in order to reach a political agreement between the co-legislators. One could interpret that the actors applying aggressive tactics used the trilogues as a negotiation tool. However, this was only possible where the actor was chairing the meetings, which in turn would mean that the meetings were held on the actor's premises. Trilogues are essential in the EU's legislative process and actors that have not participated in a trilogue before have difficulties understanding how the informal meetings are supposed to proceed. Consequently, there is still a research gap in the studies relating to trilogues, especially since they are dynamic and differ depending on the legislative file. One aspect mentioned by all interviewees that had participated in a trilogue in the past was that the Commission has a key

role and that its powers should not be underestimated. This study did not take into account the Commission's bargaining strategies, especially since it does not have any formal powers in the negotiation process once it has presented its proposal, apart from acting as a mediator between the co-legislators. The findings of the study, however, show that the Commission had a big impact on the co-legislators' bargaining strategies and consequently, it would be interesting to study the Commission's informal role in the negotiation processes in the EU and how it affects the legislative processes.

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Appendix I

Topic Guide SCA/EP

Stage 1: Introduction

- As you already know, my name is Rebecka and I am a master's student in European Affairs at Lund University. I did an internship at the Swedish Perm Rep during the autumn semester of 2018 and I am now writing my master's thesis on the negotiation process of the UTP Directive. The purpose of my thesis is to understand how formal and informal institutional factors, such as formal procedures and informal norms and ideas, affected the bargaining strategies of the co-legislators in the intra- and inter-institutional negotiation process of the UTP Directive and also what role the trilogues had, for instance if it was used as a negotiation tool.
- The interview will be approximately 30-45 minutes, or how much time do you have? And you will be anonymous, unless you would prefer not to be.
- The interview will be audio recorded in order for me to transcribe it afterwards and use it as empirical material for my master's thesis. I will first start with some opening questions then go over to the co-decision procedure and then the UTP file and the actors' strategies.
- You are allowed to withdraw from the interview at any time and not answer questions that you are not comfortable answering.
- Do you have any questions before we start?
- Start audio recording

Stage 2: Opening Questions

- Can you tell me a bit about yourself:

- How long have you been in Brussels?
- How long have you worked in/with the SCA/Parliament?
- Could you tell me a bit about your connections to the UTP file?
 - Have you worked with the file since it was presented in April 2018?
- How would you describe the UTP file?
 - E.g. Was it welcomed by your colleagues?

Stage 3: Conflicting issues in the negotiation process

- What were the conflicting issues of the UTP file in the SCA/Parliament?
 - How did the actors within the SCA/Parliament express their concerns or preferences regarding those issues? E.g. cooperative or concerned about self-interests.
- What were the conflicting issues between the Council and the Parliament?
 - How would you describe the dynamics within and between the Council and the Parliament regarding those issues?

Stage 4: Formal and informal institutional factors

Since the introduction of the co-decision procedure in 1993 (Maastricht), the number of early agreements has increased significantly.

- How would you describe the effects of the increased number of early agreements?
 - E.g. democratic deficit, possible increased power for the relais actors etc.
- How would you describe the Presidency's/Rapporteur's role in the negotiation process?
 - Do you know if the Presidency/Rapporteur initiated any of the trilogues? If so, why?
 - Would you say that the Presidency/Rapporteur acted as an unbiased mediator during the legislative process? If yes/no, why?
 - I am not aware of all informal norms and ideas in the Council/Parliament, could you tell me a little bit more about what informal norms exist within the SCA/COMAGRI and the Council/Parliament?

- How would you describe the Presidency's/Rapporteur's strategy during the negotiation process?
 - How would you say that the strategy affected the other actors in the SCA/COMAGRI/Parliament?
 - How would you say that the strategy affected the inter-institutional dynamics?

- Do you believe that the rotating Presidency scheme affected the negotiation process? If yes/no, why?

- How did the rotating Presidency scheme affect the number of trilogues?

- Do you believe that the upcoming elections in the Parliament affected the negotiation process? If yes/no, why?

- How would you say that the upcoming elections affected the number of trilogue meetings?

Stage 5: Soft or Hard Bargaining Strategies

- How would you describe the SCA representatives/MS's/MEPs level of flexibility and willingness to compromise?
 - Why do you think most of them showed high/low levels of flexibility and willingness to compromise?

- How would you describe the actors' willingness to share information?
 - E.g. how would you describe the Presidency's/Rapporteur's debriefings in the SCA/COMAGRI after the trilogues? Comprehensive information sharing? Manipulated information sharing?

- How was the attitude between the SCA representatives/MS/MEPs during the committee meetings?
 - E.g. positive environment with compliments to each other or negative environment with critical comments to each other?

- How was the attitude between the actors participating in the trilogue meetings?

- E.g. friendly or aggressive.

Stage 6: Trilogues – Final Stage

- How would you describe the Presidency's and the Rapporteur's level of flexibility and willingness to compromise in the trilogue meetings?
- How would you describe the environment between the actors involved?
- How would you describe the information sharing between the actors during the trilogue meetings?
- What were the most challenging issues in the trilogue negotiations?
 - How did the actors solve it?

Stage 7: Conclude

- Thank you very much for taking the time to do this interview, it is very appreciated.
- Is there anything you would like to ask or add before concluding this interview?
- You will be anonymous (unless you would prefer not to be) and this audio record will be transcribed in order for me to use it as empirical material for my thesis.
- I truly appreciate your contribution to the empirical material that I will analyse. Would you mind if I contact you if I have any follow-up questions after I have transcribed the interview? You are welcome to add or ask anything as well.