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Chains of Delegation in EU Foreign Policy: What causes Parliaments to control EU International Treaty-Making?

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Anne Pintz¹

PhD Fellow

Aarhus University, Department of Political Science

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This theoretical paper presents the applied theory chapter of my PhD monograph. In the thesis, it will be preceded by an empirical introduction, a literature review, a chapter on the law and practices of EU international treaty-making, as well as a general theory chapter on principal-agent theory. Please note as well that the paper has been shortened and slightly adapted from the original chapter for the cause of this conference. If you have any questions, please do not hesitate to ask. Any feedback is very much appreciated!

¹ Correspondence Address: anne.pintz@ps.au.dk

I. Introduction

According to the classical division of labour in international treaty-making, executives negotiate international agreements with external parties, whereas parliaments ratify them. However, in today's world, the work of parliaments is not constrained to ex-post involvement. Parliaments have become increasingly active in the actual negotiations of agreements by exercising active control over the negotiator.

This holds true in EU international treaty-making as well, where the Union negotiator (mainly the Commission) negotiates an agreement with a third party at the international stage. However, parliaments, both at the European and the national ones, are increasingly involved in ongoing negotiations by following and scrutinizing the process actively. Alongside with normative considerations, these practical developments have prompted a wave of empirical research on the role of parliaments in EU international treaty-making (e.g. Jancic 2017; Raube/Wouters 2017; Zanon 2010). However, theoretical models explaining parliamentary involvement in EU foreign policy have not advanced at the same pace.

When analysing parliamentary scrutiny of EU affairs, principal-agent theory has become the standard conceptual tool: parliaments perform as principals for their executives as agents, whom they control in EU decision-making in the Council.² In contrast, principal-agent theory is moreover a central model applied decision-making in EU foreign policy, and, more specifically, EU international treaty-making.³ Hereby, most of the applications treat the national executives in the Council as principals, whereas the EU negotiator representing them at international level is conceived as the agent, tasked with the negotiation of international agreements. A few applications also deal with the role of the European Parliament as a principal to the Commission (Trauner 2012; see also Raube 2013 in regard to the EEAS). Beyond this, theoretical elaborations on the role of parliaments in EU international treaty-making, spanning from the national to the international level, are lacking.

Combining these two principal-agent perspectives, this theoretical paper aims at conceptualizing the setting of EU international treaty-making as chains of delegation, running from parliaments to

² Inter alia Bergman 2000; Saalfeld 2005; Auel 2007; Winzen 2012; Finke/Herbel 2015.

³ In regard to trade negotiations (Elsig 2007; Kerremans 2004, 2006; De Bièvre and Dür 2005; da Conceicao-Heldt 2011), environmental agreements (Delreux 2009; 2015), negotiations related to cross-border cooperation in competition policy (Damro 2006) and EU humanitarian aid policy (Versluys 2007).

the Union negotiator. Extending agency theory in this way enables a theoretically informed engagement with the overall research questions of this thesis: *What causes parliaments and political parties within parliaments to control EU international treaty-making?*

In accordance with standard principal-agent theory, this theory chapter argues thereby that the principal's decision of if, when and how to control their agents and "the level of control by the principal is assumed to be subject to a cost-benefit analysis" (Laloux 2016: 4). Whilst this logic is transferrable to the complex and intertwined agency setting in European foreign policy, it is the contextual environment in which parliaments act that has changed. This, in turn, affects the constraints and incentives that parliaments need to take into consideration when deploying the control mechanisms available to them, altering the nature and magnitude of both costs and benefits. Thereby, variation in control can not only be expected from principal to principal, but also from negotiation process to negotiation process, depending on factors both internal and external to the delegation relationship.

In order to theoretically engage with the above stated research question, this chapter has a two-step approach. The first sub-chapter starts by outlining the logic of principal-agent relationships in parliamentary democracies (IIa). Eventually, the sub-chapter presents a descriptive, yet theoretically informed outline of the principal-agent relationships in EU international treaty-making from the point of view of parliaments as principals (IIb), including elaborations on agency loss (IIc) and parliamentary control (IId). However, as these elaborations provide merely an explanation of why parliaments are able to act, instead of why they act, the second sub-chapter presents the underlying logic behind the actual activation of parliamentary control mechanisms, namely cost-benefit calculations (IIIa). Thereafter, the benefits (IIIb) and costs (IIIc) of parliamentary control will be disentangled and adjusted to the setting of EU international treaty-making. In a final step, the theoretical framework will be concluded in (IV).

II. Principal-Agent Relationships in EU International Treaty-Making: A Descriptive Perspective

a) *Principal-Agent Relationships in Parliamentary Democracies*

Principal-agent theory builds on the key assumptions of rational choice institutionalism, regarding political actors as rational and interest-maximizing. Applications follow a three-step reasoning: its analytical core is the existence of an agency-relation, meaning a process of delegation from principal to agent for functional reasons. Delegation does, however, not only imply functional benefits for the principals, but entails the risk of the agent not faithfully executing the delegated tasks. In order to prevent such agency loss, the principal can establish and activate various control mechanisms over the agent, by which agents can be held accountable for their actions (Strøm 2003: 271). As such, agency theory has fostered a theoretically informed understanding of when, how and why principals control their agents. Based on these insights, the theory offers a promising theoretical perspective to engage with the overarching research question.

Agency models applied to the study of political representation depict parliamentary democracy as a particular regime of delegation and accountability, “a chain of delegation and accountability, from the voters to the ultimate policy makers, in which at each link (stage), a principal (in whom authority is originally) delegates to an agent, whom the principal has conditionally authorized to act in his or her name and place” (Strøm et al. 2003: 3). Within one delegation chain, there are several discrete links which are “all constructed from the same basic material – principal-agent relationships that are affected by information and institutions in systematic ways” (Lupia 2003: 52). Subsequently, there is a risk of agency loss at each link which makes it necessary to establish mechanisms of control in order to prevent such loss. The chain of delegation is therefore mirrored by a corresponding chain of accountability running in the reverse direction, enabling the control of the agent (Strøm et al. 2003: 20).

Within this chain, a parliament takes in a dual role, performing both as agent for the voters as ultimate principals as well as principal for the executive, to which it delegates executive power. Hence, studying legislative-executive relations usually focuses on the role of the parliament as the principal, which has to hold its government accountable as its agent (Strøm 2000: 267). Thereby, principal-agent theory “highlights a set of useful analytic dimensions for the analysis of executive-

legislative” (Saalfeld 2015: 346) by enabling a theoretically informed treatment of the key question of how parliaments scrutinize their respective executive and the latter’s policy-making activities.

As rational choice theory adheres to methodological individualism, it is important to bear in mind that parliaments are by no means unitary actors when holding the executive accountable. They consist of a number of members of parliament, who are organized in political parties and factions, who work in a variety of parliamentary committees and who are supported by their respective parliamentary administration. Most importantly, parliamentary democracies today are largely based on party government (Blondel/Cotta 2001: 1). From a principal-agent perspective, political parties are involved in all the links of the chain of delegation in representative democracies in Western Europe. Importantly, “any realistic study of agency problems in executive-legislative relations must recognize that [...] the delegation process from MPs to the cabinet is mediated and controlled by political parties” (Saalfeld 2000: 356). At the same time, political parties are very diverse regarding their interests, their resources or the functions they fulfil. The theoretical approach thus offers an important tool allowing the researcher to engage explicitly with the different tasks, incentives and constraints of the various parties within a parliament by perceiving them as distinct actors, as distinct agents to the citizens and as distinct agents to the executive.

b) The next step of delegation: Chains of Delegation in the EU International Treaty-Making

EU policy-making represents an additional arena of decision-making, meaning that the process of European integration has extended the parliamentary chain of delegation to the European level: the EU presents “a next step of delegation and accountability” (Bergman 2000: 415). The underlying idea thereby is that member states have delegated power and authority to the EU and its supranational institutions. Due to the inherent risk of agency loss, they have established a wide range of control mechanisms.

At the same time, principal-agent has become a central model applied to the field of EU foreign policy and decision-making within this policy field. In a nutshell, the institutional set-up in EU foreign policy can, based on the agency perspective on representative democracies, be perceived as a long chain of delegation, running from the voters through parliamentary institutions eventually up to the Union negotiator on the international scene. However, instead of simply adding a new link to

the chain of delegation, the main domestic principal-agent relationships have become intertwined with the institutions of the European Union, making the chain more complex. Before returning to the overarching research question, it is hence necessary to unravel the chains of delegation in a descriptive manner, focusing on the particularities of EU international treaty-making.

Determining the ultimate agent in EU international treaty-making is not difficult. Generally, agents are “those who govern by exercising delegated powers” (Thatcher/Stone Sweet 2002: 4). In EU foreign policy, the agent is thus the institution that is charged with the task of negotiating an international agreement with a third, external party; hence, the Union negotiator. The boundaries for selecting the Union negotiator are set by the Treaties. In most international negotiations, it is the Commission that is the main Union negotiator, tasked with negotiating by the Council. Delegation can also take place to the High Representative in regard to agreements in the area of CFSP/CSDP; and to the presidency in case of mixed agreements (Art. 218 (3) TFEU).

Substantiating parliaments as the relevant principals is slightly more difficult. Some scholars define principals by their ex ante legislative involvement in establishing and delegating to the agent (Curtin 2005: 92). In EU international treaty-making, however, it is not parliaments delegating international treaty-making power to the supranational level. It is the member states in the Council deciding to authorize the opening of negotiations, issuing a negotiation mandate and tasking the Union negotiator, albeit within the boundaries set by the legal framework of the Union (Art. 218 (2; 4) TFEU). Yet, irrespective of this, parliaments have certain control mechanisms towards the executive’s day-to-day conduct of the delegated task after the delegation relationship has been established. They can therefore, directly or indirectly, control the agent. Broadening the understanding of the nature of the principal-agent framework, the disposal of ex post strategies vis-a-vis the agent can be perceived as a useful additional indicator for assessing the qualification of an institution as principal (Trauner 2012: 788; see also Raube 2013: 6). Such an understanding renders it possible to treat both the various national parliaments as well as the European Parliament as the principals towards the Union negotiator.

In comparison with a domestic chain of delegation, the chain(s) of delegation in EU foreign policy has subsequently certain unique characteristics. First, there is not one, singular chain running from voter to executive anymore. As there are 28 states joined into a new system of multilevel governance, European integration multiplies the chains existing in the individual member states,

introducing 41 national parliaments as principals. Moreover, voters obtain access to a new line of delegation via the European Parliament, which can directly exert oversight over the European executive institutions – a new legislative principal. Second, within an individual delegation chain, the addition of another level of decision-making extends the chain; meaning that there are more links within one chain than in a domestic political system. Focusing on legislative-executive relationships, this means that the national executive acquires a new role as principal to the EU institutions, as national ministers in the Council take on a double function as individual agent to their national parliaments and a principal to the European executive. The Council is thereby usually depicted as a collective principal (Ripoll Servent 2014: 570). Last but not least, in comparison to EU internal policy fields, where negotiations take place on the EU level, an additional level of policy-making, the international level where the EU negotiates with third parties, has been added.

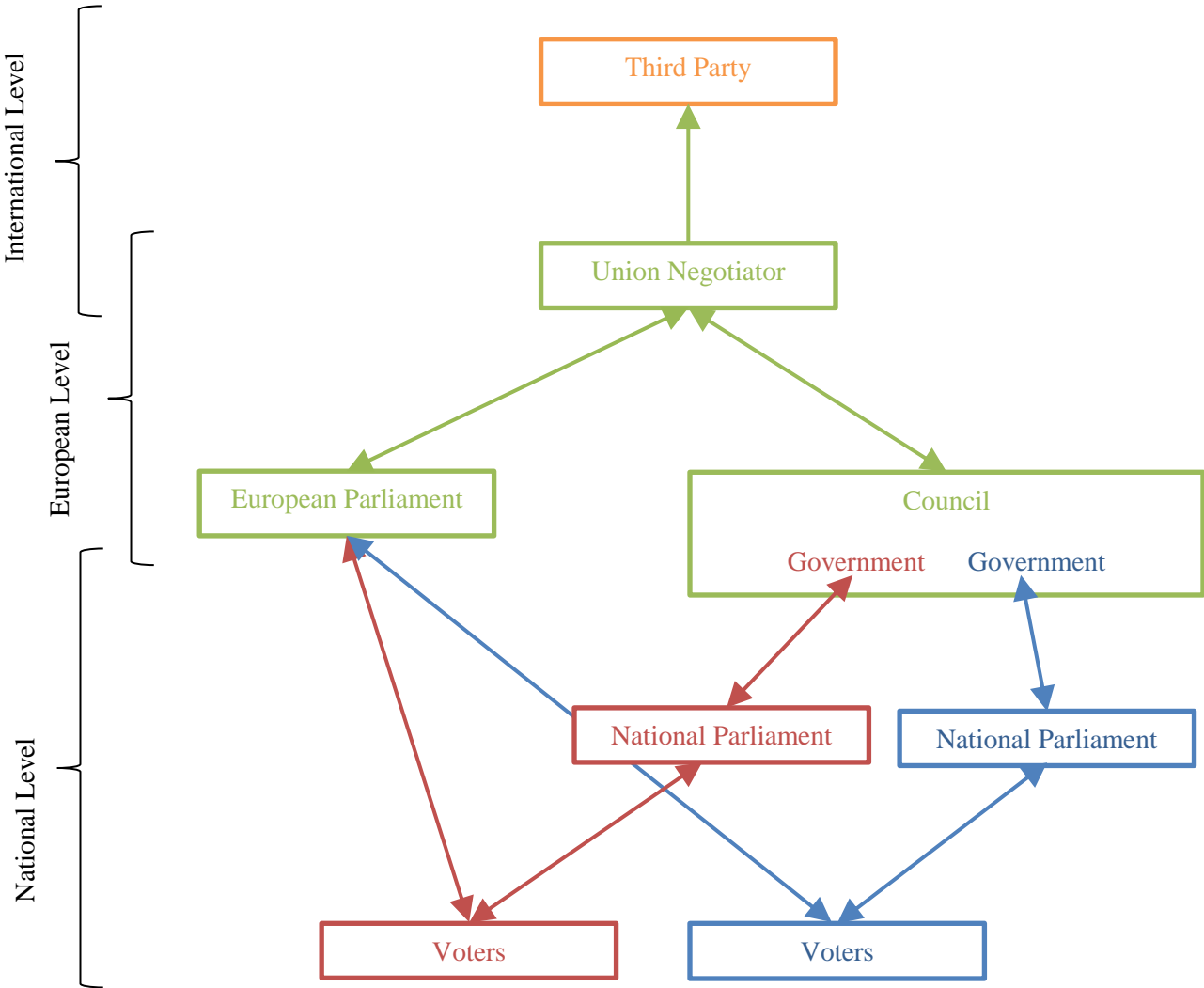


Figure 1: Chains of Delegation (and Accountability) in European Foreign Policy

As seen in Figure 1, legislative-executives relations and the chains of delegation in EU international treaty-making are thus complex and intertwined. The principals are not both directly connected to the voters and at the same time delegating authority to the supranational level. National parliaments and political parties lack direct access to the Commission, the High Representative or the Presidency as the ultimate agent. As such, an important function falls to the Council and the national executive representatives in it, who take on a double function as individual agent to their national parliaments and a collective principal to the Commission. At the end of the day, those “that ultimately carry out the EU’s foreign [policy] stand at the end of a long chain of delegation, which comprises several hierarchically organized [principal-agent] relationship” (Dür/Elsig 2011: 324). Moreover, the existence of a third level, the international stage, further alters principal-agent relations. The delegated task, the negotiation of an international agreement, involves the interaction with another party, to which the delegation and the reverse-running accountability chains do not extend. Yet, this party is decisive for the outcome of the negotiation process.

Additionally, it is important to bear in mind that parliaments as principals are by no means unitary actors. Although all political actors within one parliament may share similar general interest, “political parties may have different policy preferences regarding foreign [policy]” (Milner 2006: 124) as well as varying institutional relationships with the executives they are controlling. Therefore, studying parliaments as principals, they ought to be broken up into their constitutive units. Whilst research on parliaments has increasingly been taking such recalibration into account (inter alia Holzhaecker 2002; Saalfeld 2005; Finke/Dannwolf 2013; Finke/Herbel 2015), none of these studies concentrate on EU international treaty-making.

c) The Risk of Agency Loss in European Foreign Policy

As in any principal-agent relationship, parties are faced with the risk of agency loss in EU international treaty-making. Agency loss has been defined as “the difference between the actual consequence of delegation and what the consequence would have been had the agent been ‘perfect’” (Lupia 2003: 35). It can be traced back to two factors: the possibility of conflicting preferences between principal and agent and the possibility of asymmetrically distributed information. Generally assumed to be simultaneously present, they substantiate that an agent does

not only have incentives but also the opportunity and ability to pursue her own preferences rather than those of her principal (Lupia/McCubbins 2000: 294). The delegation chains in EU international treaty-making entail the possibility of conflicting interests between principals and agent, irrespective of the particular distribution of preferences. At the same time, as EU international treaty-making constitutes an area with restricted access for parliaments, they suffer from hidden information and meet hidden action (Strøm 2000: 270). Hence, there is a risk of agency loss for parliaments and political parties in EU foreign policy.

Assuming that political parties as the principals in the setting of EU international treaty-making have varying substantive policy preferences in regard to the negotiated policies, it is the risk of policy slippage (or policy divergence) that is most decisive. Policy slippage refers to situations when the agent does not act in accordance with the policy preferences of its principal. Most commonly, agency loss is thereby measured “as the distance between the outcome [of delegation] and the principal's ideal point” (Strøm 2003: 80).

Underlying this measurement lays an assumption that is often used in political science: rational actors have most-preferred policies, so-called ideal points, in some policy space. This means they have a single preference that maximizes its interests, wanting to bring the policy outcomes as close as possible to this ideal point, and therefore, for any two policies, preferring the one closest to this point. However, it shall be argued here that the depiction of preferences as the distance between ideal points on a continuum does not suffice the empirical realities of the setting at hand. It is, after all, merely an “entirely theoretical construct used in spatial models of political competition” (da Conceicao-Heldt 2004: 52). Instead, a different understanding of preference and agency loss shall be substantiated in the following.

As a general rule, rational choice theory does not necessarily say anything about the preferences actors have, meaning the preferences of actors within principal-agent relationships need to be “filled” in. Based on a thick understanding of rationality (Elster 1983: 2), actors in the negotiation of EU international agreements are assumed to have a substantive policy-related agenda and with that a substantive policy preference in regard to a specific international agreement and the substance thereof: a substantive policy position. This policy position is depicted relatively to the overall international agreement itself, to the actions of the Union negotiator, and to the course of negotiations of international agreements. Thereby, these relative positions have to be perceived as a matter of kind, not as a relative ideal point. This means that the possible policy positions of the

principal towards the actions of the agent have certain substantive qualities, which differ between the various positions. As such, there are differences in kind, and not differences in degree (Sartori 1991) between the possible policy positions towards the actions of the Union negotiator. It can be expected that these qualitative differences in kind may inform the incentives and constraints of agency control in different ways. At the same time, this is not to say that no hierarchy between the possible positions can be established, meaning that it is possible to order them along an ordinal scale. However, as preferences are not an ideal point, it is not possible to measure a precise magnitude of agency loss along a ratio scale.

Four policy positions of the principals towards the goal of the international agreement at hand, the actions of the Union negotiator and the course of its negotiations can be distinguished:

1. **Specific Support:** this policy position refers to a principled support of the goals of the international agreement and the course of the negotiations per se; it is specific in that it supports the general practice of the negotiations, whilst nonetheless, minor points of criticism might exist;
2. **Complementary Criticism:** this policy position is not an objection of the international agreement and the course of its negotiations on principled grounds, but is a qualified, complementary opposition to the agreement, emphasising the need to improve and alter the course of the negotiations due concerns in regard to one/or a number of specific issues under negotiation;
3. **Fundamental Criticism:** this policy position is a principled objection to the international agreement and the course of its negotiations in their current set-up; yet, there is no principled opposition to negotiations with the same third party on the same issue under different conditions and circumstances;
4. **Fundamental Opposition:** this policy position is a principled opposition to any kind of negotiations with the respective third party on the respective issue, irrespective of the set-up of the negotiations and the conditions.

The qualitative differences between the policy positions of the principal imply that policy slippage needs to be referred to as a difference in kind, not in degree. Policy slippage thus refers to situations in which the finalized and concluded treaty does not meet the substantive policy position of the political party in question.

d) Containing Agency Loss through Parliamentary Control

In light of the increased risk of agency loss in EU international treaty-making, neither national parliaments nor the European Parliament are helpless. According to principal-agent theory, the principals have oversight mechanisms⁴ at their disposal, in order to reduce the risk of agency loss. Parliamentary oversight procedures are, based on a definition provided by Conceicao-Heldt (2013), the various mechanisms that a parliament can use to control and influence the Union negotiator's behaviour in order to prevent agency loss. Since agency loss can mainly be referred back to information asymmetries and preference heterogeneity, this definition of oversight leads to two basic dimensions of the measurement of parliamentary oversight: access to information to overcome information asymmetries, and b) instruments to enforce parliamentary preferences (Winzen 2012: 659).

At the same time, parliamentary oversight can be distinguished according to its timing in regard to the negotiation process. International treaty-making can analytically be divided into three stages: the pre-negotiation (authorization) stage, the negotiation stage, and the post-negotiation (ratification) stage (Kerremans 2006; Delreux, 2009). At every stage, parliaments have various mechanisms at their disposal to control the executive, with differing rationales. Ex ante oversight aims at providing the principal with the opportunity to “define ex ante the scope of agency activity, the legal instruments available to the agent, and the procedures to be followed by it” (Pollack 1997: 108). Ad locum control, control taking place during the actual negotiations on the international level, aims at making the executive provide parliament with sufficient information on and justification of its activities, decisions and conduct, so that the parliament can pass an assessment whether its demands have sufficiently been taken into account, and if not, induce the executive to do so (Kersschot et al. 2013: 18). Last but not least, parliamentary oversight can be performed ex post, after the negotiations have been finalized. However, putting an ex post mechanism to use is not very common, as it may entail severe consequences for all the actors involved. Rather, principals prefer to prevent a situation where this would be necessary by relying more frequently on mechanisms of ex ante and ad locum control (ibid.). This does, however, not mean that the

⁴ There is a plethora of terms used to describe parliamentary activities towards the executive; be it supervision, control, scrutiny, oversight or similar expressions. Yet, irrespective of the different labels, the concept is based on agency theory.

shadow of ex-post mechanisms cannot be used in order to accompany and provide force to mechanisms of ex ante and ad locum control.

It is thereby important to keep in mind that the standing of national parliaments in the chains of delegation in EU foreign policy differs from that of the European Parliament. The European Parliament has direct access and treaty-based control rights to the Union negotiator. In contrast, there is a more difficult oversight relationship between national parliaments and EU level institutions, hence, also the Union negotiator: “whereas an institutionally formalised principal–agent relation exists between parliament and domestic executive, no such direct relationship of scrutiny and control has been established towards supranational institutions” (Wendler 2013: 803). Therefore, the control instruments at the disposal of national parliaments and the European Parliament differ. National parliaments are, to a large extent, only able to scrutinize the Union negotiator indirectly by overseeing the national representative in the Council. These domestic mechanisms of control are second-order to the control mechanisms of the Council towards the Union negotiator.

For national parliaments, oversight of EU international treaty-making is thus exceptionally difficult, not only in comparison to domestic politics, but also in comparison to the European Parliament. “It is easier to control one’s direct agent (an agent that is right above you in the delegation chain), than an ultimate agent (for which one needs to transcend one or several levels in the chain of delegation). An ultimate agent is likely to be less receptive to the preferences of principals further down the hierarchy, other than its direct principals” (Keresshot et al. 2013: 19). At the same time, the Council and its individual members, acting as gate keepers to the Union negotiator, might be able to use their proximity to the Commission strategically in their favour and withhold information vis-à-vis national parliaments in order to pursue their own agenda.

In a nutshell, member state executives in the Council have, in the ex ante stage, two control mechanisms at their disposal: the authorization, respectively non-authorization of the Union negotiator, and defining the negotiation mandate. Ad locum, the Union negotiator has information and consultation duties towards the Council and its Special Committee. Furthermore, in some instances, member states are allowed to attend the international negotiations, which enables them to observe the agent’s negotiation directly. Last but not least, ex post, they can refuse the ratification of the finalized international agreement (Delreux 2008: 1072f.).

National parliaments overseeing the Union negotiator via the domestic channel are subsequently second-order to the control exercise by the Council, aimed either at information retrieval or at enforcing parliamentary preferences. It is thereby important to keep in mind that the scrutiny by an individual national parliament is a matter for the particular constitutional organization and practice of each Member State. As such, control instruments might also be subject to varying activation threshold, meaning that they might only be at the disposal of parliamentary majorities. Hence, the precise instruments available for use by political parties can differ between EU Member States as well as political parties within the same parliament. In the European Channel, national parliaments have some further oversight instruments available. They can make use of the so-called Political Dialogue and engage in information exchange with the European Parliament. The latter is a means to “to compensate for the information advantage that the executives enjoy because of their direct involvement in international politics” (Crum/Fossum 2013: 2)”.

	Ex Ante	Ad Locum	Ex Post
National Channel	<u>Information:</u> Information rights towards the government (especially: access to negotiation directive) <u>Authority:</u> Mandating (Council meeting on the authorization of the Union negotiator and the issuing of the negotiation mandate)	<u>Information:</u> - Information rights towards the government (access to documents, questions, hearings etc.) - Access to the Special Committee <u>Authority:</u> Influence government to take a stance in Council negotiations	<u>Authority:</u> Mandating (Council signature and ratification)
European Channel	<u>Information:</u> Interparliamentary cooperation with the European Parliament	<u>Information:</u> Interparliamentary Cooperation with the European Parliament <u>Authority:</u> Political Dialogue	<u>Information & Authority:</u> Power of the Shadow of non-ratification (in the case of mixed agreements)

Table 1: Oversight Mechanisms of National Parliaments

The Lisbon Treaty has considerably upgraded the role of the European Parliament in EU international treaty-making. It has now several mechanisms of oversight available at each negotiation stage, aimed at both providing it with information as well as influencing the Union negotiator.

	Ex Ante	Ad Locum	Ex Post
European Channel	<u>Information:</u> - Reporting requirements - Access to documents <u>Authority:</u> Parliamentary Resolution	<u>Information:</u> - Reporting requirements - Access to documents - Soft power instruments (hearing, questions etc.) towards Commission <u>Authority</u> Parliamentary Resolution	<u>Information and Authority:</u> Power of the Shadow of non-ratification

Table 2: Oversight Mechanisms of the European Parliament

III. Principal-Agent Relationships in EU International Treaty-Making: The Activation of Parliamentary Control

In the previous sub-chapter, the principal-agent relationships between the European and national parliaments and the Union negotiator have been laid out in a descriptive, yet theoretically informed way. However, these elaborations provide merely an explanation of why parliaments are able to act, instead of why they act. “Parliaments are complex institutions, [...] faced with a number of different opportunities, constraints and incentives. Institutional capacities are thus not necessarily automatically translated into behaviour” (Auel et al. 2015: 283). Thus, a theory-driven analysis of actual parliamentary behaviour is necessary in order to answer the overarching research question.

a) The Rationale of Control

As rational actors, principals behave according to the logic of instrumental rationality by choosing the best means to maximize their utility and chances of achieving their preferences. Therefore, the principal’s decision of if, when and how to control their agents and “the level of control by the principal is assumed to be subject to a cost-benefit analysis” (Laloux 2016: 4). Principals are expected to scrutinize agents in a cost-efficient way. Eventually, as in any cost-benefit analysis, the ideal oversight of the principal is a function of what maximizes the expected benefits for the principal (Bawn 1997: 105). In a simple principal-agent relationship, the costs and benefits that can be associated with the principal oversight are straightforward.

The benefit of activating mechanisms of scrutiny is the reduction of the risk of agency loss and “to induce her agent to act as much in accordance with her interests as possible, in other words to minimize agency loss” (Auel 2009: 9). Indeed, as a general rule, principal-agent theory holds the expectation that the principal actually wants to hold the agent accountable. That does, however, not mean that they will in practice spend a lot of time and energy on doing so, as delegation does not only entail costs arising from the risk of agency loss but also costs arising from creating and invoking control mechanisms minimizing such loss. As Pollack succinctly states: “if these control mechanisms were costless, one would expect principals to adopt the full range of [...] oversight procedures in all cases in order to minimize the risk of agency loss. These mechanisms, however, are not costless” (Pollack 1997: 109).

Thereby, the costs of scrutiny are twofold. First, control consumes the principal’s time, energy and resources, which principals are required to invest in order to activate and employ control mechanisms. Secondly, control might actually hinder the agent in performing the delegated task to the best of her abilities, thus contradict the functional reasons for delegating in the first place and render delegation not beneficial, but disadvantageous for the principal. This cost is, in contrast to the cost of investing time and resources into control activities, not as well acknowledged in the relevant literature on principal-agent relationships. It is based on the assumption that the very rationale of delegation may prevent principals from establishing and activating rigid control mechanisms: “what truly makes delegation a dilemma is the fact that its very rationale may prevent [...] principals from establishing effective control mechanisms. Certain functions commonly delegated require that agents enjoy substantive levels of discretion in the execution of their powers” (Tallberg 2002: 28). At stake is the effectiveness and efficiency of the agent’s conduct of the delegated task, as the agent needs independence and flexibility to carry out its responsibilities efficiently: “cumbersome, complicated, technically inappropriate structures [...] undermine [the agents] capacity to perform their jobs well” (Moe 1990: 228).

Applied to the setting of parliamentary control of EU international treaty-making, “the decision to engage in (or avoid) legislative oversight activities depends on the [parliament’s analysis of] the costs and benefits [thereof]” (Saalfeld 2003: 76). Political parties will engage in control activities of the executive only if the cost therefor is less than the sum of the benefits. The issue at heart is thereby not the question of whether or not to deploy a certain control mechanisms available, but how much oversight to activate. Control ought to be thought of as a matter of degree, like

discretion is considered to be a matter of degree. These elaborations lead to the following base hypothesis regarding the strategic choice a parliament makes: *the higher the benefits of parliamentary control for a political party, and the lower the costs, the more active is that party in invoking mechanisms of parliamentary control.*

Two assumptions are connected to this hypothesis. First, the cost-benefit calculations are expected to vary from principal to principal, as the weight they accord to both benefit and costs vary between them. Political parties within parliaments are very diverse. Differences can be found not only regarding their preferences, but also regarding their resources, the functions within a parliament and the constraints they are confronted with when fulfilling these functions. . Approaching parliaments as “party-political institutions, [...] political parties and individual MPs have different motives and opportunities for influencing foreign policy” (Raunio/Wagner 2017: 7). It is therefore unlikely that all parties in a particular parliament follow exactly the same patterns in scrutinizing EU decision-making. Moreover, it is expected that the level of parliamentary control of EU international negotiations that maximizes the benefits for an individual parliament is not constant in every decision-making process. Rather, there are certain factors external and internal to a single principal-agent relationship which impact these calculations from decision-making process to decision-making process (Delreux 2010: 2). Therefore, variation in control can not only be expected from principal to principal, but also from negotiation process to negotiation process.

At the same time, this base assumption is, however, only of little substance and avoids answering when this will actually be the case. Hence, it will have to be “filled in” in the following. Thereby, it is important to note that whilst the underlying logic of activating oversight is transferrable from a standard application of principal-agent to the complex and intertwined agency setting in European foreign policy, the contextual environment in which parliaments act has changed. This, in turn, affects the constraints and incentives that parliaments need to take into consideration when deploying the control mechanisms available to them, altering the nature and magnitude of costs and benefits in comparison to standard principal-agent relationships.

b) The Benefits of Parliamentary Scrutiny of EU International Treaty-Making

Parliaments in the chain of delegation in a representative democracy assume a dual role as principals towards the executive and as agents to the voters, the ultimate principal. “Any analysis

of the roles of MPs in parliamentary systems must take into account these two faces of parliamentary life, and must combine “representation” and “executive-legislative relations” (Andeweg 1997: 110). The dual roles of parliaments are associated with specific preferences: as an agent, a party’s most important preference is to secure re-election, hence vote-seeking. As a principal, like in any classical principal-agent relationship, the most important preference is to minimize agency loss in a policy-seeking manner. “We can thus assume that the motivation of [a party] to use institutional opportunities – i.e. to engage in parliamentary scrutiny of EU affairs – depends on (a) voters’ expectations and (b) incentives that impact their motivation to exert policy influence” (Auel et al. 2015: 290).

The vote-seeking Hypothesis

As an agent, the most important goal of a parliament is the re-authorization as an agent, hence to secure the continuation of the principal-agent relationship by being re-elected. From this perspective, parliamentary behaviour can be best understood if parliaments are seen as “single minded reelection seekers” (Mayhew 1974: 5).

In order to be re-elected, legislatures need to demonstrate credibility and signal to their voters that they actually represent their best interests. They need to be seen to fulfil their duties as already elected representatives. As public scrutiny of certain policy issues helps to signal their trustworthiness, the control of “concrete EU policies can be part of such a vote-seeking strategy” (De Ruiter 2013: 1198). Importantly, the electoral benefits of scrutinizing EU affairs depend to a large extent on the salience of the respective policy in the domestic arena (Saalfeld 2003: 76). If the issue at hand is salient within the domestic electorate, parliamentarians can expect to be rewarded for their engagement. In contrast, if the issue lacks salience within the electorate, the attention the latter pays to parliamentary activities is severely reduced, and parliaments are not able to score points with their voters (Rozenberg/Hefftlar 2015: 17). At the same time, the incentives for scrutiny of certain EU policies increase with their salience as the higher the latter, the more expensive is agency loss.

It follows from the above that *the higher the salience of the issue under negotiation within the domestic electorate, the bigger are the vote-seeking benefits of parliamentary control (H1)*.

The policy-seeking Hypothesis

As a principal, the major benefit of parliamentary scrutiny for policy-seeking parties is to minimize the risk of policy slippage by inducing the Union negotiator to act in accordance with their preferences. When a party has a reason to suspect an unacceptable negotiation outcome, it needs to get better informed on what is going on at the international level, and to try to impact the negotiation process in order to ensure that its preferences are taken into consideration (Winzen 2012: 302f.).

As in any standard principal-agent relationship, the higher the risk of agency loss is, the stricter is the control activated by the principal. In regard to the negotiations of EU international agreements, it thus follows that the higher the risk of policy slippage, the higher are the policy-seeking benefits of successful parliamentary control. At the same time, principals will deploy control mechanisms in order to reduce agency loss depending on the “probability [they] assign to their chance of making a difference by investing time and other scarce resources into parliamentary oversight. [...] The higher the probability that oversight is efficacious, the higher the probability that [principals] will engage in such activities” (Saalfeld 2003: 77). Applied to the setting at hand, this means that a political party will get involved in the scrutiny of EU international treaty-making if they can reasonably expect a payoff in terms of substantive policy influence.

Overall, this leads to expect that that *the higher the risk of policy slippage, the bigger are the policy-seeking benefits of parliamentary control (H2)*; and that *the higher the chances of substantive policy influence, the bigger are the policy-seeking benefits of parliamentary control (H3)*.

These two factors – the risk of policy slippage and the chance of substantive policy influence – are in turn affected by three further factors, which will be elaborated in the following.

1. Policy Slippage: The Union Negotiator

In the complex principal-agent setting of EU international treaty-making, the Union negotiator acting on the international scene is perceived as the ultimate agent that eventually ought to be controlled. The Union negotiator is thereby expected to be all but a disinterested party in policy-making: “Supranational institutions are not simply neutral arenas, but are actors with their own preferences” (Conceição-Heldt 2004: 46), pursuing them, potentially at the expense of the

principals, in the course of international negotiations. As such, the ultimate agents and its preferences are one of the major sources of agency loss.

It is thereby usually held that the higher the preference divergence between principal and agent as ideal points on some policy continuum, the higher the risk of agency loss is. However, in this thesis the preferences of political parties are not understood as ideal points, but as relative policy positions in regard to the overall international agreement itself, to the actions of Union negotiator, and by that to the course of negotiations. These policy positions display qualitative differences, which makes it difficult to measure policy divergence along a continuum. Thus, a more qualitative approach shall be chosen here, arguing that the concrete policy position of a principal determines the risk of agency loss.

From the point of view of political parties as policy-seeking actors with a specific substantive policy position concerning the international agreement at hand, *the risk of policy slippage depends thus on the specific policy position of the political party at hand (H2a)*. Thereby, political parties in specific support of the agreement experience only a minor risk of agency loss, with this risk increasing for parties in complementary and fundamental criticism, whilst the risk is the highest for political parties in fundamental opposition.

2. Policy Slippage: The National Executive

In EU international treaty-making, it is actually not parliaments delegating international treaty-making power to the supranational level, but the national governments meeting in the Council. As such, the Union negotiator is, from the point of view of national parliamentary party groups⁵, merely an indirect agent, meaning its actions are not the only source of agency loss. Rather, the intermediate agent right above the principal in the delegation chain, the Council, is also decisive. As the power of political parties within parliaments does not extend to the collectivity of the Council, they have, however, to rely on controlling their national executive in the Council in order to “transmit” their preferences to the supranational level. Subsequently, the relationship of the political party at hand with the respective national executive becomes relevant, as the latter acts as a “gate-keeper” to the Union negotiator, causing potential policy slippage.

Similar to the above, it shall be argued here that the risk of policy slippage depends not only on the actual preference divergence between a party and its respective national executive; but also on the

⁵ Ergo, this determinant of the risk of policy slippage does not apply to the European Parliament.

institutional status of the party at hand. Research has demonstrated that intra-parliamentary cleavages between parties existing in domestic politics transcend to the European sphere (Auel 2007: 491f.). These conflict lines run, for the most part, along party-political lines and provide the major incentives for parties to scrutinize their government.

For majority parties, a great concern in parliament is the stability and maintenance of the government during a parliamentary period as well as its effectiveness (Holzhacker 2002: 462). Building a ‘bloc’ with the government, there is a high degree of incentive compatibility between government backbenchers and governmental ministers and little incentive to mistrust or scrutinize “their “government. Yet, within coalition governments, coalition parties need to fear ministerial drift (Martin/Vanberg 2004). Whilst coalition partners usually protect and defend the government jointly, and “do not always disagree over foreign policy, they frequently do” (Cantir/Kaarbo 2016: 13). Perceiving coalition governments as chains of delegation from coalition partners acting as the principals to ministers who control different portfolios as agents, parliamentary scrutiny can be perceived as an “intra-coalitional monitoring device” (Herbel 2017: 166).

Opposition parties, in contrast, need to fear governmental drift. Indeed, “the main lines of contestation [run] between the opposition parties on the one hand and the governing parties together with the government on the other” (Miklin 2013: 26). Moreover, opposition parties are generally in a disadvantaged position in comparison to governing parties as lack direct access to the national executive, and by that direct access to EU decision-making and the Union negotiator. “It is [thus] important that the voice of opposition parties is heard at the national level, because their voice is non-existent or weak within the EU institutions themselves” (Holzhacker 2002: 461). Hence, parliamentary oversight provides an important avenue for the opposition to monitor and influence policy making.

It follows from this that the incentives for parliamentary control also depend on the party’s institutional position. Putting it differently, *the risk of policy slippage depends on the institutional status of the party at hand (H2b)*, with the risk being highest for opposition parties, and decreasing for coalition parties and the governing party providing the respective minister.

3. The Chances of Substantive Policy Influence

At the same time, the weight of the “agency loss reduction benefit” depends not only on the risk of agency loss, but also on the chances that parliamentarians assign to having substantive policy influence. “From a rationalist institutionalist perspective, they should focus on measures in which they have a binding say and thus a greater chance of making an effect” (Wonka/Goebel 2016: 219). It is therefore argued that the likelihood of having an actual impact is higher when the parliament at hand has an ex-post ratification right. Whilst the European Parliament has, de facto in most cases, to give its consent to international agreements, national parliaments need only to ratify mixed agreement; whereas in the case of exclusive agreements, they have no say in the ratification phase. Thus, *the chances of substantive policy influence depend on the legal nature of the negotiated international agreement (H3a)*.

c) The Costs of Parliamentary Scrutiny of EU International Treaty-Making

In a standard principal-agent relationship, the costs of scrutiny are twofold: on the one hand, control consumes considerable resources; on the other hand, overly strict control can obstruct the rationale of delegation and endanger the effectiveness and the efficiency of the agent. Whilst the cost category of resources can easily be adapted to the setting at hand, the latter type of costs has to be adjusted and specified.

The Resource Cost Hypothesis

As in any standard principal-agent relationship, scrutinizing the agent is costly in terms of resources for the principal. “Costs associated with scrutiny are fairly straightforward: they relate to the resources that need to be invested in oversight activities such as time, costs of information gathering and opportunity costs of not investing resources in other activities” (Auel et al. 2015: 65). Decision-making in EU foreign policy takes place in an arena to which parliaments hardly have any means of formal access; whilst it is often also of a highly technical and complex nature. As such, controlling negotiations requires building up of a new area of expertise and the investment of considerable resources.

Empirical research has demonstrated that in regard to the scrutiny of EU internal decision-making, the more resources a parliament has, the more it is willing to engage in parliamentary scrutiny of

EU affairs (Sprungk 2016). As parliaments and political parties have only limited resources at their disposal, they need to consider the costs and benefits of spending time and energy on the scrutiny of EU affairs. It follows that the more resources are available to a political party, the less scrutiny costs in relative terms, tilting the calculation in favour of scrutiny being net beneficial. Hence, *the less overall resources the political party at hand as available, the bigger are the resource costs of parliamentary control (H4)*.

The Efficiency Cost Hypothesis

Principal-agent theory holds that certain functions delegated require that agents enjoy substantive levels of discretion in the execution of their powers. Constraining actions aimed at making the agent act according to the delegating principal's preferences can have the unintended side effect of an inefficient and ineffective performance on the agent's side, and thus to inferior outcomes from the delegating principal's perspective. Indeed, "in the EU, the member state governments have delegated the authority to negotiate agreements to an actor with its own interests and stakes in the outcome. Simultaneously, they have refrained from establishing mechanisms of complete control, as the [Union negotiator] must be able to negotiate with some flexibility in order to arrive at external agreements. The discretion accorded to the [agent] serves the general interest of EU governments when permitting the [Union negotiator] to conduct and conclude efficient negotiations with third parties" (Tallberg 2006: 141f.).

This cost of scrutiny is thereby of particular importance, as the agent in EU international treaty-making is tasked with forging an agreement with external third parties on the international level in the name of the EU. Most standard applications of principal-agent theory discuss issues in the context of the delegation of power to implementing agents. "However, negotiating agents have very different tasks. [Implementing] agents act to execute policies (often policies created by the principals) while negotiating agents work to create those policies for the principal" (McKibben 2016: 6). As the negotiation outcome also depends on the external negotiating partner with quasi-veto power, the negotiating agent's degree of discretion which is likely to help fulfil the principal's best interests differs in comparison to implementation tasks: it is bigger (ibid.).

Moreover, the the ideal level of discretion for the Union negotiator is not the same in the negotiation of every international agreement, but varies from negotiation process to negotiation process. This depends on factors external of the principal-agent relationship, concerning

characteristics of the international agreement under negotiation. It follows from this that *the higher the EU negotiator's need for discretion in order to foster the best-possible agreement, the bigger are the inefficiency costs of parliamentary control (H5)*. In the following, it will be elaborated on the three external factors affecting the negotiator's need for discretion.

1. Complexity

It is a standard argument in principal-agent theory that the degree of discretion allocated to an agent should vary as a function of the complexity and uncertainty inherent in a given issue area. "Even the earliest principal-agent literature recognized that the [...] incentives to exercise control vary with levels of uncertainty" (Eisner et al. 2000: 29).

As negotiations often take place in areas where the principals do not have sufficient expertise, the task of fostering a beneficial agreement is delegated to the agent that possesses the necessary background, information and experience (Rubin/Sanders 1988: 396). Thereby, the more the negotiation environment is characterized by uncertainty and complexity, the more important becomes the agent's expertise and the more it is necessary that the agent is subject to as little interference as possible. "Discretion is most useful when and where uncertainty is high and thus flexibility is necessary and valued" (Cooter 2000: 94) However, imposing strict control on the agent would reduce this necessary flexibility on its part, and lead to inefficient negotiation outcomes, as due to the parliamentary interference, the Union negotiator was not able to make the best use of its expertise. Thus, *the Union negotiator's need for discretion depends on the complexity inherent in the policy area under negotiation (H5a)*; with the need increasing the more complex the issue is.

2. Urgency

In principal-agent literature "concerns about the speed of decision-making play at best a minor role in most principal-agent models of decision-making" (Pollack 2006: 189). However, it is argued that there is a trade-off between the speed of the negotiation process and the control of the agent, as the political costs of no-agreement for the principal increase when the agreement is urgent for it (Rasmussen 2011). Urgency hence requires efficient and swift negotiations. The smaller the interference in the conduct of negotiations, the easier and faster the negotiator is able to arrive at a deal with the external third party. A high level of parliamentary control, in contrast, comes with the

potential drawback of slowing the negotiation process down. Thus, *the Union negotiator's need for discretion depends on the urgency of the international agreement under negotiation (H5b)*, with the need increasing the more urgent the agreement is.

3. Compellingness of the External Environment

The political pressure stemming from the international level must not be underestimated in any negotiation process. International agreements are not unilateral foreign policy acts, but require the interaction of the negotiator with external third parties. The negotiator therefore has a Janus-like role, tasked with reaching an agreement that both the other party as well as its own principal will accept.

Negotiating international agreements becomes a more difficult endeavor the more compelling the external environment is. This means, in a nutshell, that something is at stake for the EU in international negotiations, that there is a large number of negotiation partners and that the EU has comparatively little bargaining power in relation to the external third parties. "The more parties involved and the larger their relative bargaining power, the larger the degree of compellingness" (Delreux 2008: 1076). Under such circumstances, the cost of no-agreement increases (Delreux 2009: 724), whilst reaching a best-possible agreement becomes more difficult for the Union negotiator. Thus, the Union negotiator requires extensive discretion, and activating extensive control mechanisms potentially endangers the efficiency of the negotiation process and with that the eventual negotiation outcome. Hence, *the Union negotiator's need for discretion depends on the compellingness of the external environment (H5c)*, with the need increasing the more compelling the environment is.

4. Inferior Outcomes - Why should Parties care?

Before concluding on the inefficiency costs of parliamentary scrutiny, a second specification needs to be made: why should political parties care about the risk that their actions might cause inferior outcomes from the delegating principal's perspective?

On the one hand, research has demonstrated in regard to Council decision-making that if national "parliaments tie the hands of their governments when they negotiate at the European level, effectiveness of policy-making is jeopardised and national interests may be defeated. Realising this dilemma, members of national parliaments develop strategies to deal with conflicting requirements

of national party politics and European policy-making” (Benz 2004: 875). On the other hand, in the complex and intertwined delegations chains in EU international treaty-making, parliaments are simply not the delegating principals. Thus, one cannot refer to the functional reason of delegation as increasing the efficiency and effectiveness of decision-making (Rubin/Sanders 1988: 295ff.; Thatcher/Stone Sweet 2002: 4). It can thus not automatically be assumed that parties have an interest in efficient and effective negotiations that eventually lead to the best possible negotiation outcome from the perspective of the “delegator”, the national governments meeting in the Council.

However, under certain circumstances, inefficiency does constitute a cost from the point of view of parties: whether a political party takes the risk of inefficient outcomes into consideration depends on the party’s policy position in regard to the envisaged agreement. On the one hand, parties in specific support of the agreement can generally be expected to have an inherent interest in efficient and effective negotiations. The same can be argued for parties which have points of complementary criticism towards the negotiations, as they are not in opposition to the international agreement and the course of its negotiations on principled grounds, still supporting the overall aim of the envisaged agreement. On the other hand, political parties with fundamental criticism of or in fundamental opposition to the international agreement under negotiation are not expected to fear that the outcomes of negotiations are not line with what the national government would have regarded as best possible outcome, as they oppose the agreement on principled grounds. Hence, *whether inefficiency constitutes a cost for a political party depends on the specific policy position of the political party at hand (H5moderating)*.

IV. Conclusion

This theoretical paper set out to offer a theoretically informed answer to what causes parliaments and political parties within parliaments to control EU international treaty-making. It thereby aimed at combining two perspectives of principal-agent applications: executive-legislative relations and agency relations in EU foreign policy. In a first subchapter, it subsequently presented the chains of delegation in EU international treaty-making from the point of view of parliaments and political parties within them as principals in a descriptive, yet theoretically informed manner. As these elaborations provided merely an explanation of why parliaments are able to act, instead of why they act, the second subchapter offered a theory-driven approach to actual parliamentary behaviour.

In line with principal-agent theory, it was argued that the principal’s decision of if, when and how to control the Union negotiator is subject to a cost-benefit analysis. However, in the complex and intertwined agency setting in European foreign policy, the contextual environment in which parliaments and parties act differs from that in standard principal-agent relations, altering the precise nature and magnitude of benefits and control of parliamentary control. Figure 2 depicts the costs and benefits of parliamentary control in the setting under investigation.

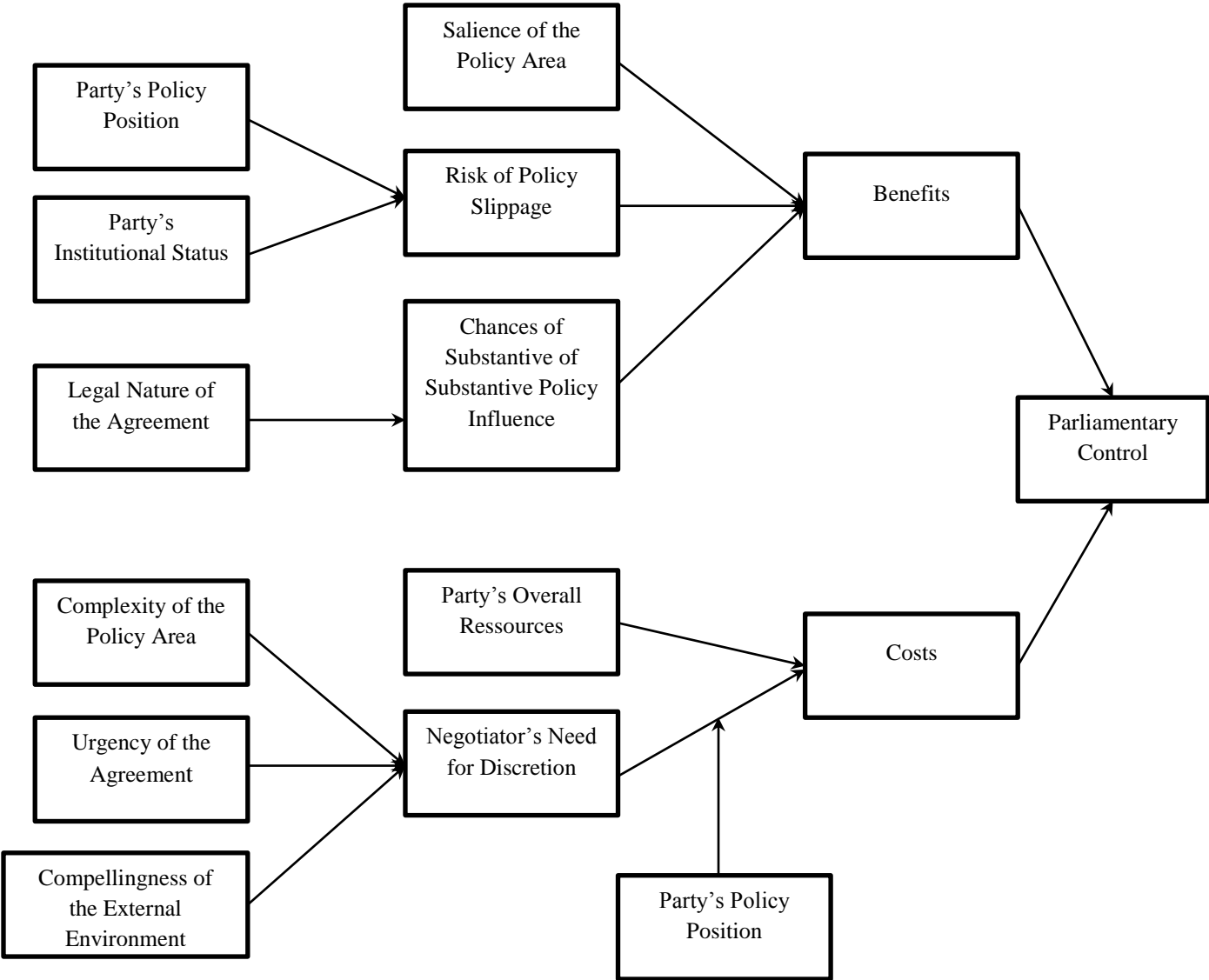


Figure2: Theoretical Framework

The benefits of control are two-fold: in parties’ role as agents to the voters, control serves as a vote-seeking strategy. This benefit increases with the public salience of the issue under negotiation. As principals to the Union negotiator, the benefit of control lays in its policy-seeking effect, due to

the decrease of policy slippage. Thereby, this benefits increases with the risk of policy slippage, which in turn is affected by the parties' policy position in regard to the international agreement and its institutional status in domestic politics. At the same time, the likelihood of having a substitutive policy influence increases the policy-seeking benefit as well, which depends on the legal nature of agreement.

The costs of parliamentary scrutiny lay, on the one hand, in the resources parliamentary control costs. The less overall resources a party has available, the bigger are those costs in relative terms. On the other hand, the risk of control causing inefficient and ineffective negotiations constitutes the second cost category. These costs increase with the negotiator's need for discretion in order to arrive at the best-possible agreement. The need for discretion is affected by three factors external to the principal-agent relationships: the complexity of the issue area under negotiation, the urgency of the agreement and the compellingness of the external environment. However, whether inefficiency does actually constitute a cost from the point of view of a political party depends on that party's policy position towards the international agreement under negotiation.

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