

## **Opening up by Closing off:**

### **How Transparency Triggers Informalisation in EU Decision-making**

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#### **Abstract**

With transparency for EU trade negotiations becoming a high-profile topic this past decade, its connection with EU inter-institutional politics has become more consequential. In response to the changed role of the European Parliament and the need to better inform the public debate, the European Commission has significantly reformed its transparency policy for trade negotiations. At the same time however, an institutional process of informalisation at the EU level has unfolded. This study uses process-tracing methodology to determine how the increased transparency caused this informalisation in the case of the Transatlantic Trade and Investment Partnership negotiations. It thereby seeks to uncover a widely-occurring yet surprisingly underexplored process of institutional change that follows from increased transparency. Contrary to earlier accounts of correlations between transparency and informalisation, the author finds that both concepts are not necessarily contradictory. Instead, informality can in fact contribute to transparency goals and help legitimise decision-making.

#### **Keywords**

European Union; Informality; Trade; Transparency; TTIP.

## Introduction

In 2009, the European Parliament (Parliament) finally obtained a right-to-information for trade negotiations. The European Commission (Commission) as the European Union's (EU) main negotiator became formally obliged to immediately and fully inform the Parliament at all stages (Art. 218§10 TFEU). This institutional transparency has become entangled with a staggering demand for transparency towards the general public. In 2012, the *In 't Veld* court cases and the Parliament's veto against the Anti-Counterfeiting Trade Agreement illustrated how a lack of transparency negatively impacted EU institutional politics, so much so that it even derailed an internationally concluded agreement (Dür & Mateo, 2014; Hillebrandt, 2017).

As transparency policy for EU trade negotiations is becoming a high-profile topic, its connection to EU internal politics is becoming ever more consequential (Abazi & Adriaensen, 2017). The Transatlantic Trade and Investment Partnership (TTIP) negotiations between the EU and United States (US) have become a pilot project in this regard.<sup>1</sup> In response to the changed role of the Parliament and the need to better inform public debate, the Commission has significantly improved transparency for these negotiations (Cremona, 2015). At the same time however, a paradoxical process of institutional informalisation has emerged (Coremans & Meissner, 2018).<sup>2</sup>

How is it possible that two seemingly contradictory processes occur at the same time? Conventional explanations argue that transparency and informality are linked in a vicious circle of decision-making efficiency and legitimacy. Transparency is generally perceived as a way to improve legitimacy of decision-making, at the cost of losing confidentiality and/or quick decision-making (Cross, 2013). Informality on the other hand, helps to circumvent transparency requirements and preserve negotiation efficiency (Heremans, 2011; Naurin, 2006). This inevitably counteracts the legitimacy gains intended by the transparency policy and as a result, yet another wave of reforms is needed.

The contribution of this article lies in challenging this black-and-white conception. It demonstrates that informalisation can also improve or complement transparency and by extension, help to legitimise decision-making. In the broader context, the high level of transparency for the TTIP negotiations is unique. But the institutional process of informalisation that has simultaneously developed, exemplifies a wider-occurring – yet surprisingly under-explored – process of institutional change. Understanding the effects of transparency policies on institutional information flows is an essential part of uncovering the democratic legitimacy of EU-level decision-making.

Using process-tracing methods, I formulate a causal mechanism based on transaction costs of institutional communication. The hypothesis holds that an increased level of transparency generates new transaction costs at the institutional level. This prompts the appearance of informal coping mechanisms, which then become institutionalised (informalisation), as additional benefits of informality come apparent through implementation.

The first section identifies the prevalent assumptions in the current literature regarding the relation between increased transparency and informalisation, and notes that not much progress has been made to break through the vicious circle. The second section sets out the causal mechanism and the empirical methodology used. The third section contains the empirical evidence found in the case. The implications and opportunities for further research are discussed in the conclusion.

## **1. A Vicious Circle of Transparency and Informalisation**

Informalisation is understood as the institutionalisation of informal practices. Informal practices are *processes or procedures where (a) there is no collective codification of the exchanges between the participants and (b) exchanges are not publicly enforceable or sanctioned* (Coremans & Kerremans, 2017). A practice is considered institutionalised if it is *guided by a framework of (uncodified) rules and norms structuring interactions and coordinating expectations between actors* (Ole Elgström & Smith, 2011; Farrell & Héritier, 2003).

The co-occurrence of new transparency policies and informalisation has been observed within the Council (Cross, 2013, 2014; Elsig, 2010; Hillebrandt, Curtin, & Meijer, 2014; Lempp & Altenschmidt, 2008; Lewis, 2010; Novak, 2014; Stasavage, 2006), in legislative decision-making with the increasing popularity of dialogues (Eibauer, 2012; Häge & Kaeding, 2007; Häge & Naurin, 2013; Heremans, 2011; Hillebrandt et al., 2014; Naurin & Rasmussen, 2011; Reh, Héritier, Bressanelli, & Koop, 2011), and in other international organisations (Daase, 2009; Mayer, 2011; Reh et al., 2011).

Explanations of such correlations revolve around an efficiency argument: greater transparency hampers the flexibility and the confidentiality required for efficient decision-making. According to rational choice institutionalists, informality reduces transaction costs of joint decision-making by re-introducing greater flexibility in the negotiation process (Häge & Kaeding, 2007; Kleine, 2013; Pasquier & Villeneuve, 2007; Reh et al., 2011). Sociological institutionalists on the other hand, focus on the advantages from the inherent confidentiality of informal decision-making (Cross, 2013; Lewis, 2010; Puetter, 2003).

Both sides argue that, in order to safeguard the effectiveness and efficiency of the negotiation process (i.e. reaching agreement in an acceptable timeframe), decision-makers turn to informal practices after transparency is increased. Going informal allows decision-makers to obfuscate

who said what, a tendency that has been identified as ‘evasion practices’ (Heremans, 2011, p. 87) or ‘decision-making leakage’ (Naurin, 2006, p. 192). The central idea of this ‘realist conventional wisdom’ (Novak, 2014, p. 50) is that the fear of disclosure motivates decision-makers to choose oral over written procedures. This decreases the paper trail, making the transparency policy ineffective (Heremans, 2011; Leino, 2014; Pasquier & Villeneuve, 2007). Hence, informality is equated with secretive, closed-door decision-making practices: it is used to intentionally circumvent or counteract transparency in favour of decision-making efficiency and to the detriment of legitimacy of decision-making (Christiansen & Neuhold, 2013; Conrad, 2006; Häge & Naurin, 2013; Lewis, 2010).

That balance between legitimacy achieved through transparency and efficiency is under scrutiny here. Despite an exhaustive literature *theorizing* the possible links between transparency and efficiency, ‘[w]hether transparency really leads to inefficiency has so far hardly been subject to *empirical* research, and a systematic assessment of this projected trade-off would be timely and necessary’ (Brandsma, 2018, p. 17, emphasis added). In addition, ‘the mechanisms responsible for lending transparency its effects remain poorly understood’ (Cucciniello, Porumbescu, & Grimmelikhuijsen, 2017, p. 42; see also Christiansen & Neuhold, 2013; Hillebrandt, 2017). This article contributes to a more empirically informed debate about the role of transparency in the EU and adds to the much needed research on daily interaction between the institutions (Cross, 2013; Rosén, 2016).

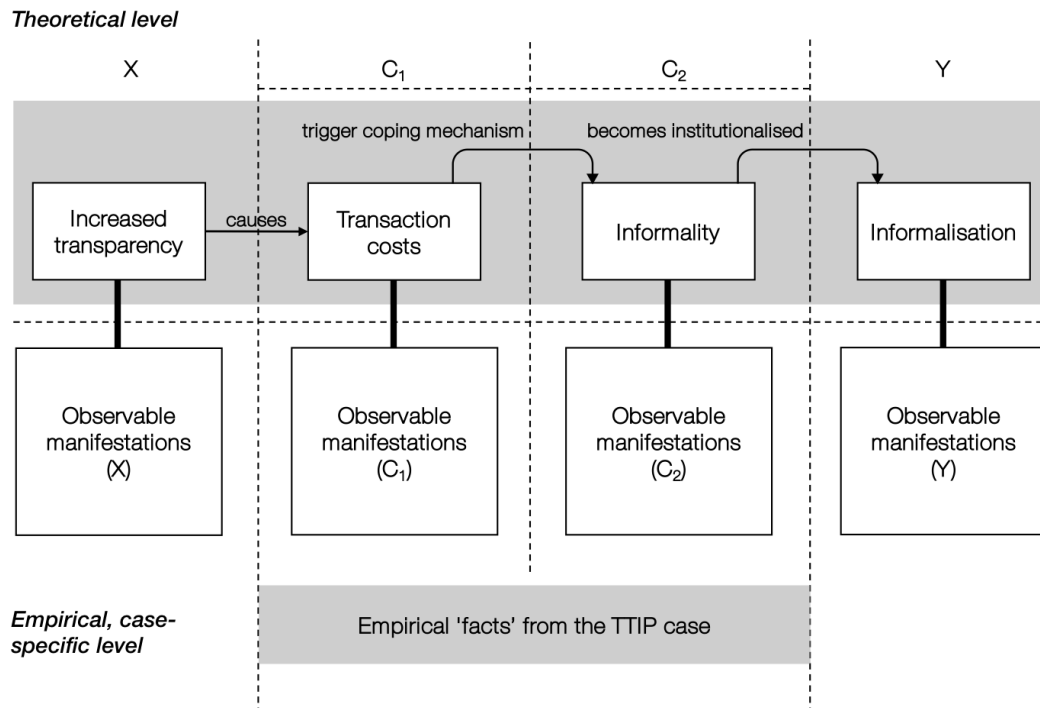
In the next section, I formulate a mechanism based on the premise that informalisation can *improve or complement* – rather than compete with – transparency in inter-institutional decision-making (Helmke & Levitsky, 2004). It challenges the prevalent assumption that informality is used by decision-makers to circumvent transparency rules. Instead, it proposes that informalisation can be used to support transparency goals.

## **2. A Process-tracing Mechanism of Transaction Costs**

This section contains the causal mechanism explaining how increased transparency for the TTIP negotiations has resulted in an informalisation of Parliament-Commission interaction (Figure 1). This approach allows for a fine-tuned analysis of the complex causal processes at work in informal environments (Mayer, 2011).<sup>3</sup> I will also set out exactly which observable manifestations I expect to find if the mechanism is present in the case (Tables 1, 2, 3 and 4). If the evidence for each part of the mechanism is found, it can be established that the causal mechanism was present and functioned as expected. The high reliance on account evidence is met by within-method triangulation of qualitative and quantitative data acquired through document analysis and extensive fieldwork.<sup>4</sup>

The causal mechanism is expected to function in any institutional context where both increased transparency and informalisation of decision-making are present, and where institutional actors are faced with resource constraints. In any given case, informalisation should be identified in the same inter-institutional relationship as the one where increased transparency has taken place as well. The TTIP case is chosen as a typical case in order to test the mechanism in the regularly observed association between transparency and informalisation (Beach & Pedersen, 2013). The conclusion reviews the limitations of this approach and suggests other empirical cases.

Figure 1 Causal mechanism of transaction costs



Adapted from Beach & Pedersen, 2013, p. 15

### Cause: Increased Transparency

Increased transparency is defined as an *opening up of the internal organisational processes and decisions to third parties, whether these third parties are involved in the organization or not* (adapted from Florini, 1998, as cited in Pasquier & Villeneuve, 2007, p. 148).<sup>5</sup> A qualitative threshold is determined for the three dimensions of transparency (Table 1). Based on this qualitative threshold and prior knowledge of the case, I expect to find the respective observable manifestations reflected in Table 1.

Table 1 Qualitative threshold for dimensions of transparency

Dimension	Definition	Qualitative threshold	Observable manifestations
Width	Number of actors who have access to information	An extension of access to new institutional and/or public actors	References in institutional correspondence to procedures for widening access to TTIP-related information

Depth	Quality of information provided (existence/content)	Release of new information about the existence and/or content of decision-making	<ul style="list-style-type: none"> <li>- References in institutional correspondence about including more information about existence and substance of TTIP decision-making</li> <li>- Increased sensitivity, clarity and explanatory quality of TTIP documents</li> </ul>
Manner of provision	Reactive or proactive	Introduction of reactive provision or additional proactive provision of information	<ul style="list-style-type: none"> <li>- More public documents available online</li> <li>- Earlier release of information</li> <li>- Automatization of document-transfer</li> </ul>

### ***C1: Transaction Costs from Transparency***

My argument starts from the assumption that the increased transparency for EU trade negotiations either generates new or aggravates existing transaction costs for the affected actors. Transaction costs are *all costs coming from (a) the creation or change of a practice, and (b) the use of that newly created or changed practice* (adapted from Furubotn and Richter 1992, as cited in Marshall, 2013). This expectation stems from transaction costs of ‘imperfect information’ or ‘the need for policy-relevant information’ (Pollack, 2002, p. 207).<sup>6</sup> While transparency at first glance seems to reduce this transaction cost (by correcting the informational balance between the actors involved), it also creates new capacity problems.

Increased transparency implies that the *provider – in casu the Commission* – not only has to share the numerous existing documents, but also produce new ones. It has to create or improve a supporting infrastructure of explanatory texts, distribution platforms (e.g. online repositories, webpages, search functions), and document (de)classification systems (Table 2, OM1 and OM5). Additional oral communication via press or internal briefings and meetings also requires human resources (Table 2, OM2). While these administrative transaction costs are often overlooked, they are of considerable importance to institutions providing transparency (Pasquier & Villeneuve, 2007). The administrative burden from an increasing number and complexity of access to documents requests for EU trade negotiations has put considerable strain on Commission staff in the past (Bjurulf & Elgström, 2004; Commission, 2000; 2004;



2016c; 2016d; Parliament, 2013; 2015c; European Court of Justice, 2014). Moreover, these transaction costs result from increasing both public and institutional transparency.

Increasing transparency also creates costs for the *receiver* – *in this case the Parliament* (Pozen, 2010). More information available means more information to be processed if the receiver wants to utilise it (Brandsma, 2012). The receiver will have to improve information-processing and (de)classification systems, or set up new ones (Dobbels & Neuhold, 2014) (Table 2, OM 5). This transaction cost of developing sufficient administrative capacity is magnified by (a) the increase in legislative workload in EU trade policy since the mid-2000s, and (b) growing regulatory complexity of new trade negotiations (Reh et al., 2011, pp. 1123–1124; Young, 2017). Transaction costs rise with increasing complexity of legislative files (Reh et al., 2011). Classified documents are generally more complex, sensitive, and therefore more difficult to understand. I therefore expect the high influx of TTIP classified documents to pose serious challenges for the Parliament in terms of information-processing (Table 2, OM3 and OM4).

*Table 2 Observable manifestations (OM) for C1*

1	References to transaction costs from increased transparency for Commission in institutional documents and interviews
2	Increase in DG Trade’s staff numbers for dedicated transparency policy staff
3	References in interviews indicating cognitive cost for Parliament
4	Greater technicality in inter-institutional discussions
5	References in institutional documents to TTIP-specific reconfiguration of classification systems

### ***C2: Informality as a Coping Mechanism***

Institutional actors are expected to look for coping mechanisms to reduce the newly-emerged transaction costs. Informality ‘to share function-specific information and coordinate policies’ is a wider phenomenon in institutional environments and a characteristic quality of international trade negotiations (Mayer, 2011, p. 324; see also Coremans & Kerremans, 2017). Informality reduces transaction costs of information-sharing, negotiation and monitoring in

joint decision-making. The flexibility of *ad hoc* informality helps actors to cope with deficiencies of formal options, while allowing them to still comply with new regulations: ‘transaction costs are a strong incentive for actors to “go informal”.’ (Reh et al., 2011, p. 1133, emphasis original; see also Christiansen et al., 2003; Hall & Taylor, 1996; Kleine, 2014).

Informal exchanges between institutions can reduce transaction costs from increased transparency by limiting the number of participants, reducing workload of information gathering for complex files, and lowering organisational resource use (Häge & Kaeding, 2007; Reh et al., 2011). For the provider, informal exchange does not require the production, distribution and processing of lengthy documents, formal clarifications and meetings with interpretation and formal invitations. On the receiving end, informal communication can help to process the new information quicker and more exhaustively compared to solely relying on own resources (Coremans & Meissner, 2018).

If informality indeed appeared in the TTIP case, there should be evidence of new and more forms of informal exchange between the Parliament and the Commission (Table 3, OM 6 and 7). But to prove that their appearance was motivated by transaction costs from transparency these changes should have taken place *after* the transparency increase (Table 3, OM 8). The main problem is that establishing this chronological sequence is not likely to be straight-forward because of the incremental nature of informality. Therefore, the hypothesised connection between increased transparency and informality has got to be evident from interviews probing into the reasons for why informal exchanges were introduced in the TTIP case (Table 3, OM 9). If the hypothesis of transaction costs is absent, I expect to come across arguments of evasion tendencies or even indifference to the need for transparency in interviews with officials and fieldwork. Several questions were asked in interviews and during fieldwork to elicit references to the need for confidentiality and secluded decision-making, if these motivations were present in the case.<sup>7</sup>

Table 3 Observable manifestations (OM) for C2

6	New or updated DG Trade-INTA informal working practices
7	Increased frequency of informal contacts
8	Changes in informality happening after increase in transparency
9	Interview data confirming hypothesized connection

***Outcome: Informalisation of Institutional Relations***

Functionalist arguments fall short when trying to explain instances where *ad hoc* informality becomes institutionalised. Such informalisation exists of a systematic and organised system of informal interaction, compared to *ad hoc* informality (Table 4, OM10). In addition, functionalism cannot explain how informalisation may help improve public transparency. I therefore turn to sociological interpretations of institutional change, recognising that different theoretical arguments may be valid depending on where one finds himself in the institutional process (Reh et al., 2011; Stacey & Rittberger, 2003).

First, long-term informalisation brings with it a much more pervasive confidentiality. This promotes a higher degree of mutual trust and thus the possibility of exchanging sensitive information. Second, informalisation fosters dynamics of problem-solving and policy learning, which in turn contributes to cost-savings in the decision-making process (Lewis, 2010; Puetter, 2003). Repeated informal contact mitigates hierarchy and creates an atmosphere of common interest and values, mutual reciprocity and solidarity (Ole Elgström & Jönsson, 2011).

The longer communication takes place, and the more intense it becomes, the more important socialisation and learning processes are (Niemann, 2013). This means that informalisation also helps actors to better manage the cognitive burden of the increased information-sharing (Héritier, 2012; Jönsson & Strömvik, 2005; Kleine, 2013). These characteristics explain why informality becomes engrained into EU-level decision-making. But most importantly, they indicate that informalisation can support the goal that inter-institutional transparency was

aimed at: improving the quantity and quality of information exchange. Informalisation, therefore, does not just support inter-institutional transparency but it can actually deepen it. And by including parliamentary actors with a representative function, it can also translate to supporting public transparency and ultimately democratic legitimacy. Previous research has found that the Commission was driven by legitimacy-seeking motives when supporting the Parliament’s inclusion in EU trade policy (Rosén, 2016).

Informalisation of information exchange fosters feelings of co-ownership on the side of the Parliament, which is beneficial for the Commission. Similar to informalisation in the Commission-Council relationship (Table 4, OM11), this may prevent opposition and possibly involuntary defection later in the ratification process (Coremans & Kerremans, 2017). For the Parliament, informalisation of communication provides the advantage of capacity building, as well as earlier input into the decision-making compared to formal transparency alone (Haverland & Liefferink, 2012). If these socialisation processes were present in the TTIP case, it does not suffice to find evidence of informalisation (Table 4, OM10 and 11). I expect to find references in interview and observation data confirming the existence of a new *modus operandi* and more permanent change in norms of information exchange for trade negotiations (Table 4, OM12).

*Table 4 Observable manifestations (OM) for Outcome*

<b>10</b>	More systematised and structured informal practices, with set meeting frequency and schedules
<b>11</b>	Similarities with other, already institutionalised informal relations in terms of dynamics, interaction patterns and structure of informal contacts
<b>12</b>	Interview and observation data confirming socialisation dynamics

The following section will establish whether the expected empirical manifestations for each part of the mechanism were present in the case of TTIP.

### 3. Case Study

#### *Cause: Increased Transparency for TTIP Negotiations*

Throughout the TTIP negotiations, the Commission has reformed both its institutional transparency policy towards the Parliament significantly (Coremans, 2017). First, access to TTIP documents was widened from a core group of members of the International Trade Committee (INTA), to all Members of the European Parliament (MEPs) (Parliament, 2015a). Secondly, the particularly high increase in availability of *EU Restreint* documents indicates a deepening of transparency, as these documents contain sensitive information regarding the negotiations (Parliament, 2015a).<sup>8</sup> Finally, the TTIP *Sharepoint* system streamlined the distribution of *EU Limité* documents to the Parliament and greatly improved proactive provision of information (Coremans, 2017). As a result, transparency for TTIP has increased to an unprecedented level, marking a breaking point not only for the quantity but also the quality of information being released.

#### *C<sub>1</sub>: Transaction Costs of TTIP Transparency*

For the Commission, increased transparency for TTIP brought along three main types of transaction costs for the Commission. Firstly, the Commission has referred on multiple occasions to the ‘inappropriate and disproportionate’ costs of examining a high volume of TTIP documents for release, as well as preparing justifications for non-release (Commission, 2016a, p. 3; see also Commission, 2015c; 2015d). Some requests cover documents that are already publicly available online, which implies duplication of administrative costs (Commission, 2016a). Moreover, the assessment of the possible release of documents ‘related to topics or negotiation strategies that may end up being discarded in the actual negotiation process’ is a futile investment of administrative resources (Commission, 2015d, p. 3). The disclosure of

more records of meetings also brings with it an additional administrative cost (Parliament, 2016).

Secondly, proactively publishing an unprecedented number of documents, creating additional explanatory texts and improving webpages has put a lot of strain on the communication unit within the Commission's Directorate General for Trade (DG Trade): 'at administrative level, a lot of human resources are going into preparing, publishing and explaining these texts' (Interview Commission official, July 2016). Administrative resources devoted to translations of over 500 new webpages and documents on TTIP are but one example of this (Parliament, 2015b).

TTIP has also seen an exceptionally high number of public debates (Commission, 2015c; 2015e; see also Commission 2016b). DG Trade administrators regularly travelled to different capitals for speaking obligations:

Public affairs is more than just transparency as publishing documents. The cost in engaging with the public debate is quite high as we are very active on this. [...] This takes a lot of time and takes a big toll on resources (Interview Commission official, July 2016; see also Interview Commission official, June 2016).

As a result, staff numbers in DG Trade's communication unit have increased (Interview Commission official, July 2016). The Parliament even called for a redistribution of personnel resources towards DG Trade to support these efforts of increased transparency (Parliament, 2015e).

Thirdly, the addition of TTIP-specific regulations to the Commission's already extensive record-keeping and classification system was considered a high administrative cost (Commission, 2014; 2016e; Parliament, 2015f).

For the Parliament, transaction costs from increased transparency are rarely mentioned in public statements or documents. However, careful study of administrative procedures in the INTA Committee indicates that increased transparency for TTIP has also put pressure on their resources.

At the administrative level of INTA, the sudden influx of documents has necessitated the (re)organisation of document repositories, in particular following the creation of the *TTIP Sharepoint* and reorganisation of the Rules of Procedures for handling (confidential) documents (Observation, October 2016). In addition, new regulations for access to confidential documents by EP officials and parliamentary assistants had to be created, as access for those actors was not covered by the 2010 Framework Agreement (Observation, November 2016).

On the political side, the high degree of technicality in combination with a high level of transparency implied that the documents available for consultation were both more complicated and more numerous (Observation, November 2016). Therefore, MEPs struggled with the increased influx of information too: ‘MEPs want to have enough info but not more than they can handle’ (Interview Parliament official, April 2016).

To summarize, all predicted evidence with regards to transaction costs following increased transparency was found in the TTIP case. The influx of TTIP classified documents and high technicality of INTA-DG Trade communication was a high cognitive cost for the Parliament (Table 2, OM3 and OM4). Institutional documents and interviews with officials from different institutions contained multiple, independent references of administrative costs for the Commission related to provision of an increasing number of TTIP documents (Table 2, OM1). DG Trade also expanded its communication staff (Table 2, OM2). As INTA had already increased its staff numbers after the Lisbon Treaty, little room for expansion remained. Hence, INTA has had to rely more extensively on DG Trade’s TTIP expertise (Rosén & Tørnblad, 2018). To support institutional transparency, DG Trade and INTA both introduced new TTIP-specific rules for handling and exchanging documents and reconfigured their classification

systems by introducing TTIP-specific regulations (Table 2, OM5). This evidence confirms the presence of this part of the causal mechanism (see section 2 of the online appendix).

### ***C<sub>2</sub>: Informality as a Coping Mechanism for TTIP Communication***

Informal communication about TTIP has increased both in meetings between DG Trade and INTA administrators, and in interactions between DG Trade administrators, MEPs (assistants) and political group representatives (Observation, October 2016; Parliament, 2015d). In place since 2011, the INTA monitoring groups provide a platform for the Commission to inform MEPs about the state of play, transfer political messages, and explain technical details of trade negotiations (Interview Parliament officials, April 2016; Interview Parliament official, May 2016; see also author reference for more details). However, the number of unique changes that have been introduced for the US monitoring group since TTIP is exceptional. This has strengthened the informal contacts between INTA and DG Trade significantly.

Firstly, whereas participation in other monitoring groups is limited to INTA members, the US monitoring group is open to other opinion-giving Committees when discussing TTIP matters (Interview Parliament official, May 2016; Observation, February 2017). The informal character of the monitoring group is guarded meticulously to safeguard its day-to-day purpose and the disclosure of sensitive information (Interview Parliament official, April 2016).

Secondly, in addition to the customary meeting after the end of the negotiation rounds with the third country, the US monitoring group also convenes before each TTIP negotiation round. During these pre-round briefings, the MEPs can indicate their preferences to the chief negotiator in DG Trade *before* he enters into discussion with the US negotiators. This gives participants more opportunities to send clear messages and results in more structured and detailed exchanges (Interview Parliament official, May 2016). It also means that the US monitoring group in general meets twice as much as other monitoring groups, with the



frequency rising steadily since the start of the TTIP negotiations (Interview Parliament official, May 2016).

Thirdly, while activities are normally paused in the transition period between two legislatures, special arrangements were made for the US monitoring group to ensure continuity of information exchange during the 2014 elections (Parliament, 2014a). In addition to the unique procedures of the US monitoring group, the president of the Parliament has also created an exceptional informal high-level group, which meets with the Commissioner once every two to three months (Interview Commission official, January 2016).

Interview and observation data indicated that INTA struggled with the influx of information after the level of transparency was increased (Observation, November 2016; Interview Commission official, October 2015; Interview Commission official, January 2016). The monthly INTA Committee meetings lacked the flexibility needed for obtaining immediate and complete information from the Commission (Interview Commission official, January 2016). Hence, DG Trade introduced a higher frequency of informal meetings with INTA to increase efficiency of the documentary transparency: ‘informal meetings are a way to inform MEPs so that the quality of the discussion in the INTA committee is stronger than when they would try to work on the basis of papers alone’ (Interview Commission official, October 2015; see also Interview Commission official, January 2016; February 2016). The combination of formal transparency through written documentation, informal oral communication and clarifications of technical and political aspects of TTIP has narrowed the knowledge gap between INTA and DG Trade (Interview Parliament official, May 2016).

In sum, the empirical research revealed new forms and increased frequency of informal communication between DG Trade and INTA (Table 3, OM6 and OM7). As expected, due to the incremental nature of the administrative process and the trickle-wise introduction of transparency, it was not clear whether informality was introduced after the increased transparency (Table 3, OM 8). However, interview and observational data explicitly confirmed

that informal interactions increased because of practical problems related to transaction costs from increased transparency (Table 3, OM 9).

The transaction costs identified in C<sub>1</sub> (high administrative burden for the Commission in sharing documents and high cognitive cost for the Parliament when receiving documents) were mitigated by using new or enhanced informal communication channels. Interviews with officials from both institutions revealed that informality was intended to help the Commission to comply with its obligation of immediately and fully informing the Parliament. The higher frequency of meetings between DG Trade and INTA through informal channels increased the efficiency of transparency measures: the informal arrangements improved the quality of discussion by enhancing MEP's expertise and narrowing the knowledge gap between INTA and DG Trade. The Commission specifically used informal meetings with INTA to better inform the Parliament and lessen the amount of information to be communicated with more labour-intensive written documents.

The informal practices enhance the consumption of documentary transparency by the Parliament, thereby providing an answer for both the Commission's administrative burden and the Parliament's cognitive cost. The Parliament's enhanced understanding of the negotiations also reduces the risk of involuntary defection at the ratification stage – which is beneficial for the Commission for obvious reasons and improves the Parliament's own oversight capacity. Despite specific enquiries into evasion tendencies or indifference during the fieldwork, no evidence of either alternative explanation for informality was found. Therefore, the evidence for the reasoning behind the introduction of informality in the TTIP case significantly updates our confidence in the validity of the hypothesis.

***Outcome: Informalisation of DG Trade-INTA Communication***

As stated in the previous part, the frequency of US monitoring groups has increased significantly between 2014 and 2016 (Interview Commission official, October 2015). In addition, a block-booking system was put in place for INTA monitoring groups at the end of 2015, which indicates that they have now become common practice (Parliament, 2015g; 2015h). Both developments have reduced the need for less structured, lower-level bilateral meetings between DG Trade and INTA: ‘we still organise technical briefings with the Parliament, but these take place on a more *ad hoc* basis because there is this more structured approach in INTA monitoring groups’ (Interview Commission official, October 2015).

Three unique characteristics of the TTIP monitoring group have created an atmosphere of equality and inclusion of MEPs in the decision-making process. Firstly, it provides a wider reach for DG Trade’s communication with MEPs. Having direct and regular contact with a bigger group of MEPs – not only INTA members – means less risk of white noise in the communication, compared to having only one interlocutor within INTA and by extension with the whole Parliament (Interview Commission official, January 2016). Secondly, the extra monitoring group meeting offers a chance for MEPs to have pre-round input and hence more directly influence external negotiations (Interview Parliament official, May 2016). Thirdly, the opportunity for all MEPs to directly ask questions to the chief negotiator contributes to an atmosphere of equality (Observation, October 2016; Interview Commission official, January 2016).

The US monitoring group, together with the other provisions for structured, informal information exchange at different levels between DG Trade and INTA, has become the new norm for inter-institutional interaction about the TTIP (Observation, October 2016). It has also introduced a continuous, day-to-day interaction, especially at the administrator-level (Observation, January 2017). Both sides now know what to expect from each other and have created a well-functioning working relationship based on mutual trust, in the face of future co-dependence in the ratification process (Interview Parliament official, May 2016).

These dynamics in the TTIP monitoring group show several similarities with the earlier institutionalised format of Informal Technical Meetings between Council and Commission (Coremans & Kerremans, 2017). The monitoring group provides a forum for creating a common understanding about current issues, avoiding misunderstandings and smoothening further discussions. DG Trade can explain the reasoning behind its decisions, explain why it can or cannot act in line with MEPs interests, and communicate pressures it is facing in the external negotiation rounds. In this way, the regular and repeated back- and forth communication between MEPs and DG Trade fosters shared expectations about the external negotiations (Interview Commission official, October 2015; Interview Commission official, January 2016; Observation, February 2017).

The empirical study has revealed a now systematised system of informal practices, with set meeting frequency and schedules. This is quite similar to the already informalized Commission-Council relations for trade policy in terms of dynamics, interaction patterns and structure (Table 4, OM10 and OM11). In addition, interview and observation data confirmed that socialisation dynamics have created a new *modus operandi* regarding inter-institutional coordination and information exchange for the TTIP negotiations (Table 4, OM12). As this evidence had to be found in the case in order for the outcome to be present, and because there are no plausible alternative explanations for finding it, it provides a double decisive test for the socialisation hypothesis and strengthens our confidence in the presence of the outcome (see section 2 of the online appendix).

## **Conclusion**

The observable manifestations from the case study were assessed by determining the certainty and uniqueness of the expected evidence of each part of the mechanism. The combined evidence for each part of the mechanism allowed the hypothesis to pass either a smoking gun or double decisive test (see section 2 of the online appendix for a detailed analysis of the evidence). As a result, it can be concluded that the causal mechanism was present and functioned as expected in the case of TTIP: increased transparency caused high transaction costs in inter-institutional communication between Parliament and Commission, which prompted the development of informal mechanisms that over time developed into an institutionalised system of informal information exchange. This observation corresponds with earlier (probabilistic) findings about the importance of transaction costs of internal coordination and information gathering, as well as the role of socialisation for fostering informalisation (Reh et al., 2011).

The combination of the informalisation of DG Trade-INTA communication on TTIP and the Lisbon provisions regarding the Parliament's role in EU trade policy, has significantly strengthened the Parliament's oversight function. But one could argue that an informalisation of inter-institutional relations reduces the possibility of increasing transparency towards the general public. With more being discussed behind closed doors without codification, there is less opportunity for written information to be distributed to the public (Abazi, 2016).

And yet, a complementary relationship between institutional transparency and institutional informalisation can also positively impact public transparency. This is the case especially if informalisation encompasses an institution considered to fulfil a democratically legitimizing role.<sup>9</sup> This article has demonstrated that informalisation allowed the Commission to provide the Parliament with more and higher-quality information regarding the TTIP negotiations – especially because it extended access to information to all MEPs. The improvement of quality of information that is achieved through inter-institutional informalisation thus contributes to

increasing accountability and improving representative democracy in the EU (Cross, 2014).<sup>10</sup> In addition, complementary coexistence of transparency and informalisation may prevent negative effects such as grandstanding and posturing (Cross, 2013). At the very least, the combination of the relatively large increase of public transparency (even if it does not reach the “ideal”), high institutional transparency, and informalisation of Parliament-Commission communication for TTIP is an improvement to a system where arguments of secrecy and confidentiality between Council and Commission reigned supreme only a few years before.

The increased transparency provided in the case of TTIP is relatively large, compared to other trade negotiations. This single study can only update our confidence in the presence of the mechanism in this particular case. However, because of the set-theoretic logic of process-tracing (emphasising differences in kind and not in degree, see section 2 of the online appendix), one can determine the membership of other cases within the set by using the qualitative threshold for increased transparency.

For instance, the Commission has already indicated that it will extend TTIP transparency provisions to other trade negotiations. It is therefore worthwhile testing this causal mechanism for the Parliament-Commission relationship in later cases of EU trade negotiations (Commission, 2015b). In addition, the Parliament-Council relationship is still greatly lacking in transparency, and much room for improvement remains in terms of their inter-institutional relationship. Testing the causal mechanism in the event that transparency from the Council to the Parliament would increase, will help qualify the boundaries of the mechanism. Hillebrandt (2017) has already found that transparency expanded closed-door information exchange between Council and Parliament on foreign policy and international agreements. Finally, the mechanism can also be tested in past changes in inter-institutional relations between Council and Commission for external trade policy, as also here informalisation based on reciprocity and mutual interest has taken place (Coremans & Kerremans, 2017).

Venturing outside the trade policy field, the complementary relationship between transparency and informalisation can have empirical manifestations in broader institutional contexts as well. The ubiquitous presence of informality in institutional decision-making warrants empirical research into causal processes leading decision-makers to choose informality. For instance, testing a detailed causal mechanism based on transaction costs can help to explain the widespread informalisation of EU legislative decision-making (Reh et al., 2011). Finally, in light of international trends of coinciding transparency and informalisation, testing for causal processes underpinned by transaction costs may help reveal how and why decision-making shifts to informal arenas outside of the EU context.

Rather than providing a comprehensive and all-encompassing explanation, the transaction cost mechanism should be considered as one possible causal account of why dynamics of transparency and informality tend to coincide in institutional decision-making contexts (equifinality). Other mechanisms may be present in different cases, yet that does not detract from the explanatory value of this particular causal mechanism in the case of TTIP. On the contrary, the presence of the causal mechanism in this empirical case brings us one step closer to understanding the complex dynamics underlying informal institutional formation and change.

Supplemental data for this article can be accessed at [\[link to source\]](#)

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<sup>1</sup> Negotiations started mid-2013 and were officially on hold since November 2016. A new mandate was issued at the end of 2018 and negotiations have resumed since then.

<sup>2</sup> As discussed in more detail below, informalisation is the systematic and structured use of informal practices in inter-institutional decision-making.



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<sup>3</sup> The details of the research design can be found in section 2 of the online appendix.

<sup>4</sup> Detailed information about the data collection and analysis – including the document reference list – can be found in section 1 of the online appendix.

<sup>5</sup> This definition covers both institutional and public transparency, the former referring to information exchange between institutional actors, whereas the latter covers information exchange between institutions and the broader public (Author reference). This article will mainly focus on institutional transparency but the connection with public transparency and the normative relevance of this will be discussed in the conclusion.

<sup>6</sup> Increased transparency may also create or aggravate transaction costs from ‘credible commitment’ strategies and ‘conflicting preferences’ (Pollack, 2002). For the sake of theoretical clarity, those transaction costs are not discussed here.

<sup>7</sup> Because of the sensitive nature of evasion tendencies or indifference to transparency rules, it is extremely unlikely that I will find any other types of evidence besides interview references. By using interview questions that explicitly test for evasion tendencies or indifference, it should be possible to get an insight into whether or not such tendencies are present, especially because the nature of the interviewees’ responsibilities with regards to TTIP does not suggest any motive for twisting the facts (see section 1 of the online appendix).

<sup>8</sup> The *EU Restreint* category is generally the highest category of documents in EU trade policy, as there are hardly any classified documents produced in this policy field (Interview April 2016, Parliament official).

<sup>9</sup> For a useful discussion on legitimacy and accountability in the case of TTIP, see Gheyle & De Ville (2017).

<sup>10</sup> Ideally however, a representative democracy system should allow the Parliament to act as an interlocutor with the broader public, thereby preventing duplication of transaction costs for communication as well as supporting efforts for public transparency.

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