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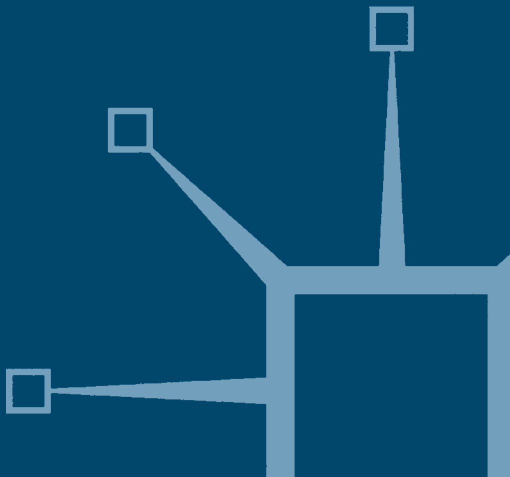
Unveiling the Council of the European Union

Games Governments Play in Brussels

Edited by

Daniel Naurin and Helen Wallace



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Unveiling the Council of the European Union

Games Governments Play in Brussels

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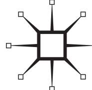

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Acknowledgements

This book is a product of the very timely new wave of sophisticated research that we have witnessed in recent years on the Council of Ministers – the most important decision-making institution of the European Union. The contributors to this volume are all participating in a continuing project aimed at unveiling the Council, previously infamous for its tradition of secrecy and behind-the-doors bargaining. Their efforts have resulted in a considerably improved availability of data, refined theorizing, and methodological pluralism, all of which prompt us to believe that we are presently experiencing a golden age of research on the Council. As editors, we would like to express our warmest gratitude to those scholars included in this volume, who kindly allowed us to capitalize on their painstaking work. All the chapters have been submitted to a double-blind peer review process, with two individual reviewers assigned to each chapter. Our gratefulness is therefore also directed towards those scholars who generously devoted some of their time to helping us compile a better volume. And a special thank you goes to Diana Draghici for excellent copy-editing work! The book is also the outcome of the fortunate encounter of the two editors in 2005 at the Robert Schuman Centre for Advanced Studies of the European University Institute in Florence, Italy. A fruitful collaboration has followed, including a workshop in Florence in May 2006 on the theme 'Who governs in the Council of Ministers?' Several of the chapters integrated in this book were initially submitted as first drafts within the framework of this workshop. Invited as discussants were our dependent variables themselves – distinguished practitioners from some of the EU member states and the Council Secretariat! Our thanks go to all those who participated and assisted us in organizing this event.

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List of Abbreviations

APRE	aggregate proportional reduction of error
BSE	bovine spongiform encephalopathy
Bt	bacillus thuringiensis
BTA	Basic Telecommunications Services Agreement
CAP	Common Agricultural Policy
CCP	Common Commercial Policy
CFSP	Common Foreign and Security Policy
CGS	Council General Secretariat
COREPER	Comité des représentants permanents (Committee of Permanent Representatives)
DEU	Decision-Making in the European Union (project)
DG	Directorate General
DG-E	Directorate General (External Affairs)
DOSEI	Domestic Structures and European Integration (project)
EC	European Community
ECJ	European Court of Justice
ECOFIN	Economic and Financial Affairs Council
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFC	Economic and Finance Committee
EFSA	European Food Safety Authority
ENA	École Nationale d'Administration
ENPI	European Neighbourhood and Partnership Instrument
EP	European Parliament
EPC	Economic Policy Committee *also* European Political Cooperation
EPC/CFSP	European Political Cooperation/Common Foreign and Security Policy
ERDF	European Regional Development Fund
ESDP	European Security and Defence Policy
EU	European Union
EURODAC	European Dactyloscopie
GATS	General Agreement on Trade in Services
GDP	gross domestic product
GMO	genetically modified organism
GNP	gross national product
HOSG	heads of state and government
IGC	Intergovernmental Conference

INGO	international non-governmental organization
JHA	Justice and Home Affairs
LCD	lowest common denominator
MDS	multidimensional scaling
MEP	Member of the European Parliament
NBS	Nash Bargaining Solution
OC	Optimal Classification
permrep	permanent representative
PSC	Political and Security Committee
QMV	qualified majority voting
SCA	Special Committee on Agriculture
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
SPS	sanitary and phytosanitary
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WTO	World Trade Organization

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1
Introduction: from Rags to Riches

Daniel Naurin and Helen Wallace

The starting point

With its country membership almost doubled after an elapsed time span of less than a half-decade, and facing yet another stage of efforts expended towards reforming its operating rules, the European Union (EU) of presently 27 members is currently undergoing a period of transformation, albeit not for the first time. In recent years, many practitioners and commentators have speculated that the EU was at a risk of ending up trapped in a gridlock in the face of the challenge of incorporating 12 additional members from May 2004 onwards. Such concerns have been at the heart of the discussion surrounding treaty reforms, both in regard to the Constitutional Treaty, which suffered two adverse referenda during 2005 in France and the Netherlands, and to the efforts to rescue this failed ratification through the Treaty of Lisbon, signed in December 2007.

The central constituent in the EU's working procedure is the Council of the European Union (or the Council of Ministers, as it is referred to in everyday vocabulary). It is arguably the most powerful of the institutions involved in the day-to-day decision-making of the EU, since it constitutes the primary arena in which key negotiations are played out among member governments. An array of proposals laid out in the recent Treaty of Lisbon aims to alter the ways in which the Council of Ministers and the European Council operate. Not least for this rationale, it is all the more important that our understanding of the Council should be well anchored in sound empirical evidence and rigorous analysis. The present volume strives to achieve precisely this goal by bringing together in a single monograph some of the most significant among recent contributions to the scholarly research on the Council. The chapters that follow thus look at the evolution of the Council over recent years, offering many insights not only into the deeply entrenched, conventional patterns of behaviour, but also into recent and ongoing trends.

Research into the workings of the Council of the European Union has reached a new phase of sophistication. Previously, the study of negotiations

in and around the Council was generally hampered by the scarcity of information about the inner workings of the Council, with hard data sorely lacking, and soft data scattered and fragmentary. Scholars in the field nonetheless sought to shed light on what might be going on, partly by developing a range of formal models, and partly by building up the repository of qualitative studies. However, it was hard to integrate the different approaches or to develop debate among scholars with different methodological and theoretical assumptions. The temptations to engage in stylized confrontations of approaches were all too seductive, and more often than not the substantive discussions were confined within the boundaries of one approach or another, rather than being more widely shared.

Fortunately, this situation has recently been transformed. The range of available data has grown enormously, even though there are still many dark corners waiting to be revealed. The number of academic researchers working on the Council has significantly increased. In part, this reflects a widespread recognition that the Council is of utmost importance in the institutional system of the EU, and hence that we need to do a better job of improving our collective understanding of how it really works. However, the burst of interest also indicates a sense that with sustained endeavour, there may be a real chance of breakthroughs in our understanding: theoretical, methodological and empirical. Against this backdrop, we can perhaps even look forward not only to more robust explanations of how the Council works, but also to more plausible predictive analysis. These aspirations gain added cogency in a period when the membership of the EU has expanded from 15 member states to 27 (as of January 2007), with concomitant debates in the world of practice about the viability of the inherited institutional system and about the prospects for institutional reforms. Moreover, as the research field has expanded, it has become increasingly evident that there is a much enhanced potential for pulling together the emerging findings and insights from recent and current studies.

This volume therefore seeks to capitalize on this new richness in a deliberately ecumenical fashion. The authors come from a range of different schools of analysis and intellectual approaches, and also include both more senior and more junior scholars. Overall, we have four main aims. The first is to encourage an investment in pooling the emerging data on the Council, both quantitative and qualitative, in a more systematic fashion than hitherto. The hope is that a collective effort can be expended to build a cumulative resource for current and future scholars, with a widely accessible repository of shared and increasingly accurate information, as well as a clearer identification of where the gaps are that might be filled by further research. A start has been made with the creation of a dedicated website at www.councildata.cergu.gu.se, which already hosts datasets and links for a number of individual and collective projects. The second aim of the volume is to identify fruitful combinations of precision and nuance that can be made

by drawing on the approaches and findings of different kinds of scholarship. We indicate a number of these in this introductory chapter, in particular under the headings of coalition-building, consensus, deliberation and leadership. The third aim is to promote more active debate and indeed mutually informed argument among those who scrutinize the Council through different kinds of lenses. Some of that debate has been included within this volume in the hope that much more may follow. The chapters by Heisenberg and Schneider specifically address this issue, but across the chapters there are cross-references to the debates in the literature. The fourth aim is to move on from a better understanding of the Council as such to richer accounts of the Council's role in its wider setting.

The chapters in this volume mainly focus on the inner workings of the Council (at ministerial and official levels of interaction). Yet all of the authors recognize that these form part of a denser tapestry of interaction with other EU institutions and with the politics of the member states. Many of the points identified across the volume need to be fed into the wider research agenda in EU studies, and not only those which are mainly focused on institutional dynamics. As the case study chapter by Pollack and Shaffer demonstrates, there is a great deal to be learned from the careful mapping of decision-making in specific policy domains, both as policy regimes are initially framed and as they are subsequently implemented. Interestingly, their study shows some quite different features of the Council from those generally identified, in particular with respect to consensus norms. More mapping is needed of other policy domains in order to gain a clearer understanding of what can be regarded as typical and as untypical patterns. Important features to look out for in this respect, all of which are addressed in this volume to some extent, include the stability and content of political cleavages, the roles played by formal rules and informal norms, by political ideologies and bureaucratic procedures, and by national and European identities, the impacts of opaqueness or transparency on the way politics is played out, and the forms of power exercised in the complex games which governments play in Brussels.

The state of the data

A big investment has been made in recent years in improving the state of the available data on decision-making in the Council. Partly, this stems from the new transparency arrangements of the Council itself. On the one hand, these include the posting of a wealth of data on the Council's own website, http://www.consilium.europa.eu, where records can be found of ministerial-level meetings, in particular press releases, agendas, minutes and the monthly voting statistics (on explicitly recorded votes). This material goes back fairly thoroughly to 1998, with some limited further details on the previous few years. On the other hand, the Council Secretariat is also able to release (in response to reasoned requests) a good deal of supplementary material,

including, for example, some documentation from meetings of lower level working groups. Material for earlier periods may be accessible either for the very early years in the officially released archives or on request. However, the Council's record-keeping system has become much more systematic only over the past decade. Thus, for earlier periods, a good deal of material (not in electronic form) still awaits attention and careful scrutiny. Some material, especially on the 1960s, has been the subject of exploration by historians.

The scholarly community has responded with some vigour to this newly accessible data. A significant range of studies have now been undertaken on the explicit voting data, on the co-decision procedure with the European Parliament, and to a more limited extent on trawls of the minutes of meetings for complementary material. Hagemann's work on statements in the records by dissenting member governments at Council meetings is an example in this sense, and is reported in her chapter in the present volume. The challenge here will be to develop systematic time-series data that will enable us better to understand trends and variations over time, as well as to deepen the use of this material in order to shed light on both differences between member states and differences across policy domains.

Alongside these official data there now exist the results of a number of collective and individual data compilations which are made available for further analysis. The Decision-Making in the European Union (DEU) project, reported *in extenso* in Thomson et al. (2006), and the Domestic Structures and European Integration (DOSEI) project (see, for instance the special issue of *European Union Politics* 2005, 6(3)) are fine examples of combined efforts to develop pools of data on the policy positions of member states and other actors. Several authors in this volume draw on the DEU dataset. Naurin and Lindahl's ongoing project of collecting survey data on cooperation and communication patterns over time in the Council working groups, reported in their chapter, is another example. Much more remains to be mined from these various official data and large-scale scholarly datasets.

This notwithstanding, there is a good deal of missing data and material. In particular, there are no systematic data on failed decisions, to wit proposals that have been implicitly or explicitly rejected in the Council. Nor do we have systematic records of how agreement is formed at levels of negotiation among officials in advance of ministerial meetings, where some decisions subject to the qualified majority voting (QMV) provisions are taken by identifying implicitly or informally favourable majorities. In this respect, we are reliant on qualitative studies of individual cases, examples of which are represented in this volume by Aus, Lewis and Niemann. Additional process-tracing research is clearly needed of other policy cases and other periods, on the basis of which a more cross-sectional picture will hopefully emerge. One startling omission is the absence of detailed work of this kind on the Common Agricultural Policy (CAP), despite its clear importance both over time, going back to the 1960s, and in the volume of decisions taken in this

domain. A particular lacuna is the limited research on how 'the shadow of the vote' operates as a mechanism, namely the processes of 'implicit' voting whereby effective majorities are established in Council negotiations which lead to agreed decisions being taken and without dissension being explicitly recorded. Golub (1999 and 2006) has made an interesting effort to infer from statistical evidence that this is a widespread phenomenon (see also König 2007). Further work is needed, however, to investigate how the process works.

Overall therefore, the quality and cogency of recent research on the Council constitute a huge improvement on earlier years. The contributions to this volume illustrate just how much can be achieved by way of added value as the investment in better theorizing, data-collecting and data-exploitation gathers momentum. We have selected what we believe are some of the most important research themes being dealt with among researchers in the field. These concern the decision rule (consensus norms or formal voting rule), coalition-building, modes of interaction (strategic, reason- or norm-driven), and the impact of the formal and informal institutional structure on the exercise of power and leadership – factors which shape preferences, and shape how preferences are aggregated into decision outcomes. We have invited authors who would, we knew, make interesting contributions. In making this choice we have put emphasis on ensuring a variety of methodological approaches, as well as theoretical and empirical perspectives and arguments. All the selected themes are to some extent contentious in that they inhabit debates – methodological, theoretical and empirical – among scholars.

Coalition-building

The first section of the book is concerned with coalition-building and conflict dimensions in the Council. A common view in the literature on the Council has traditionally been that there are no 'fixed' alignments of member states in the negotiation processes, but that coalitions shift from issue to issue. It has been widely assumed that no particular conflict dimension – such as the Left-Right dimension which often dominates national politics, or a pro-anti European integration dimension, or geographical dimensions (which could be based on regional preference clusters or cultural identity factors) – structures the interactions between the governments in the Council in a dominant way. This assumption has produced a picture of the Council as an ad-hoc problem-solving machinery, focusing on the concrete issues of the day and debating each issue on a case by case basis.

The release of the Council minutes and voting records to the public, backed by the new data collections based on interviews which have been compiled by researchers, has dramatically improved the possibilities of further investigating these issues. For example, studies based on the DEU data have demonstrated that preferences are not randomly distributed between the member states. Some patterns can indeed be found with respect to the

preferences and interests entering the negotiation process. In particular, prior to the 2004 enlargement, a North-South dimension was identified, in which Northern member states appeared to be clustered somewhat apart from the Mediterranean states (Thomson et al. 2004; Zimmer et al. 2005; Kaeding and Selck 2005). Some early evidence from the post-enlargement period, based on the same type of data, seems to confirm that geographical preference patterns are also present after the accession of ten new members in 2004 (Thomson 2007).

The chapters by Mattila and Hagemann in this volume analyse to what extent preference patterns are also visible at the output-end of the negotiation process, namely at the voting stage. Using the Council monthly summaries, Mattila has previously analysed voting patterns in the EU-15, finding similar North-South patterns to those in the DEU data. In his contributed chapter, he focuses on voting after the 2004 enlargement. Has the Big Bang enlargement to include ten new member states impinged on previous alignments? And has it raised the overall level of conflict in the Council?

Mattila finds that this has not been the case. The share of contested decisions has not increased in the first few years after enlargement and is still remarkably low. No less than 90 per cent of the acts during the period were consensually adopted. The coalition patterns in the EU-25 also resemble the EU-15 patterns in the sense that the most visible conflict dimension is again North-South. On the whole, Mattila concludes that the accession of ten new member states in 2004 has not changed the voting patterns in the Council in any major way.

Hagemann, on the other hand, argues that the enlargement has indeed brought about changes in Council decision-making, which are apparent also in terms of voting behaviour. Her research is also based on the public Council records, but her dataset differs in some respects from Mattila's. First, while Mattila registers only the final stage votes, Hagemann also includes intermediate votes during the legislative process as well as the formal statements that member states can attach to the Council minutes. Second, whereas Hagemann includes only legislative decisions, Mattila takes account of all types of Council decisions.

Interestingly, Hagemann does not find any North-South pattern in her data from the period preceding the 2004 enlargement, as earlier studies have. Instead her data indicate more of a Left-Right pattern, which is especially visible in the finding that domestic government changes, mainly occurring from Left to Right wing during this period, make member states shift positions accordingly in the Council coalition space. After the 2004 enlargement, however, this pattern disappears and Hagemann's data also show some indication of a geographical clustering, although this is less structured and distinctive compared to the findings prior to enlargement.

With respect to the level of contestation, Hagemann finds that although member states usually avoid registering their discontent by abstaining or

voting against a legislative act, as also demonstrated by Mattila, the number of formal statements attached to the minutes is at a relatively high level in the first years following enlargement. It may be that formal statements have increasingly become an accepted and useful measure for governments – which do not want to go so far as to block a decision – to signal their divergent preferences. In this way the 'culture of consensus' (which will be analysed further in some of the subsequent chapters) can be upheld in the face of increased preference heterogeneity, while governments still get to exercise some voice.

While the DEU data captures the input into decision-making in the Council (preferences or initial positions), Mattila and Hagemann study the formal output (votes, formal statements) registered in the Council records. Apparently, as shown by the divergent conclusions drawn by Mattila and Hagemann, the results on the output side are sensitive to precisely which type of data is being used. We do not yet know exactly where the differences originate – whether it is the formal statements or the different types of Council acts in the datasets. It may well be the case that making a formal statement to the records involves a different strategic choice (voice without obstruction) compared to no-votes and abstentions, which thus produces the different patterns. It could also be that voting is the most public and politicized type of behaviour, which may trigger more of a partisan logic. Generally, the reasoning behind member states' choices to cast no-votes, abstain, make a formal statement or just remain silent, is a subject which is not yet well understood and where further research is needed.

The third chapter in this section, by Naurin and Lindahl, instead looks at the negotiation process between initial bargaining positions and final votes. Naurin and Lindahl interviewed a large number of negotiators from all member states in 2003 and 2006, inquiring with whom those negotiators most often cooperated in order to develop a common position. Cooperation patterns, Naurin and Lindahl argue, in contrast to preferences and votes, also capture the social activity of coalition-building, which is perpetuated in Council negotiations.

Nevertheless, their main finding is a familiar one. The North-South dimension predominated in 2003, and is evident also in the enlarged EU in 2006. In the latter case, however, the longitude (North-South) dimension has been complemented by a latitude (East-West) one. The cooperation patterns in the enlarged EU are in fact strikingly similar to a map of Europe. Adding to previous studies, Naurin and Lindahl also offer a picture of what the centre-periphery perspective looks like in the negotiation networks. The big states (including the famous Franco-German axis) are clearly at the centre, indicating that larger size not only means more formal votes, but also tends to yield more 'network capital'.

An important issue for future research within this theme is to scrutinize further the content of the geographical patterns. Geography is obviously only

a proxy for some underlying concept. The reason why Danes usually prefer to cooperate with the Dutch rather than the Portuguese hardly has anything to do per se with their latitude position on the globe. Some have started this work of determining which factors produce these patterns (Thomson et al. 2004; Mattila 2004; Zimmer et al. 2005; Naurin 2007a), but the findings are thus far rather inconclusive.

Consensus

The voting records thus provide a rather peaceful picture of the Council proceedings. Only in a minority of cases do member states register discontent with the decisions taken. In fact, the level of formally registered conflict is so low that it becomes a methodological problem for the voting-based studies of coalition patterns. A lot of the 'action' in the Council is left outside the public records, as pointed out by Heisenberg in her chapter. However, since data on 'implicit voting' and 'failed decisions' are not included in the official records, the level of contestation is probably higher than can be inferred from the Council minutes. In this respect, we lack systematic quantitative data. Later in this volume Pollack and Shaffer describe – through a case study of the issue concerning genetically modified organisms (GMOs) – what conflict and deadlock in the Council may look like in practice.

Nevertheless, it is clear that the Council prefers to negotiate agreements rather than to proceed to voting, and that the negotiations frequently are successful in the sense that agreements are concluded. This fact constitutes the key research question for the subsequent two chapters. König and Junge in their chapter, and Aus in his, both address the 'rationalist puzzle' according to which the Council frequently manages to reach agreement on issues where veto player theory would have predicted no-votes and deadlock. In order to analyse this puzzle, however, they choose very different research strategies, and also end up at different conclusions. While König and Junge continue to defend rationalist interest-based explanations, Aus argues that more attention to the logic of appropriateness may help to solve the problem.

König and Junge consider two potential explanations for the poor performance of veto player theories in predicting Council consensus. First, they ask whether the problem is one of mis-specification of the models, whereby important variables may have been omitted. In particular, no veto player models hitherto applied to the Council have considered the possibility of issue-linkages, even though this is an often mentioned feature of the Council according to the textbooks. König and Junge introduce a model which takes into account the possibility that the member states trade support for different issues on the basis of different degrees of salience. Second, they address the possibility that the problem is a more general one, inherent in the assumptions of the theory: if actors behave according to a non-calculative

logic of appropriateness, informal consensus norms may tilt the outcome away from the model predictions.

König and Junge analyse these questions by combining the DEU data on Council decisions and the preferences of the member states on a range of policy issues with voting data from the Council minutes. The veto player models predicted a rejection of the Commission proposal in about half of the 48 cases, but the Council in fact reached agreement to accept the proposal in all cases. Thus, they find that although all the veto player models – including those taking salience into account – fail rather miserably in predicting collective decisions, they are doing somewhat better with respect to individual voting behaviour. However, even for the individual votes the error rate is substantial. The authors conclude that further specifications of the veto player models with respect to the identification of the agenda-setter and the introduction of possible omitted variables such as salience and voting weights will not improve the models' ability to predict Council decisions. They also refute, however, the critical suspicion that this has to do with 'a general misconception of decision-making incentives' on behalf of rational choice theory. As evidence, they demonstrate that there is very little variation in the degree of consensus between different member states and policy domains in their dataset.

So what does explain the unexpectedly high level of consensus? König and Junge recommend us to search for 'more general incentives for cooperation', which may be found in the complex committee system of the Council and the different kinds of bargains which are offered at different levels of this system. Others, like Aus in the following chapter, and also Heisenberg and Lewis in this volume, emphasize informal consensus norms as a key factor omitted in the veto player models. Such norms, these authors assume, may be general rather than domain- and country-specific as understood by König and Junge.

Aus, in his chapter, shows how this may work in practice. The key turning point in the story of how the Council reached agreement on the Dublin II regulation on asylum policy, as described by Aus, was when the Danish Presidency deliberately activated such an informal norm, by deciding to launch a 'silent procedure' in order to break the deadlock. According to this procedure the regulation would be considered as adopted if no one had objected to it at the end of a time period set by the Presidency. In practice the Presidency gave the recalcitrant Greeks and Italians a week to stand up and say 'No'. But raising objections during the silent procedure, according to Aus, would be seen as inappropriate. It would be a violation of 'how things are done' in the Council, where you should try to avoid standing out as a troublemaker. The case is especially interesting as it demonstrates not only that informal norms may be important determinants of behaviour, but also how such norms can be used as instruments for rationally calculating actors (the Danish Presidency in this case).

Deliberation

Consensual decision-making, thus, is a key characteristic of the Council, although the sources of consensus are debated among researchers. But what type of consensus is created in the Justus Lipsius building? A strong trend in democratic theory for some years has been to emphasize the value and importance of deliberation as a way of producing consensus and creating legitimacy for collective decisions. Democratic politics, according to this view, should be more about giving good reasons than forcing or striking deals. Deliberation means trying to reach agreement through the force of the better argument – convincing others of the right thing to do – rather than bargaining via threats and promises. Bargaining, according to normative deliberative democratic theory, is a perfectly legitimate way of reaching agreements in the marketplace. But we should not buy and sell public policy. In politics – at the forum – arguing is the morally superior way of interaction.

The success of deliberative democratic theory within political philosophy has increasingly been followed up by empirical researchers. Although empirical research cannot properly 'test' the normative claims of the theory, it can test its relevance to the real world. EU scholars have engaged in this task and some important contributions are present in this book, seeking answers to questions like: To what extent is the Council a deliberative body? Are Council decisions best described as 'reasoned consensus' or as 'deals'? Under what circumstances are arguing and bargaining more prominent as modes of interaction?

These questions – and the methodological challenges that come with them – are addressed in different ways in the chapters by Niemann, Pollack and Shaffer, and Lewis. Niemann dives deep into a detailed process-tracing of two specific negotiations (the Article 113 Committee's negotiations on the 1997 World Trade Organization (WTO) Basic Telecommunications Agreement, and the 1996–97 Intergovernmental Conference (IGC) Group of Representatives negotiations on the scope of the common commercial policy), using interviews, public and non-public documents and direct observations. Pollack and Shaffer, on the other hand, make a broad overview of the Council's involvement over 20 years in one policy field (the regulation of GM foods and crops), based on publicly available sources and interviews. Lewis summarizes the results of a long range of interviews with Council actors that he has been conducting over a period of eight years (1996–2003).

As a consequence of endorsing different research strategies, the difficult questions concerning definitions and operationalizations of the key concepts of arguing and bargaining are also approached differently in the three studies. Niemann's narrow conception of deliberation – aiming at distinguishing 'sincere arguments' from strategic rhetoric – necessitates a close study of actors' motivations. Pollack and Shaffer use a more blunt measure, focusing mainly on the level of conflict and the willingness of member states to modify their

positions. Lewis distinguishes not only between strategic (utility-following) and non-strategic action, but also attempts to show in practice the difference between a logic of appropriateness (norm-following) and a logic of arguing (reason-following).

The clearest common finding of the three contributions is that it is difficult to generalize with respect to the status of the Council as a deliberative body. Deliberation certainly happens, but only under specific circumstances. In particular, the level of politicization is important. Although deliberation by its normative proponents is designed to be a method for conflict resolution, there is a clear limit to how much conflict this mode of interaction can manage. Especially when conflict reaches the public arena positions tend to stiffen and a tougher bargaining attitude comes to the fore. Whether this is a disappointment or not could be discussed. On the one hand, if one believes in the normative value of deliberation, this mode should not be confined to the resolution of merely technical, low visibility issues. On the other hand, the relationship between deliberation and representation is a delicate one. From a democratic accountability point of view we would not want to see ministers with clear mandates from their constituents being too soft on their positions.

While not being contradictory, on some points the findings of the three studies speak to each other and suggest modifications. For example, one of the 'conducive conditions' for deliberation which Niemann points at – to wit the degree of uncertainty and complexity of the issue at hand – should probably be re-specified in the light of the findings of Pollack and Shaffer. Technical complexity and factual uncertainty may, as was clear in the case of GM foods and crops, be fully compatible with political certainty and fixed preferences, which ultimately drives political actors.

However, these three contributions to the 'deliberative turn' of EU studies should be seen as 'plausibility probes', as Lewis puts it, rather than systematic tests of conditional factors potentially determining the level of deliberation. The next step within this field is to develop research strategies for conducting such tests. Choosing empirical indicators will (as always) entail a delicate balance between generalizability and fidelity to the theoretical concepts. The studies presented here have provided the groundwork for this research task.

Leadership

The ability of the Council to reach decisions in the face of increasing preference heterogeneity and cultural plurality is a key issue for students of the Council. König and Junge on the one hand, and Aus on the other, discuss the relative importance of rational vote-trading and informal norms of appropriateness for inducing member states to reach agreement. Another factor potentially contributing to steering negotiations towards efficient outcomes are institutional actors, such as the Presidency, the Commission and the Council Secretariat. Tallberg and Beach, in their chapters, both argue that a

functional logic of negotiating efficiency can explain why delegation of leadership power from member states to such actors has occurred. In contrast to liberal intergovernmentalism, where it is assumed that the negotiating parties are perfectly capable themselves of finding efficient agreements, Tallberg and Beach point at transaction costs and potential negotiation failures. The institutional actors can contribute leadership in the Council with the effect of 'oiling the wheels of compromise' (Beach), by means of mediation and agenda-setting.

However, oiling the wheels may not be the only thing these agents do. Both Tallberg and Beach emphasize that the leadership they provide is biased rather than neutral. Tallberg argues that the rotating Presidency has developed into a real power platform in the Council. In effect, it allows the member state holding the chair six months to take advantage of privileged informational and procedural resources that make it possible to steer negotiations toward the agreements it prefers.

In his chapter, Tallberg outlines a rationalist theory of delegation of leadership power to the chairmanship in multilateral bargaining games. While solving collective action problems of agenda management, brokerage and representation, the delegation also creates opportunities for the appointed leader to exploit information asymmetries and procedural privileges for private (national) gain. In a series of case studies from 1999–2002, Tallberg illustrates how this is done in practice, and also how decision-making rules may condition the influence of the chair. In these cases, he argues, the Danish, Finnish, French, German, and Swedish Presidencies 'succeeded in shifting outcomes in their own favour' on issues concerning enlargement, institutional reform, environmental policy, budgetary policy, and foreign policy.

Warntjen, on the other hand, makes a direct challenge to Tallberg's claims of the power of the Council Presidency, which he believes are exaggerated. To assume that the member states of the EU-15 would have had an implicit deal on getting to exploit each other every seventh year is unreasonable, he argues, and becomes even more so in the enlarged EU of 27. Instead the procedural power actually delegated to the Presidency is limited, according to Warntjen. The member states have secured the collective benefits of leadership, while at the same time narrowing the Presidency's room for manoeuvre.

In a formal analysis of the procedural powers laid down in the Presidency in the Council Rules of Procedure, and a comparison with those of the Speaker of the US House of Representatives, Warntjen lays out his case. He argues that the Council Presidency does not have agenda-setting power in the rational choice meaning of the term of having a monopoly on making proposals. Instead the member states have chosen to grant the Presidency a limited form of proposal power, which they have not given treaty status. The Presidency has a louder voice than the others during its term in office, but is certainly no policy dictator. Tallberg responds that Warntjen's critique is 'the product of an

unnecessarily narrow understanding of influence and at odds with important empirical evidence', the latter being referred to in his chapter.

Beach in his contribution does not deny that the Presidency in many situations is an important facilitator of agreements in the Council. Like Warntjen, however, he questions the assumption that the member states have accepted an order where they each in turn get to dominate the others. In particular, according to Beach, there is a lack of trust in the big states as Presidencies, which makes them handicapped as leaders. Furthermore, smaller states may lack the resources in terms of expertise and bargaining skills to provide leadership on many issues.

Instead, according to Beach, the Council Secretariat, although small and with few formal powers, may take the place of the Presidency as provider of the leadership necessary for avoiding negotiation failures and deadlocks. The Secretariat has both the expertise and the trust that the member states often lack. A text coming from the Council Secretariat is more acceptable, other things being equal, than one originating in London or Paris, according to Beach. Furthermore, the Secretariat is there all the time, not just for six months every thirteenth year.

But the Council Secretariat is not just a neutral assistant, Beach argues. It is a bureaucratic actor with an interest in strengthening its role and capacities in the decision-making process, in particular by watching over the competences of the Council vis-à-vis the European Parliament and the Commission. In his previous work Beach has demonstrated his argument with respect to treaty reform negotiations. In this chapter, he describes two new case studies of bargaining in the second and third pillars of the European Union: the 2005 negotiation of financing for the Common Foreign and Security Policy (CFSP), and the negotiation of Eurojust within the third pillar in the late 1990s and early 2000s. Interviews and primary and secondary documentary sources are used to demonstrate the impact of the Council Secretariat in these negotiations.

Tallberg, on the other hand, is sceptical towards the claim that the Council Secretariat provides leadership in the EU. He suggests that the Council Secretariat 'constitutes a central resource at the disposal of the Presidency', but does not agree that it should be seen as 'an independent source of leadership' in the EU.

A point that emerges in these contributions is that political vacuums or ambiguities can provide space for exploitation by political actors, sometimes in unexpected ways. Beach's account of the Council Secretariat's role in framing parts of the decision-making process is not about formal powers, but about the ability to intervene cogently. On this point it would be valuable to explore the impact of the Council Secretariat in other domains and to compare the recent impact of the Secretariat with that of the Commission in cognate areas and in previous periods. In a similar vein both Tallberg and Warntjen (from different standpoints) shed light on the varying ways

in which the Council Presidency confers influence (but subject to limits) on member states holding the office.

Finally, Thomson considers another possible source of leadership, namely the dominance of the big states. A classic realist view of the Council would assume that the big member states are in control, while smaller states and supranational institutions have little room for manoeuvre on issues of high political importance. Is this a reasonable starting point for understanding how leadership is exercised in the normal day-to-day proceedings of the Council? Naurin and Lindahl found that big states not only have a stronger formal vote, but are also more centrally placed in the negotiation networks. Does this mean that the big states always get what they want? Do smaller states' preferences weigh at all in the negotiations?

Thomson demonstrates that they do. He uses the DEU data on policy preferences, and a modelling approach where different alternative power distributions are tested. It emerges that trying to predict the outcomes of Council negotiations without considering small states' preferences gives significantly worse predictions than when their preferences are counted. Interestingly, the smaller states' impact seems to be larger under QMV rather than under unanimity rule, when all states formally have equal (veto) power. Thomson also analyses a new data collection of the same type as the DEU from after the enlargement of 2004. Again, it is clear that the new (and mainly small) member states' preferences must be considered in order to predict negotiation outcomes in the Council.

Thomson concludes that the Council is not permanently dominated by any group of member states. It seems that the old pluralist slogan that 'all actors can exercise influence on at least some issues, some of the time', applies in the Council. It is not difficult to see the importance of such a state of affairs for the legitimacy and long-run stability of the European Union as a whole.

How best to study the Council?

One important source of strength of the new wave of research on the Council of the EU, on which this volume seeks to capitalize, is the plurality of methods, theories and empirical data being used. This book in itself contains research based on in-depth case studies of single decisions, process-tracing of negotiations over time, formal analyses and advanced statistical analyses of hundreds of decisions and individual behavioural acts and opinions. The empirical data include direct observations, qualitative interpretative interviews, expert informational interviews, surveys, primary and secondary documentary sources, cross-sectional and over time.

Pluralism naturally also implies debate. One of the aims of this volume is to highlight contentious issues and encourage discussion, which can hopefully clarify the state of the field and point to future directions for further research. Some of the debates are issue-specific, and concern different

empirical findings based on different types of data or theoretical definitions and assumptions. Others are more general and familiar from international relations and comparative politics at large, such as the ever-present tension between rational utility-maximizing approaches and theorists emphasizing the importance of endogenous preferences and identities and logics of appropriateness for explaining political behaviour (for excellent introductions into the different perspectives applied to the EU – rational choice and constructivism, neo-institutionalist versus policy-oriented approaches, comparative versus *sui generis* theorizing – see Jørgensen et al. 2006).

The last two chapters of the book include an explicit methodological debate on how best to study the Council of the EU. Heisenberg is worried about the growth of formal modelling and rational choice approaches, relying on a routinized and narrow conception of human behaviour, and quantitative methodologies in studies of the Council. In her view, the status of the political science discipline in the United States should serve as a deterrent example. The 'science' has overtaken the 'political' to such an extent, according to Heisenberg, that it has 'estranged US academic political science from reality so much as to have little to contribute to solving the problems of the day'. This is not the way to go for EU research. Furthermore, the *sui generis* nature of the Council and the lack of data on the factors actually driving decision-makers in the Council ('attitudes, preferences, informal norms, established practice, country history') make doubtful the value of applying quantitative methodologies.

Reviewing some of the most cited recent work on the Council, Heisenberg finds that qualitative empirical work is better both at generating policy-relevant research questions and at answering them. The exceptional and idiosyncratic nature of decision-making in the Council calls for qualitative theorizing and thick descriptions of empirical case studies, which invite readers to evaluate the interpretation of the data. While formal works tend to obscure the institutional uniqueness of the Council decision-making norms, according to Heisenberg, quantitative work depends on systematic generalizable data which simply do not exist. The failure of the formal and quantitative approaches is illustrated by the fact that the DEU project so far has contributed few innovative findings or new insights about the workings of the Council. In Heisenberg's view, it has mainly confirmed findings generated by previous qualitative work (such as the importance of the 'culture of consensus').

Schneider defends the turn to 'normal science', as he puts it, in the research on the Council. As editor of the journal *European Union Politics* and main investigator in the DEU project, Schneider has been a leading promoter of the trend towards more systematic and often but not necessarily quantitative testing of formally derived hypotheses. The underlying assumption of strategic rationality in the game-theory models is well-justified, Schneider argues, and he predicts that these models will play a key role in the future

study of the Council. In his opinion, it is a relief that the field has now largely left behind the previous 'inconclusive debates over unwieldy topics such as the uniqueness of the European Union' and is firmly engaged in systematic comparative research and explicit hypotheses testing. We can do, and we are doing, Schneider argues, both the 'political' and the 'science'.

Schneider is critical towards the sample of studies on which Heisenberg focuses, which he believes does not accurately mirror the status of the field. He is also not impressed by her suggestion that 'we knew it all before', which he thinks reflects a tendency to generalize from ad hoc observations. Heisenberg's critique that formal rational choice approaches can neither generate nor answer the important questions in the field is countered by Schneider in a listing of research findings which he argues are pertinent to exactly those questions raised as 'missing' by Heisenberg.

The tone in the two contributions is not always very forgiving, reflecting strong convictions. In this sense, the ecumenical ambitions of the editors were perhaps not completely successful. On the other hand, this methodological debate is common, but usually only heard in conference corridors and at department coffee breaks, and seldom brought to the fore in such an explicit and systematic way. Hopefully, we have had a clarification of the arguments, which leaves the reader to decide which path is most fruitful. And we have definitely enjoyed the blossoming of biological metaphors. While Heisenberg strongly denies that the best way to analyse elephants is to compare their trunks with worms (implying that the Council is *sui generis* and must be studied as such), Schneider sees little value in being on a first-name basis with laboratory amoebas, regardless of how special they are.

The Council in the EU system

Recently, the roles and practices of the Council have been thrust into the spotlight of public and academic scrutiny for two main reasons. One is that institutional reform of the EU has been the subject of fierce argument over the past few years. The other, and perhaps related, reason is that the membership of the EU has grown rapidly from 15 to 27 member states, with enlargement to 25 in 2004 and to 27 in 2007. These concerns have to be set in the broader context of how the institutional system of the EU operates as a whole.

The main focus of the chapters in this volume is on the internal workings of the Council rather than on its inter-institutional relationships with either other EU institutions or with the home governments of the member states. Thus, the volume's primary contribution is to provide us with a more nuanced understanding of the Council itself, and it remains for further research to examine the 'so what' consequences for inter-institutional relationships. Several issues emerge as ripe for further exploration. These include: whether or not (and if so how) coalitions spread across EU institutions (for example, how does increasing politicization along the Left-Right dimension

in the European Parliament affect the mainly geographical interaction patterns in the Council?); what kinds of distinctions can be made as regards institutional behaviour and outcomes among the different 'pillars' within the EU's legal and procedural order; what evidence can be found of inter-institutional competition within the EU; and what kinds of distinctions can be drawn between the more consensual areas of collective decision-making and the more contested.

As regards coalition-formation, as König and Junge suggest, we need to examine more closely the relationship between Commission proposals and agenda-setting, on the one hand, and at how the Commission exploits potentially favourable coalitions in the Council, on the other. This dog hardly barks in the chapters of this volume, although traditionally Commission entrepreneurship and brokerage are often argued to be key ingredients of the 'Community method'. As regards the distinctions between pillars, contributors to this volume report paradoxical findings. It seems to be the case, according to Aus, Beach and Niemann, that in some very intergovernmental areas the Council is surprisingly efficient, in the sense of finding ways of proceeding to agreed outcomes, whereas in what ought to be much more 'communitarized' policy areas, contestation may be endemic and prolonged, as Pollack and Shaffer suggest. On the issue of inter-institutional competition, this volume valuably sheds further light on the roles and influencing capacity of both the Council Presidency and the Council Secretariat (see chapters by Beach, Tallberg and Warntjen). Yet the findings of these chapters need to be scrutinized in relation to the opportunities for the Commission to exercise framing and mediating influences. To the extent that either the Council Presidency or the Council Secretariat can be argued to be critically influential on one occasion or another, in what ways is this phenomenon linked to either structural or contingent features of the Commission's role? Many chapters in this volume address the question of how far the Council should be understood as a consensus-oriented institution or one which in which contestation is endemic. The contribution by Pollack and Shaffer addresses a policy issue subject to recurrent and protracted contestation, not only within the Council but in the inter-institutional exchanges with the Commission and the EP, and not only at the decision-forming stages but also as decisions are taken into the implementation phase. Their work suggests that further deep case studies of other policy domains are needed, and that we need to follow more closely examples of Council-Commission interaction in the efforts to implement contested policies.

As regards the political debate about institutional reform within the EU, different camps can be identified in the world of practice. At one end of the spectrum are those who seek to strengthen the political autonomy of the EU by reinforcing its more supranational features and by making it easier for more decisions to be reached on a more majoritarian basis. At the other end of the spectrum are those who have been keen to retain the scope for

the Council as far as possible to be the decision-maker of last resort and for individual member states to maintain their scope for safeguarding precious national preferences or reservations. The demise of the Constitutional Treaty arose from this argument, and the 2007 negotiations leading to agreement in Lisbon in October 2007 on a modified Reform Treaty[1] reflect this continuing argument about where the so-called 'institutional balance' should be struck within the EU.

By and large our chapters suggest that practice in the Council and its relationships with the rest of the EU system consist of a mixture of formal rules and informal practices. Behaviour evolves over time and at least as regards the Treaty of Nice (agreed in 2000 and implemented in 2003), no major effects are reported as a result of the rule changes embodied in that treaty. Of course, formal extensions of the powers of the European Parliament (EP) do have specific impacts by changing the relative roles of the EP and of the Council in, for example, the legislative areas subject to the co-decision procedure. However, the very important relationship between the Council and the Commission seems to be much less a function of formal rules than it is the product of negotiated arrangements and text-processing or linked to the salience and controversiality of particular policy issues. Aus argues, for example, that agreements can be and are reached even in a policy area as tricky as Justice and Home Affairs (JHA) in the absence of strong institutional mechanisms, as long as other favourable conditions are present and can be mobilized through informal processes. This echoes Lewis's insistence on the importance of informal processes across the range of policy sectors.

Among the most contentious issues in the political debate has been the question of the relative power of different member states in the EU system and particularly the alleged impact of different rules for establishing majorities in the Council. This is a topic that has attracted attention from the academic community as well as much media commentary. Our authors are generally sanguine on this issue. Explicit voting is relatively infrequent and almost certainly does not give us hard evidence about either the nature of contestation or about relative success. As König and Junge argue, the multi-dimensionality of contestation and the reluctance to express explicit opposition do not enable us to establish a clear picture of how negotiations proceed. Probing into the detailed patterns, it seems, according to Thomson, that smaller member states do indeed have the opportunity to influence outcomes, but more by exploiting informal resources and through contingent coalitions than by the use of the formal voting rules. This is so even though Naurin and Lindahl report that negotiators from the larger member states are more centrally positioned in the negotiation networks. Moreover, the Council presidency allows opportunities to both larger and smaller member states to exercise leverage. Thus narrowly defined assertions about one particular decision rule or another seem much less interesting than the detailed examination of the circumstances in which particular kinds of decision are reached

on particular kinds of issue and with what patterns of influence exerted by which member states.

As regards the impact of recent enlargements, many practitioners had feared that the serial enlargement that produced the EU-27 risked generating gridlock in the EU and especially in the Council. The evidence of our authors tends categorically to invalidate this fear. Hagemann and Mattila, with slightly different cuts on the data, show on the contrary that since 2004 the Council has pretty much been characterized by 'business as usual', although Hagemann reports that dissenting entries in the Council minutes have become more common. The trends of explicit voting remain broadly similar to those that preceded enlargement, although our explicit voting datasets unfortunately do not stretch back before 1995 – more work remains to be done here. What is reported in our volume is also consistent with other work (Best and Settembri forthcoming; Dehousse et al. 2006; and Wallace 2007) on this topic, which also suggests that the levels of 'productivity' of the Council remained similar in the EU-25 to those in the EU-15 – it is too early to have available solid data on the more recent arrival of two further member states in January 2007.

Conclusions

For a long time EU scholars have complained about the lack of systematic empirical data on what is going on inside the Council. Our textbook knowledge of what is happening in the EU's most important legislative and decision-making institution has to a large extent been based on anecdotal evidence. One reason has been the closed nature of the Council. The lack of transparency was justified by the need for secrecy during negotiations.

In a very few years, however, we have gone from a situation where the Council really was the black box of the EU, to the state of play today, where we have a whole range of superb qualitative and quantitative data collections, case studies, cross-sectoral and time-series data. This means that EU researchers are better equipped than ever before to analyse the decision-making processes of the Council and to test conventional wisdoms. They can analyse questions such as: Which conflict dimensions structure the interactions between the member states in the Council? What type of bargaining is going on? What is the level of contestation? What are the important bargaining resources? Who has power and how is power exercised? What are the mechanisms of conflict and consensus? How effective is the institutional machinery in producing legislative output from this complex set of interests, ideas and power resources which is the European Union? And above all, what is the effect on all this of such dramatic events as the Big Bang enlargement in 2004?

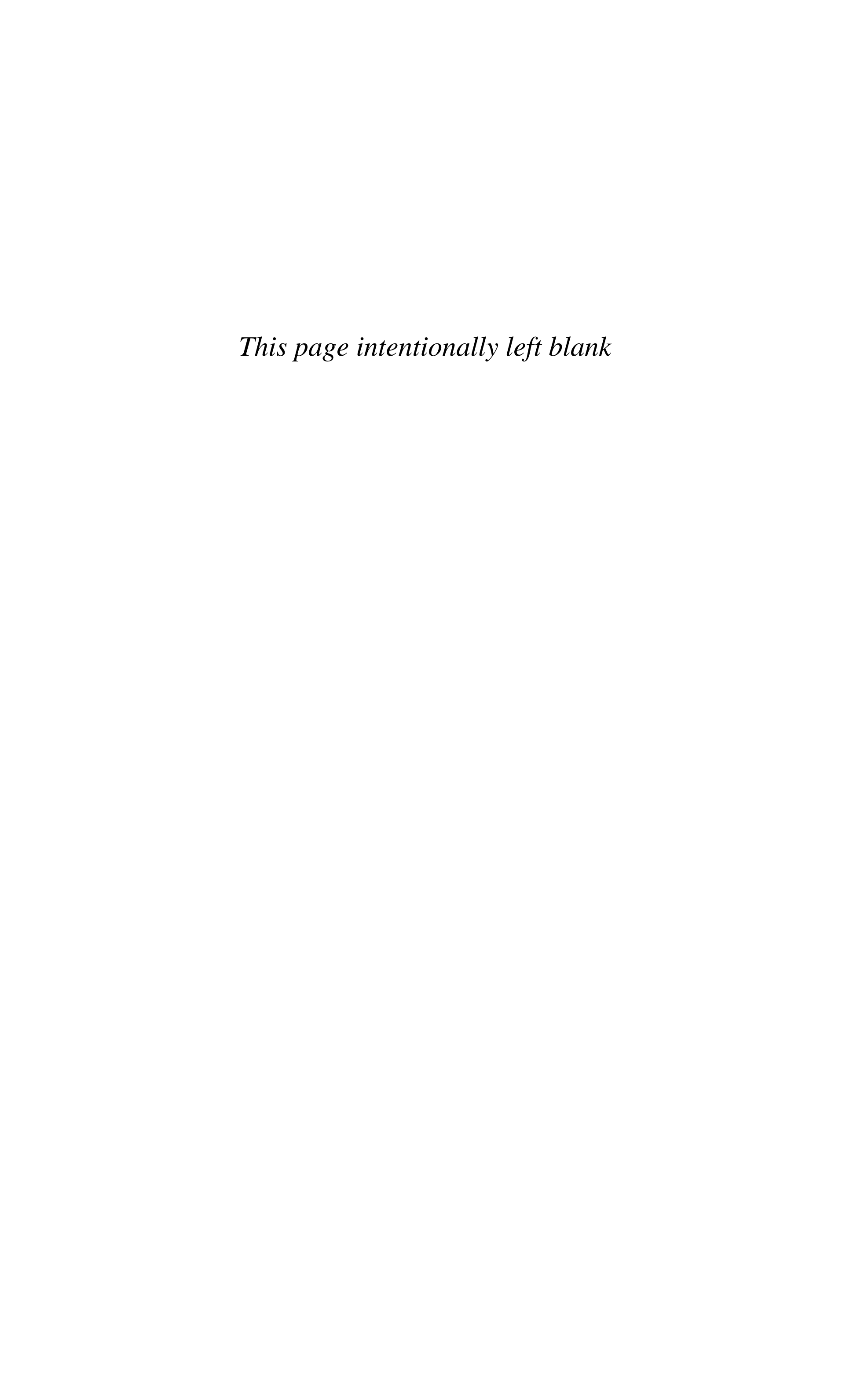
Scholars can and are doing that, as demonstrated in this book. The effect will be important, not only with respect to our knowledge of the Council

itself – and therefore of EU politics in general – but also because this research is advancing general theories of bargaining, power and modes of interaction in international institutions, for which the Council is a particularly fruitful object of study.

Notes

1. For the full text of the Reform Treaty the reader is directed to the website http://www.consilium.europa.eu/uedocs/cmsUpload/cg00014.en07.pdf (date of last access: 16 December 2007).

Section One
Coalition-Building



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2
Voting and Coalitions in the Council after the Enlargement

Mikko Mattila

Introduction

Prior to the accession of ten new member states into the European Union in 2004 and of two additional members in 2007, some researchers were concerned that the enlarged Union, and particularly its major legislative organ the Council of Ministers, would be threatened by a gridlock. The rules for decision-making in the enlarged Union were decided in the Nice summit and subsequently codified in the Treaty of Nice. These rules increased the relative voting power of bigger member states at the expense of smaller member states. However, at the same time, the qualified majority voting (QMV) threshold required for the adoption of QMV proposals was raised, which prompted some researchers to forecast problems for future Council decision-making in an enlarged Union (Baldwin et al. 2001; Felsenthal and Machover 2001).

In this chapter I analyse how the accession of the ten new member states in 2004 has affected the decision-making in the Council of Ministers. In particular, I am interested in the voting process within the Council: How has the contestation of decisions changed and what is the role of the new member states in this potential change? For the purposes of my investigation, I analyse the roll-call records of the Council during the whole period of the EU-25 from May 2004 to the end of 2006. This analysis constitutes the first part of this study. In the second part I analyse coalition patterns in Council voting. Has the introduction of ten new Council members affected coalition formation in Council voting and if so in which ways? How do the new members fit into the existing 'political space' of Council interaction?

The chapter is structured as follows. It begins with a short review of previous studies of Council decision-making, focusing on analyses that concentrate on Council voting or on empirical measurement of Council members' preferences. Next, the data is introduced, followed by the empirical analysis that consists of two parts. The first part is mostly a descriptive analysis of the level of contestation in Council roll calls in the enlarged Union.

The second empirical part focuses on coalition patterns in Council voting, analysing the size and composition of dissenting coalitions. The conclusions are summarized in the last part.

Previous research

Since the mid-1990s the amount of empirical analyses focusing on the Council of Ministers has increased considerably, which is one of the rationales for this volume. In addition to general introductions (see for instance Hayes-Renshaw and Wallace 2006; Sherrington 2000), the Council's activities have been analysed from more focused perspectives, with various theoretical approaches and with various types and sources of empirical data. According to Kaeding and Selck (2005), the studies that have focused on coalition-building in the Council can be divided into two main theoretical categories (see also Lewis 2003a). Thus, rationalistic approaches stress the importance of actors' (member states and EU institutions) strategic choices, which are based on their policy interests, while constructivist approaches emphasize the effects of actors' culture, social norms and identities.

Turning to different types of data used, a distinction can be made between qualitative and quantitative studies. Qualitative analyses of the Council rely mainly on interview data with EU experts (for instance Lewis 2003a and Chapter 9 in this volume) and can often produce a more nuanced picture of the way the Council operates than can be reached with quantitative data. Quantitative analyses of bargaining and/or coalition-building in the Council typically utilize either Council roll-call data or data collected from EU experts in semi-structured interviews. A good example of the latter approach is the Decision-Making in the European Union (DEU) research project, which has produced an invaluable dataset of Council members' policy preferences on 66 Commission proposals (Thomson et al. 2006; Stokman and Thomson 2004; König and Junge (Chapter 5) and Thomson (Chapter 13) in this volume). These data have mainly been used to test various theoretical models of bargaining in the Council. Finally, there are some studies that use more traditional questionnaire data from actual participants of Council negotiations (for instance, Beyers and Dierickx 1997; Elgström et al. 2001; Naurin and Lindahl, Chapter 4 in this volume).

Council roll-call records have been analysed by Mattila and Lane (2001), Mattila (2004), Heisenberg (2005), Hayes-Renshaw et al. (2006), Aspinwall (2007), Hagemann and De Clerck-Sachsse (2007b) and Hagemann (Chapter 3 in this volume). These studies show that explicit voting in the Council is rather rare, and when it occurs it is typically only one member state that is contesting the proposal. This phenomenon, sometimes referred to as a 'culture of consensus', has been justified by its legitimizing effect: the EU's legitimacy purportedly increases in the eyes of its citizens when losers are not made explicit (Heisenberg 2005, p. 82). Another justification for

consensual decision-making is that it encourages compliance in implementing the EU-level decisions in domestic legislation (Hayes-Renshaw et al. 2006, p. 163). Whether these claims are true is obviously an empirical matter, but both justifications are problematic from the point of view of democratic accountability and transparency. The representatives of member states should be held accountable to their national parliaments and, ultimately, to citizens. Democratic accountability can hardly function properly when real political disagreements are masked behind the practice of consensual decision-making.

The bulk of the published literature analysing the effects of the enlargement on the Council's work was written before the Eastern enlargement in 2004 took place. Researchers interested in the Council's voting rules were concerned with the possible detrimental effects on the decision-making capability of the Council in case the QMV quota would not be lowered when new members joined the EU (for instance, Hosli 1999). In fact, the opposite happened: in the Treaty of Nice, this quota was raised (Felsenthal and Machover 2001). In addition to voting rules and decision quotas, the distribution of member state preferences affects the Council's capacity to act. The more different the policy preferences of the new members are from those of the older members, the more the Council's capacity to act will be affected (see König and Bräuninger 2004). Zimmer et al. (2005) studied the Council preference distribution with empirical data from semi-structured interviews with EU experts both from the old and the new member states. They concluded that, although the new members do not form a homogeneous group of countries, 'enlargement exports greater preference heterogeneity to the EU' (ibid., p. 415). Their overall, although tentative, conclusion was that the enlargement would strengthen the Southern bloc as most new members fall into the group of subsidy-dependent states. Finally, Kaeding and Selck (2005, p. 283) speculate that enlargement leads to a situation where the North-South dimension in the Council might be replaced by a North-South-East coalition pattern. I evaluate the validity of these arguments in the empirical part of the chapter.

Data

The Council roll-call data used in this chapter is based on information released by the Council Secretariat at the Council website (http://ue.eu.int).[1] In particular, I use the 'Monthly Summary of Council Acts' documents which list all legislative and non-legislative decisions made by the Council and, if voting occurred, which countries voted 'no' or abstained from voting. In this chapter, contested acts (or decisions) are defined as such acts in which one or more of the Council members explicitly voted against the proposal or abstained from voting. The time period for the analysis is the whole period of the EU with 25 member states, from 1 May 2004 to 31 December 2006.

During this period the Council decided on 416 legislative acts and 942 other acts. Of these about 38 per cent were decisions, 32 per cent regulations, 8 per cent directives, 6 per cent joint actions and the rest consisted of various other types of decisions (resolutions, common positions, declarations, agreements and so on).

The data used in this chapter differ from the data used by Hagemann (Chapter 3) in two main ways. First, Hagemann's time period is different. I concentrate only on the EU-25 period while she has a longer time frame in her analysis. Second, my data encompass all decisions made by the Council, while Hagemann's data only include actual legislative decisions. Furthermore, Hagemann makes use of statements that the member states sometimes attach to their voting decisions as additional information.

Although the Council roll-call data can give us insight into the way the Council operates and what kind of cleavages can be found among its members, there are several limitations to this kind of data. An obvious problem is that roll-call data do not encapsulate information on 'failed' decisions, that is, proposals that failed to gather the required majority to support them. These acts are not submitted to vote; they are usually remitted for further discussion to lower levels of preparation. Second, some member states may disagree with the majority, but for some reason choose not to record their dissent officially by formally voting against the proposal or abstaining from voting. The reason for this may be that the decision in question is relatively insignificant and its media value in the home country is low. Whatever the reason, one can assume that the observed number of contested decisions is really a downward biased estimate of the true amount of dissent in the Council (Mattila 2004, p. 31). Finally, it is possible that two countries vote together against a proposal but do not really share similar policy preferences. For example, one member state may vote against a proposal because too large cuts in agricultural subsidies are proposed while another member state votes 'no' because the proposed cuts are too small. However, in most cases it is probably safe to assume that member states voting together against a proposal at least by and large share similar policy preferences.

On the other hand, there are also advantages to using roll-call data. First, roll-call data is easy and fast to gather and almost instantaneously available at the Council website after the formal decisions have been made. Major research projects aiming to collect data on the 'real' preferences of the Council members, such as the DEU project, involve a large amount of resources and they are not easily repeated to check whether changes have occurred after the data collection. Second, voting decisions represent official choices made by the representatives of the member states in a political institution which makes decisions affecting hundreds of millions of Europeans. Thus, the analysis of Council voting records is justified from a democratic point of view.

Contestation

As noted above, the addition of ten new members to the decision-making process implies that the variability of preferences represented in Council has increased considerably. How has this affected the share of explicitly contested votes in the Council? Table 2.1 provides the answer to this question. Of all the decisions in the dataset about 90 per cent were agreed upon unanimously. For legislative acts the corresponding share was 85.8 per cent, and for other acts 91.1 per cent. Negative votes were given in 8.9 per cent of legislative acts and 6.2 per cent of other cases. This means that the share of contested decisions has not increased since enlargement, as might have been expected. On the contrary, the share of contested decision appears to have decreased. Figures collected by Heisenberg (2005, p. 72) for the EU-15 show that about 82 per cent of legislative acts were decided by consensus during 1995–2002 (see also Hayes-Renshaw et al. 2006, p. 163).

One interpretation of this rather unexpected observation of increased consensus would be that the ten new member states have been very quick to internalize the prevailing norms of the EU decision-making process, particularly the 'culture of consensus'. This result is in agreement with Field (2001, p. 67), who argues that the new Council members are 'likely to at least partly adopt the norm that they should not allow the smooth functioning of the EU's business to be impeded by their desires to further national concerns'. However, this will not necessarily be the case in the future. If one looks separately at the first post-enlargement year and the following period it is clear that even during this short time there has been a significant change. During the first 12 months the share of all acts decided by consensus was over 94 per cent, after that it dropped to 87 per cent. This is likely to mean that the new members used the first membership year to become acquainted with the written and unwritten rules and norms of Council decision-making. However, this learning period was soon replaced by the 'business as usual' period, which is reflected by the statistics from the second and third post-enlargement years. They are quite in line with those calculated from the pre-enlargement period. It is an interesting question for future research to

Table 2.1 Contested definite legislative acts and other acts, May 2004–December 2006 (absolute number of acts in parentheses)

	Legislative acts	**Other acts**	**Total**
Uncontested	85.8% (357)	91.1% (858)	89.5% (1215)
Negative votes	8.9% (37)	6.2% (58)	7.0% (95)
Abstentions (no negative votes)	5.3% (22)	2.8% (26)	3.5% (48)
Total	100.0% (416)	100.0% (942)	100.0% (1358)

Table 2.2 Contested acts by decision rule (percentages of total with absolute number of acts in parentheses)

	Legislative acts[a]		**Other acts**
	Unanimity	**QMV**	
Uncontested	96.9% (94)	82.2% (259)	91.1% (858)
Negative votes	0.0% (0)	11.7% (37)	6.2% (58)
Abstentions (no negative votes)	3.1% (3)	6.0% (19)	2.8% (26)
Total	100.0% (97)	100.0% (315)	100.0% (942)

Note: a. In four cases of legislative acts the decision rule was not specified in the source documents.

see whether this declining trend of consensus in the Council voting continues or whether the change was just a return to the 'normal' pre-enlargement level of (dis)agreement.

The share of contested acts is naturally influenced by the decision rule used. During the research period 76 per cent of the legislative acts decided by the Council required agreement by the qualified majority voting (QMV) rule. Hayes-Renshaw et al. (2006, p. 163) showed that annually during their research period (1998–2004) some 75 to 80 per cent of decisions subject to the QMV rule were not explicitly contested in the Council. Table 2.2 shows that the comparable figure for the enlarged EU of 25 members was about 82 per cent, that is, higher than during most of the years preceding enlargement. Again, there is a noticeable variation in time. In 2004 only 16 per cent of the QMV acts were contested while the corresponding figures for 2005 and 2006 were 21 per cent and 17 per cent respectively. Of the non-legislative acts 91 per cent were not contested in the Council (in 2004 this figure was 97 per cent, in 2005, 88 per cent and in 2006, 90 per cent). Unfortunately, the 'Monthly Summaries of Council Acts' released by the Council Secretariat do not classify these non-legislative acts according to the decision rule, meaning that any conclusions regarding the effects of the decision rule cannot be made with these acts.

Considering the share of contested decisions in different compositions of the Council (Table 2.3) it is clear that the picture does not deviate much from the pre-enlargement period. Analysing the 1995–98 period, Mattila and Lane (2001, p. 42) found that the policy sectors in which voting 'no' against the Council majority or abstaining were most likely to occur were agriculture, matters related to internal markets and transport affairs. During the EU-25, the share of contested decisions was highest (21 per cent) when acts were decided using the written procedure.[2] Contestation was most common in the Transport, Telecommunications and Energy Council (18 per cent), the Competitiveness Council[3] (17 per cent) and the Agriculture and Fisheries Council (15 per cent). The General Affairs (5 per cent), Economic and Finance

Table 2.3 Contested acts by Council (absolute number of acts in parentheses)

Council	**Uncontested**	**Negative votes**	**Abstentions (no negative votes)**	**Total**
Written procedure	78.6% (55)	15.7% (11)	5.7% (4)	100% (70)
Transport, Telecommunication and Energy	81.6% (62)	9.2% (7)	9.2% (7)	100% (76)
Competitiveness	83.5% (71)	11.8% (10)	4.7% (4)	100% (85)
Agriculture and Fisheries	85.5% (282)	9.0% (30)	5.5% (18)	100% (330)
Environment	86.0% (74)	8.1% (7)	5.8% (5)	100% (86)
Employment, Social, Health and Consumer Affairs	89.4% (42)	8.5% (4)	2.1% (1)	100% (47)
Education / Youth / Culture	92.6% (63)	5.9% (4)	1.5% (1)	100% (68)
Justice and Home Affairs	93.1% (95)	4.9% (5)	2.0% (2)	100% (102)
Economic and Financial Affairs	95.1% (173)	4.4% (8)	0.5% (1)	100% (182)
General Affairs and External Relations	95.5% (298)	2.9% (9)	1.6% (5)	100% (312)

Affairs (5 per cent) and Justice and Home Affairs (7 per cent) councils were those where decisions were most likely to be agreed without dissenting votes.

From previous analyses of Council voting we know that on average larger member states (Mattila 2004) and Northern countries (Hayes-Renshaw et al. 2006) are more likely to abstain or vote 'no' than smaller countries or more Southern countries. This overall pattern has not changed in any major way, as shown by Table 2.4. Sweden tops the list of 'no' voters and abstainers, followed by Denmark, Poland and Lithuania. At the bottom of the table one can find Ireland, Hungary and Slovenia.

In terms of changes in individual states' positions , the Netherlands and the UK have moved down on the list of 'no' voters while Portugal has moved up when compared to the pre-enlargement period. The relative changes in the positions of the Netherlands and the UK may be related to the fact that they both held Council Presidencies during the research period. Previous research has shown that governments holding the Presidency tend to moderate their voting behaviour during the half-year period (Mattila 2004, p. 43).

Most of the new member states are relatively small, which would mean, if the pre-enlargement results still apply, that they are unlikely to be among the group of states that contest proposals most frequently. Results in Table 2.4 seem, at least partially, to confirm this. The average values at the bottom of the table show that in general the new member states contested proposals less than the older member states, although the differences are very small. Among the new member states, Poland and Lithuania were the most likely 'no' voters or abstainers and Hungary, Slovenia, Latvia and Estonia rarely challenged the majority.

Table 2.4 Uncontested votes, negative votes and abstentions by member state (per cent of all decisions)

	Legislative acts			**Other acts**		
	Uncontested	**Negative votes**	**Abstentions**	**Uncontested**	**Negative votes**	**Abstentions**
Sweden	96.4	2.2	1.4	96.8	2.2	1.0
Denmark	97.4	2.4	0.2	97.6	1.9	0.5
Poland	97.8	1.2	1.0	98.2	0.7	1.1
Lithuania	97.8	1.7	0.5	98.5	0.6	0.8
Portugal	97.8	1.0	1.2	98.5	0.5	1.0
Germany	97.8	0.5	1.7	98.8	0.4	0.7
Greece	97.8	1.0	1.2	99.3	0.3	0.4
UK	98.1	0.7	1.2	97.9	1.2	1.0
Italy	98.1	1.0	1.0	98.5	0.6	0.8
Netherlands	98.3	1.0	0.7	97.6	2.0	0.4
Malta	98.6	1.4	0.0	99.3	0.2	0.5
Czech Rep.	99.0	0.5	0.5	98.7	0.2	1.1
Belgium	99.0	0.2	0.7	98.9	0.5	0.5
Austria	99.0	0.7	0.2	99.5	0.3	0.2
France	99.0	0.2	0.7	99.5	0.2	0.3
Slovakia	99.0	0.7	0.2	99.5	0.2	0.3
Cyprus	99.3	0.2	0.5	99.7	0.2	0.1
Luxembourg	99.3	0.0	0.7	99.8	0.0	0.2
Finland	99.5	0.2	0.2	97.8	1.5	0.7
Estonia	99.5	0.0	0.5	98.0	1.4	0.6
Spain	99.5	0.0	0.5	98.6	0.8	0.5
Latvia	99.5	0.2	0.2	98.8	1.1	0.1
Slovenia	99.5	0.2	0.2	99.0	0.4	0.5
Hungary	99.5	0.2	0.2	99.4	0.2	0.4
Ireland	99.5	0.2	0.2	99.6	0.2	0.2
All countries	98.6	0.7	0.6	98.7	0.7	0.6
EU-15	98.5	0.7	0.8	98.6	0.8	0.6
New member states	98.9	0.7	0.4	98.9	0.6	0.6

Dissenting coalitions

Several researchers have tried to uncover – using roll-call data, the DEU data or survey data – the dimensionality of the Council decision-making space and the locations of the member states in this space. In these studies different quantitative methods have been used to identify the coalitions of member states that share preferences in the Council decision-making: multidimensional scaling (König and Pöter 2001; Mattila and Lane 2001; Thomson et al. 2004; Naurin and Lindahl in Chapter 4 below), principal component analysis (Selck 2004a; Kaeding and Selck 2005; Selck and Kuipers 2005), correspondence analysis (Zimmer et al. 2005), cluster analysis (Hayes-Renshaw et al.

Table 2.5 Size distribution of contesting coalitions

Number of member states in a contesting coalition	**Share**	**Number of cases**
More than 7	5.6%	8
6–7	7.7%	11
4–5	19.6%	28
2–3	32.9%	47
1	34.3%	49
Total	100.0%	143

2006), the NOMINATE scaling method (Hagemann and De Clerck-Sachsse 2007b) or the optimal classification scaling method (Hagemann, Chapter 3 in this volume). These studies have resulted in various interpretations of the Council decision-making space: some have found that it is the redistributive cleavage that shapes the interaction in the Council (Zimmer et al. 2005) while others maintain that it is the free-market versus regulatory solutions that is the main divisive cleavage (Thomson et al. 2004).

However, there is one result that seems to be common to most of these studies: there appears to be a North-South dimension in the Council that structures voting patterns (although for a different picture see Hagemann in Chapter 3). The Northern EU member states are more likely to vote together than with more Southern member states and vice versa. Nevertheless, the reasons for this phenomenon are still open to interpretation. It is hardly the geographical location as such that affects the voting patterns. It is more likely that member states that vote together share a similar political culture or have similar preferences on the future of integration or, perhaps, voting just reflects the struggle between net contributors and net receivers of EU subsidies.

The aim here is to analyse voting patterns in the Council to observe whether and in which ways enlargement has changed the situation. According to calculations by Hayes-Renshaw et al. (2006, p. 169) almost half the 'coalitions' contesting proposals during the period 1998–2004 were in fact formed by only a single member state. In the EU-25 Council with ten additional new members this is likely to have changed. Table 2.5 shows the size distribution of contesting coalitions in the EU-25. In a third of contested proposals it was only a single member state that voted 'no' or abstained. A little less than a third of the cases consisted of coalitions of two or three member states while almost 13 per cent of the coalitions involved six or more Council members. This means that in the enlarged EU the contestation is clearly more likely to involve dissenting coalitions of at least two member states than was the case prior to the enlargement. However, generally the dissenting coalitions are still rather small.

Table 2.6 Most active country pairs dissenting with the majority

Country pair	**Share of first state's all contestations**	**Share of second state's all contestations**
Sweden – Denmark (25)	Sweden (56%)	Denmark (74%)
Sweden – Netherlands (20)	Sweden (44%)	Netherlands (67%)
Sweden – Finland (17)	Sweden (38%)	Finland (74%)
Sweden – Estonia (16)	Sweden (36%)	Estonia (76%)
Finland – Denmark (15)	Finland (65%)	Denmark (44%)
Netherlands – Denmark (15)	Netherlands (44%)	Denmark (44%)
Finland – Estonia (13)	Finland (56%)	Estonia (62%)
Finland – Netherlands (12)	Finland (52%)	Netherlands (40%)
Estonia – Denmark (12)	Estonia (35%)	Denmark (35%)
Sweden – UK (12)	Sweden (27%)	UK (43%)

Table 2.6 provides a closer look at the most frequent dissenting coalitions in the enlarged Council. It depicts the ten most active country pairs that together contested proposals on the Council table. These results show that Sweden and Denmark chose together to challenge the Council majority 25 times during the research period. This means that in 74 per cent of cases when Denmark decided to vote 'no' or abstain from voting Sweden contested the same proposal, and in 56 per cent of cases when Sweden contested a proposal Denmark joined Sweden.

All of the country pairs in Table 2.6 include at least one of the Nordic countries. This reflects both the tendency of the Nordic member states (especially Sweden and Denmark) to contest proposals more often than most other Council members and, more interestingly, the tendency of these countries to do it together. In addition to the Nordic countries, other members of the 'Northern bloc' (Estonia, the Netherlands, the UK) are represented in the table. For example, when Estonia decided to contest a proposal it did so in more than 76 per cent of cases together with Sweden. Put together, the results in Table 2.6 show clearly how the Council coalition-building in explicit 'no' voting revolves around the Northern member states, especially Sweden and Denmark.

Obviously, other member states joined forces to vote together against the majority as well. Portugal was the most frequent coalition-builder among the Southern member states, forming a contesting coalition seven times with both Spain and Italy. Greece joined forces six times with both Italy and Portugal to vote against the Council majority.

Figure 2.1 presents a two-dimensional picture of the preference configuration in the Council.[4] It is based on a visual displaying technique called multidimensional scaling (MDS). MDS is a way of depicting distances or similarities between units of analysis on one or more dimensions (Kruskal and

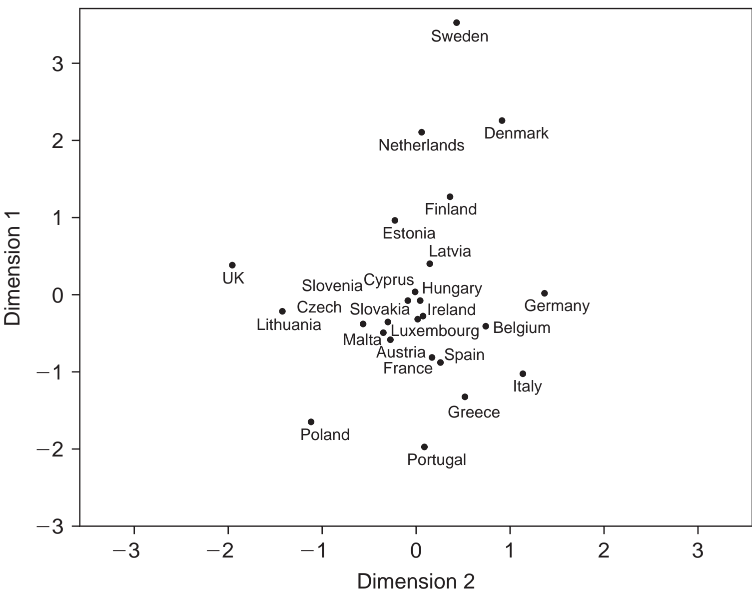


Figure 2.1 Multidimensional scaling map of Council voting

Wish 1978). The MDS procedure summarizes the roll calls in a figure that can be interpreted as a road map. When two points (member states) are located close to each other in Figure 2.1, the corresponding member states are more likely to vote in a similar way; similarly, the further apart two states are, the less likely it is that they vote together.

In the MDS analysis, only those decisions in which one or more countries opposed the majority were used (143 cases). The basic rationale was simply that only such cases can yield information about the dimensionality of Council voting. Selecting cases in which all countries voted 'yes' would not have yielded any information about preference dimensions. Abstentions are coded as negative votes for the purpose of this analysis. The distance measure used in the analysis is the Euclidean distance of voting vectors between a pair of countries.

The centre of Figure 2.1 shows a group of member states that hardly ever vote against the Council majority. Of the largest member states only one – France – belongs to this group. The member states that are the most frequent 'no' voters are located either in the upper (Sweden and Denmark) or the lower (Poland and Portugal) half of the figure. The large distance between Germany and the UK indicates that these two countries rarely vote together against the majority. Sweden, Denmark and the Netherlands stand in close proximity to each other. This indicates that, in the rare cases when more

than one country opposes the majority, these countries are likely to vote in the same way, hence entering a coalition against the majority.

The overall alignment of member states in Figure 2.1 points, once again, to the existence of a North-South dimension that affects the voting patterns in the Council (dimension 1). The situation has not changed in any significant way when compared to the time before the enlargement (see Mattila and Lane 2001, p. 45). Sweden, Denmark, the Netherlands and Finland are at the top of the figure, while Greece, Portugal and Italy are located at the bottom of the figure. There are also some clear 'geographical deviations' in the map: France, Austria and, in particular, Poland are located among the 'Southern' member states. Also Ireland, in spite of its northerly geographical location, is found in the middle group. According to Kaeding and Selck (2005, p. 282) this can be explained by Ireland's position as a major net beneficiary of EU subsidies, which brings it closer to the more Southern net beneficiaries. In general, the member state positioning in Figure 2.1 does not lend support to Kaeding and Selck's (2005, p. 283) prediction that enlargement creates a new situation where the new member states form a new bloc to supersede the older North-South dimension through a North-South-East coalition pattern.

Turning attention to the new member states it is easy to see that most of them are located in the centre of the figure (with the aforementioned exception of Poland). On the whole, this means that the new member states have not, at least during their first two and a half membership years, brought about any major changes to the main North-South dimension in the Council voting. Interestingly, Estonia occupies the most 'Northern' position of the new member states. It seems that Estonia is a new member of the Northern group. If we interpret the North-South dimension as dividing countries that prefer free-market based solutions over regulatory solutions as Thomson et al. (2004) suggest this is not surprising. In domestic politics Estonia favoured free-market based policies in many sectors even before the EU membership.

Conclusions

This chapter has presented an analysis of voting in the Council of Ministers since the 2004 enlargement. The results show that the accession of the ten new member states into the EU did not change the voting patterns in any major way. The share of acts adopted by consensus did not decrease. If anything, consensus slightly increased and it will be interesting to see in the future whether this is just a temporary phenomenon reflecting the adjustment period of the enlarged Union or whether the increased number of member states will eventually lead to increased voting in the Council. Moreover, the contestation was mostly in the same policy sectors as in the pre-enlargement period. The average size of a contesting coalition was slightly larger than before the enlargement but this was to be expected because of the larger number of member states represented in the Council. However,

the contesting coalitions remained small, with two-thirds of them consisting only of one or two member states.

The coalition patterns in Council voting after the accession of the new member states did not alter in any significant way the basic North-South dimension that was found in studies preceding the enlargement. It is the 'Northern' group of member states that is most likely to contest Council decisions and they quite often do it together. The main participants in this group are Sweden and Denmark. Of the new member states Estonia is the only one to belong to this group. Most of the new member states are aligned with the older Central and Southern European members.

At least tentatively, these results show that the fears of a gridlock in Council decision-making in the enlarged union were exaggerated. However, one should not draw too far-reaching conclusions from the analysis presented in this chapter. The roll-call data can provide only a limited and rather superficial picture of the way the Council operates. In order to evaluate the effects of enlargement in its entirety these results should be supplemented by a more thorough analysis of the content of contested Council decisions. In addition, qualitative analyses based on interviews and participant observations could show how the day-to-day interaction in Council bargaining has changed.

Notes

1. The data collected for this article is available at www.councildata.cergu.gu.se (along with the data used in Mattila and Lane 2001, and Mattila 2004).
2. Written procedure can be used in urgent matters if the Council or COREPER unanimously decide to use this procedure (see Article 12 of the Council's Rules of Procedure).
3. The Competitiveness Council was created in 2002 by merging three previous councils (Internal Market, Industry and Research councils).
4. The figure must be interpreted with due caution. Because of the irregular nature of Council voting and the shifting voting coalitions the 'political space' of the Council decision-making cannot be completely described with two dimensions. The 'stress value' is a goodness-of-fit measure used with MDS analysis to show how the solution corresponds to the original distance data (Kruskal and Wish, 1978, pp. 49–65). In the two-dimensional solution the stress value was .14, which indicates an acceptable level of fit. The stress value for the one-dimensional solution was .28 and for the three-dimensional solution .09.

3

Voting, Statements and Coalition-Building in the Council from 1999 to 2006

Sara Hagemann

Introduction

The increasing accessibility of Council documents has resulted in a rapidly growing literature on EU members' behaviour, preferences and incentives when negotiating and adopting new legislation. Existing quantitative studies concerned with these topics draw on either interview-based datasets or on records of roll-call voting. This chapter presents a range of new findings based on a dataset which resembles the roll-call information included in the existing literature. Only, here the data consist not only of the final stage votes usually included in roll-call analyses of the Council, but also contain the governments' recorded positions at prior stages of the legislative process as noted in the minutes of individual Council meetings. Furthermore, the dataset also includes information on oppositions recorded as formal statements following the adoption of a decision. Formal statements are usually included in the minutes and often consist of one or a number of governments' serious concerns or disagreement with a policy proposal. But these governments may choose not to oppose the decision through voting. When looking into the data it seems, therefore, as if the recorded formal statements reflect a two-sided game by governments: by differentiating between voting and formal statements governments are able to adopt legislation while still sending a political signal of preserving their preferences in the formal statements recorded in the minutes. The results presented in this chapter suggest that including the formal statements in quantitative analyses can provide an additional insight into the nature of bargaining in the Council.

Analysing all legislative acts adopted in the Council from January 1999 until the end of December 2006, the results show that important changes have indeed occurred since the ten new member states joined on 1 May 2004. Unlike most other accounts of voting behaviour and coalition formation in the Council, patterns of Left-Right politics are detected here for the January 1999–April 2004 period, whereas the post-enlargement period does not show any distinct party political patterning. One important observation

in support of the identified Left-Right coalition patterns in the period prior to enlargement is that the data clearly show how changes in government in a number of the countries represented in the 1999–2004 Council also led to significant changes to these members' voting behaviour at the EU level. To be specific, the rightward shift in a considerable number of member states in this period also meant a considerable shift in how votes were cast in the Council. Indeed, the results seem to indicate that party politics rather than nationally-defined preferences dominated in the 1999–2004 Council, whereas tendencies of geographical clustering prevail from May 2004 to December 2006. Still, these results from the post-enlargement period are not as clear as the distinct North/South or North/South/East divides which have previously been suggested in the literature.

The chapter proceeds as follows: the next section provides a short overview of the current literature on Council decision-making. It finds that there is a pressing need to confront empirically the purely theoretical accounts of bargaining scenarios in the Council, as well as to clarify the somewhat contradictory evidence provided by different empirical analyses. The latter seems to be largely due to a difference in research methods and the existence of relatively few large-N quantitative analyses. Motivated by this conclusion, the second section describes the data used in the empirical analysis. Although governments' recorded positions will never provide the full story of the negotiation process, it is suggested that the inclusion of voting outcomes prior to the final adoption stage, as well as the inclusion of recorded formal statements made by governments following the passing of a decision can provide an additional insight into the preference configurations of government representatives. The third section presents the results from the January 1999–April 2004 period, while the fourth section presents and compares the results from the May 2004–December 2006 period with the previous years. The chapter concludes with a summary and discussion of the findings.

What we have learned so far

A brief summary of the current knowledge on Council decision-making immediately tempts one to make a distinction between the findings from research relying predominantly on qualitative analyses and those relying on quantitative material. However, the research on Council decision-making is still very much in its infancy and, as a consequence, most assumptions about Council members' behaviour and preferences and the influence of different factors on policy outcomes have only been empirically addressed to a rather limited extent (compare Hörl et al. 2005). What we have learned so far from the empirical analyses can be summarized as follows. The branch of political scientists who have engaged in analysis of Council decision-making via a qualitative research approach frequently underline a more consensus-oriented culture within the Council than is assumed in the

dominant theoretical models and in many quantitative analyses. For example, in many theoretical models, the legislative behaviour of governments is assumed to be dictated by either the distribution of voting power, by the member states' spatial distance to the status quo, or by a combination of the two.[1] In contrast, the qualitative branch of the empirical literature rejects most of the conclusions from both the spatial analyses and the voting-power theories (see for instance Westlake 1995; Sherrington 2000; Lewis 1998), and often argues that decision-making processes and legislative outcomes must be accounted for through an 'empirical experience in the Council' (Heisenberg 2005, p. 66). According to this line of thought, formal voting records and minutes do not capture the dynamics of informal bargaining, and hence do not adequately portray the political ambitions and behaviour of member states.

Instead of seeking to predict the outcome of specific policy negotiations or advance claims with regard to who dominates the bargaining process, the intention of the group of scholars basing their work on qualitative research methods has mainly been to provide a more detailed insight into the day-to-day decision-making, and describe the formal and informal institutions that shape the Council members' negotiations. Their main findings have been that explicit voting on agreed decisions at ministerial level is rare and that, when dissent is expressed, this is usually done by a single member state (Hayes-Renshaw and Wallace 2006, p. 284). Ministers generally endorse collective decisions by consensus, even in those cases where they could activate qualified majority voting (QMV). Furthermore, when disagreement is apparent, in nearly half the cases it is related to 'technical' decisions rather than political issues. To the extent that voting takes place, this occurs implicitly rather than explicitly, operates mostly at the level of officials rather than ministers, and is not recorded systematically in publicly accessible form (Hayes-Renshaw and Wallace 2006; compare Heisenberg 2005). Therefore, it is argued, the Council can be understood only by analysing both its informal and formal operations, and the oversimplification of many theoretical accounts results in a neglect of the very reasons why the complex Council system is able to function: 'corridor bargaining', dynamics within working groups and committees and the importance of actors' experience and personal negotiation skills must be qualitatively accounted for (Hayes-Renshaw and Wallace 2006, p. 28).

There is no doubt that this qualitative branch of the literature has advanced the insights into many aspects of Council decision-making. And many more elaborate qualitative accounts of both specific policy situations and of general dynamics are certainly needed for the further advancement of the field. Still, since more and more information is also becoming available for rigorous quantitative studies, the findings highlighted by the qualitative researchers would benefit from being supported at the more aggregate level as well. The group of researchers presented below are partly motivated by this necessity.

The greater proportion of quantitative research projects on Council decision-making combine their research design with different theoretical takes on EU policymaking and have sought to arrive at conclusions on such issues as preference aggregation, voting behaviour, and the consequences of the power distribution within different areas. Yet, as explained above, this branch of the literature is still in its infancy, and the empirical evidence with regard to firm conclusions on general tendencies in the Council is somewhat sparse.

The information used for quantitative analyses is either gathered from interviews with experts (Bailer 2004; Pajala and Widgren 2004; Thomson et al. 2006; Zimmer et al. 2005) or from voting records (Heisenberg 2005; Hosli 1999; Mattila and Lane 2001; Mattila 2004; Hayes-Renshaw and Wallace 2006[2]). At the present stage, it is difficult to assess whether data from expert interviews or the Council minutes and voting records provide the better source of information regarding underlying conflict structures and preferences in the Council (König 2005, p. 366). It is furthermore also difficult to evaluate which of the research projects, if any, actually present a comprehensive picture of the general dynamics in the Council; each of the current studies is restricted by important boundary specifications which in many cases make it difficult to further generalize on the basis of the findings. This also explains why a few studies have produced contradictory results even though the purpose of the research has been to explain similar research questions.[3] Table 3.1 summarizes the findings, methods and scope from each of the existing quantitative research projects on governments' preferences and underlying conflict structures in the Council.

It should be stressed that Table 3.1 is not meant as a critical assessment of individual research projects. In fact, each of these studies has provided extremely valuable and interesting insights into the Council's processes and member states' behaviour. Furthermore, most of the above-mentioned scholars do not make any claims with regard to the general applicability of their findings to issues or areas other than those included in their analysis. They are, in most cases, careful in explaining the specifications and limitations of their analyses and findings. This is why it does not seem useful to address any of the studies in more critical detail here. However, the table gives a precise and brief overview of what has already been done in the field, and what further opportunities and necessary steps are still left for future investigations.

On this basis, the conclusion must be that there is, to say the least, room for many more quantitative explorations. First, it is essential simply in order to advance empirical knowledge and get more detailed information on all of the Council's policy areas and across more stages of the legislative process. Second, it is imperative to make use of rigorous statistical methods in order to capture and analyse any emerging patterns in, for example, voting behaviour. One notable relevant observation is that many exogenous measures are

Table 3.1 Existing research on preferences and conflict structures in the Council based on quantitative analyses

Author	Project	Type of data	Voting stage	Data	Method	Scope/limitations
Mattila and Lane (2001)	'Why unanimity in the Council? A Roll-Call Analysis of Council Voting'	Quantitative; based on Council minutes	Final vote	1381 pieces of legislation from 1994–98	Roll-call analysis	Stages prior to the final adoption stage are disregarded. Formal statements following the adoption of a decision are not included
Franchino and Rahming (2003)	'Biased Ministers, Inefficiency and Control in Distributive Policies'	Quantitative; based on exogenous measures of parties' preferences in national politics and policy outcomes from a specific policy field	Adopted regulations	14 regulations	Document analysis. Analysis with governments' preferences from national politics	Analysis is carried out within a single policy field
Selck (2004a)	'On the Dimensionality of European Legislative Decision Making'	Quantitative; based on expert interviews (DEU data)	From proposal to adoption	66 Commission proposals; 162 issues on decrees, directives and decisions under consultation and co-decision	Policy positions of legislators on a series of issues Scales range from 0 to 100	Difficult to evaluate experts' aggregation of information and conclude on the locations of policy positions; not clear if the sample of proposals is representative of the whole population of decisions

Mattila (2004)	'Contested Decisions: Empirical Analysis of Voting in the European Union Council of Ministers'	Quantitative; based on Council minutes	Final vote	180 observations (voting records for 15 member states for 12 half-year periods) from 1995–2000.	Roll-call analysis	Stages prior to the final adoption stage are disregarded. Formal statements following the adoption of a decision are not included
Zimmer et al. (2005)	'The Contested Council: the Conflict Dimensions of an Intergovernmental Institution'	Quantitative; based on expert interviews (the DEU dataset)	From proposal to adoption	70 Commission proposals; 174 issues on decrees, directives and decisions under consultation and co-decision	Correspondence analysis based on the DEU dataset	Difficult to evaluate experts' aggregation of information and conclude on the locations of policy positions; not clear if the sample of proposals is representative for the whole population of decisions
Heisenberg (2005)	'The Institution of Consensus in the European Union: Formal versus Informal Decision-Making in the Council'	Quantitative; based on Council minutes	Final votes	Recorded legislation from 1994–2002	Roll-call analysis	Stages prior to the final adoption stage are disregarded. Formal statements following the adoption of a decision are not included

(*Continued*)

Table 3.1 (Continued)

Author	Project	Type of data	Voting stage	Data	Method	Scope/limitations
Thomson et al. (2006)	'The European Union Decides'	Quantitative; based on expert interviews (DEU data)	From proposal to adoption	66 Commission proposals; 162 issues on decrees, directives and decisions under consultation and co-decision	Policy positions of legislators on a series of issues. Scales range from 0 to 100	Difficult to evaluate experts' aggregation of information and conclude on the locations of policy positions; not clear if the sample of proposals is representative for the whole population of decisions
Hayes-Renshaw and Wallace (2006)	'The Council of Ministers'	Quantitative; based on Council minutes	Final votes	Recorded legislation from 1994–2004	Expert interviews; document analysis	Difficult to make generalizations re. preferences and conflict structures as mostly descriptive statistics are presented. Data are confined to last stage formal voting
Naurin (2007a)	'Networking Capital and Cooperation Patterns in the Working Groups of the Council of the EU'	Quantitative; based on survey data	Preparatory stages	361 interviews with member state representatives from 11 working groups	Phone interviews of about 10–15 minutes	The findings are that interpersonal trust and network capital is a perceived asset in coalition-building in working groups. Whether these translate into policy positions at ministerial level/later decision stages is not investigated

available on the Council members' characteristics,[4] and can be useful in the testing and interpretation of findings from the Council. Third, it is necessary to address some of the current theoretical disputes by means of quantitative testing. A final conclusion must be drawn, for example, on the disagreement between those scholars who present the Council as a 'Council of Consensus' and the group that pictures it as a 'Council of Conflict'. Each of these assumptions has direct implications for how to approach analyses of both intra- and inter-institutional issues. If Council decision-making is indeed dominated by informal norms of consensus without de facto formal rules in place, then the findings and fundamental assumptions from the rational institutionalist literature must be re-evaluated, as they make claims not only about the position of policy outcomes from the Council itself, but also about the relationship between the EP, the Commission and the Council based on the formal decision-making rules. Therefore, if consensus is predominant to the extent that Council decision-making cannot be characterized as a bargaining game between strategic, utility maximizing actors, then any further research should be very careful to capture the complexity of the informal negotiations in order to account for policy processes and outcomes. On the other hand, if no convincing evidence is found that Council decision-making is characterized by consensus-seeking actors rather than self-interested – and perhaps conflicting – actors, then it could perhaps be beneficial to draw on the insights from traditional bargaining theory and use the models proposed in the rational choice literature. The task of settling these fundamental questions is of great importance but it may not be the enormous task that it appears at first glance.

Data and measurement

The results presented below rely on a dataset consisting of all legislation adopted by the Council from January 1999 to December 2006. It is not argued here that the data provide a full picture of the negotiation process in the Council. They will only be able to reflect the end product of the negotiations in each meeting as formally recorded in the minutes. Still, these sources may provide an additional insight into the Council dynamics beyond that which is captured by the final stage voting records, and the intention here is simply to report and analyse the results while also considering the formal statements and stages prior to the last decision phase.

Since the focus of the analysis is on a comparison of the level of contest and governments' behaviour in the period following the 2004 enlargement and the January 1999–April 2004 period, the analysis will be based on the records of individual governments' decision to oppose, abstain or support a proposal either in writing (as a formal statement, described below) or in direct voting when this occurred.

Two notes should be made about the coding of the data. First, one important difference between the unanimity and QMV systems requires attention when coding the governments as either in favour or support of a proposal: when the decision rule is unanimity, abstentions are not counted as 'no' votes. This means that decisions can be made with few countries actually voting for the proposal, if none of the countries actively opposes it. The opposite is true for QMV, where the high threshold means that in practice abstentions have the same effect as 'no' votes. Second, if a proposal is accepted, members who wish to oppose, abstain or who have serious concerns about the decision can record their views officially by making formal statements. Formal statements are usually made immediately after a decision has been adopted, and have traditionally been described in the literature as only being used in cases where a member state abstains or opposes the majority in a voting situation and wishes to make its reasons for doing so public. However, the dataset makes it clear that this is no longer the only purpose of the formal statements. Instead, it shows that the member states actually use the formal statements to voice their opposition against a proposal, while there may be reasons for not doing so by voting. There are several instances where the adoption of an act is immediately followed by one or more formal statements from a single or a small group of member states (the maximum is nine, but the average only around two) showing disagreement with the majority, even in cases where the opposing country does not show its dissatisfaction through the votes. It obviously requires some explanation as to why governments would choose to record their position in this manner but do not exercise their legal rights to oppose a given policy through voting. Here, formal statements that include a direct opposition to a proposal are coded as '0', similarly to disagreement that is voiced either in the form of a 'no' vote or by abstention if the legislation falls under the QMV decision rule.[5]

For the purpose of comparing the legislation from before the 2004 enlargement with the legislation adopted afterwards, the data are divided into two, with the January 1999 to April 2004 period including 934 pieces of legislation, and the May 2004 to December 2006 period including 449 acts. Legislation which was initiated and voted upon in the Council, but was not finally adopted in the period January 1999 to December 2006 is not included in the analysis. Of this total of 1383 acts, 512 pieces were presented to the Council several times. A proposal which is voted upon X number of times is treated as X individual votes, as behaviour in the Council can be assumed to change throughout the different stages of the legislative process (compare Mattila 2004; Mattila and Lane 2001). Furthermore, the data include several cases where a single policy proposal presented to the Council comprised more than one issue on which decisions has to be made. For instance, a proposal on the regulation of emissions from vehicles may include several different levels of emission standards depending on the type of vehicle.[6] Votes may therefore be taken on each of these regulatory levels and are also included

in the data as separate voting situations. In sum, the total number of voting situations in the January 1999 to December 2006 period amounts to 1941 and results in 20,140 individual votes.[7]

The presentation of the findings from both the time leading up to enlargement and the years following enlargement is done in two steps. First, a few descriptive statistics are presented regarding the adoption rates and the level of contestation recorded when including both voting situations and the formal statements. Second, an analysis of the distribution of governments' preferences – as recorded in the minutes – is conducted for each of the periods. This is based on the optimal classification method, which measures and presents the governments' ideal point estimates in a spatial picture that can be used to make inferences about the Council members' behaviour relative to each other. The findings are confirmed in a robustness check with a Bayesian Monte Carlo Markov Chain (MCMC) model included in Appendix 3.A.[8]

Recorded behaviour, January 1999–April 2004

As shown in Table 3.1, decision-making in the Council for the years leading up to the 2004 enlargement has been rigorously analysed in a number of publications, with perhaps the most prominent being those by Hayes-Renshaw and Wallace (2006), Mattila (2004) and various projects relying on the DEU dataset presented in Thomson et al. (2006). The general conclusions from these analyses regarding the use of voting in the Council have been that 'some 30 per cent of decisions are taken formally on the basis of unanimity and some 75 to 80 per cent of those decisions technically subject to QMV are not contested explicitly at ministerial level in the Council' (Hayes-Renshaw and Wallace 2006, p. 278). Also, the 'A' point procedure meant for less controversial agenda items, which are usually thought to be merely 'nodded through' at the ministerial level, is in most of the literature reported to cover more than 80 per cent of legislation, whereas the 'B' point procedure for more politically difficult issues only makes up around 18–20 per cent for the 1999–2004 period.

Table 3.2 presents the findings for these same issues when considering not only voting recorded at the final adoption stage but also earlier decision stages. The table shows that there was a remarkably consistent adoption level in the January 1999–April 2004 period, whereas the rate of passing laws under the different rules varied somewhat in these years. Also the use of 'B' agenda points seems to vary slightly. Still, it must be concluded that the percentage of legislation adopted as 'B' points is generally quite low throughout the years included in this table. The 'A' agenda point category dominated by covering more than 85 per cent of legislation each year from 1999 to 2004.

However, perhaps the more interesting finding from this table are the results reported in the rows 'Contested 1' and 'Contested 2'. 'Contested 1'

Table 3.2 Descriptive statistics of legislation adopted by the Council, January 1999–April 2004

	Jan–Dec 1999	**Jan–Dec 2000**	**Jan–Dec 2001**	**Jan–Dec 2002**	**Jan–Dec 2003**	**Jan–April 2004**
All	161	169	160	164	163	139
By unanimity	85	80	58	66	102	87
	52.8%	*47.3%*	*36.3%*	*40.2%*	*62.6%*	*62.6%*
By QMV	76	89	102	98	61	52
	47.2%	*52.7%*	*63.8%*	*59.8%*	*37.4%*	*37.4%*
Contested 1*	39	34	52	29	36	11
	24.2%	*20.1%*	*32.5%*	*17.7%*	*22.1%*	*7.9%*
Contested 2**	53	59	78	53	69	46
	32.9%	*34.9%*	*48.8%*	*32.3%*	*42.3%*	*33.1%*
'A' points	151	144	145	147	152	137
	93.8%	*85.2%*	*90.7%*	*89.6%*	*93.3%*	*98.6%*
'B' points	10	25	15	17	11	2
	6.2%	*14.8%*	*9.3%*	*10.4%*	*6.7%*	*1.4%*

Notes
*: Disagreement voiced through voting and through abstentions (under QMV).
**: Disagreement voiced through voting and formal statements. Formal statements are included in the minutes following the adoption of a proposal.
Italics: Percentage of legislation per year.

includes all opposition voiced through voting and, where the decision rule has been by QMV, also by abstentions. The reason for including abstentions as a form of recorded disagreement in legislation falling under QMV is that, as previously explained, such positions have essentially the same effect as a no-vote due to the high threshold for adopting a decision. The national representatives are commonly assumed to be fully aware of this consequence when recording their wish to abstain from voting on a QMV proposal, and hence, this row covers what in the literature is usually included in analyses of recorded oppositions.

Table 3.2 also presents the figures for opposition voiced through voting or abstentions, which range from 17.7 per cent to 32.5 per cent (when briefly excluding the first four months of 2004). Whether this is a high, moderate or low number for a legislature with an impressive preparatory committee system is difficult to conclude solely based on these figures. However, it should be recalled that in the literature the level of contest for QMV legislation is reported to fall between 75 per cent and 80 per cent, whereas the total for all legislation is commonly found to be more than 85 per cent. In comparison, the figures in Table 3.2 show that when considering all decision stages, the level of contest is elevated by approximately 9 per cent in 1999, 5 per cent in 2000, 18 per cent in 2001, 3 per cent in 2002 and 7 per cent in 2003, respectively. Hence, covering all stages of the legislative process does indeed make

a difference to the analysis of contested decisions, and the relative increase in the percentages of recorded oppositions may indicate a higher degree of disagreement voiced at the earlier phases of the legislative process than at the final decision stage.

The 'Contested 2' row provides information about the issue of formal statements. The recording of formal statements is rarely – if ever – addressed in the literature, and this row reports on the level of contest when considering the oppositions voiced through voting, abstentions and formal statements. As already explained, formal statements often express a country's explicit disagreement or reservation with regard to a policy. Formal statements are included in the minutes of the Council meetings and allow the member states to make clear to internal and external actors any possible opposition to part or all of the full proposal, even in cases in which opposition is not voiced through voting. The figures show that the level of contest in the Council is generally about 10 per cent to 20 per cent higher each year when including this form of recorded disagreement. Thus, in 1999 the percentage of legislation adopted with recorded disagreement was 33 per cent, in 2000 it was 35 per cent, in 2001 it was 49 per cent, and so on. This significant increase in the percentages is obviously important, and several practitioners have, when presented with these results, explained that formal statements are indeed one way for the governments to show their opposition instead of voting 'no'. Through this measure, governments are able to enact a sense of 'willingness to cooperate' without at the same time sending a political signal of having deviated from their initial policy preferences. Though it is clear that while this may be a politically feasible way to avoid policy gridlock through contested voting, using formal statements also raises some important issues about the transparency and accountability of the decision-making processes. Hence, it seems of great importance for scholars and political observers alike to continue to monitor and investigate this phenomenon.

Coalitions, January 1999–April 2004

No final conclusion has been drawn with regard to the Council's coalition-formation processes. Even the various accounts provided by practitioners over the last decade do not appear altogether aligned with regard to whether governments do form stable coalitions over time and across policy areas or if negotiations are characterized by ad hoc groupings and more volatile preference configurations. Nevertheless, a few trends are commonly acknowledged as revealing the basic characteristics of how different groups in the Council behave, although these have predominantly been deduced only from last stage voting records. Large member states and Northern countries have been found to be those most likely to oppose or abstain when voting occurs (Mattila 2004; Hayes-Renshaw and Wallace 2006), and redistributive cleavages and groupings of free-market versus regulatory members have also been identified in certain periods (Zimmer et al. 2005; Thomson et al. 2004).

This section investigates whether some governments only oppose when certain other governments also oppose, or if the voting is strictly of an ad hoc nature. It does so by applying the optimal classification (OC) scaling method to the data from January 1999–April 2004, after which a similar analysis of the post-May 2004 period makes it possible to compare the two analyses.

Similarly to the multidimensional scaling method used by Mattila in Chapter 1, the OC scaling method analyses governments' 'voting behaviour' and provides a 'map' of how governments have voted relative to each other. This may give some indication of which coalitions are formed in the Council, at least as they are recorded in the Council minutes. To explain the scaling method in a very simplified manner, OC pairs off each legislator's decision to vote 'yes' or 'no' on each individual policy proposal. Based on an agreement score matrix, a set of cutting planes that divide the 'yes' voters from the 'no' voters on each policy proposal, legislators' ideal points are calculated in turn, such that an optimal classification (hence the name!) for each legislative choice is achieved. Details of the method can be found in Poole (2005), and the interested reader can double-check the results analysed below with the results generated by running a Bayesian MCMC model with the data as presented in Appendix 3.A.[9] Figure 3.1 below presents the spatial map of governments' voting behaviour in the first two dimensions for January 1999–April 2004 when including both the earlier phases of the legislative process

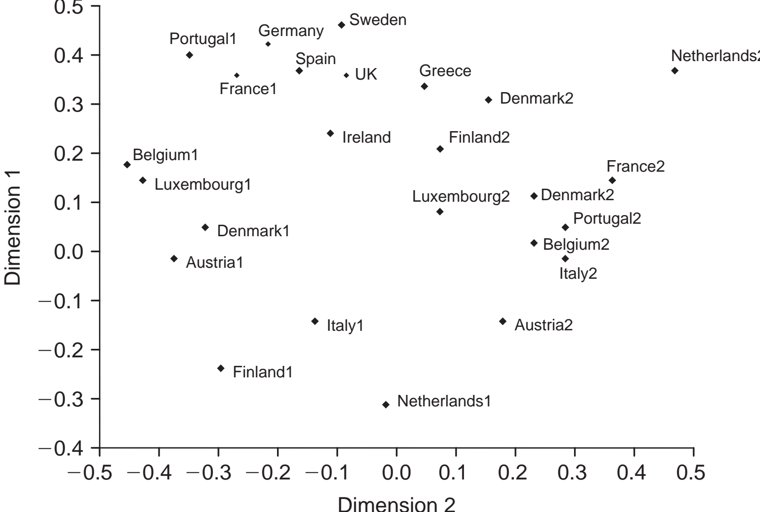


Figure 3.1 Governments' ideal point estimates in the 1st and 2nd dimensions, January 1999–May 2004

Note: 1 or 2 following the country name indicates first or second governments in the period.

and the formal statements. Table 3.3 shows the 'goodness-of-fit' for applying the OC model to the data.

The aggregate proportional reduction of error (APRE) values in Table 3.3 report that the OC model is suitable for the classification of votes from the dataset: APRE varies from zero to one. When APRE is equal to zero, the model explains nothing. When it is equal to one, perfect classification has been achieved. Hence, a score of .692 reflects a convincing robustness of the votes classified at the first dimension. However, in the subsequent dimensions the level of votes explained is not drastically increased, except perhaps with the inclusion of the second dimension, indicating that each of these dimensions do not capture significant percentages of the votes and therefore do not add much to the analysis either. As a precautionary measure before dismissing any of these subsequent dimensions, Appendix 3.C shows a scatterplot matrix of the first three dimensions in order to ensure that any possible relationship between the values in these dimensions – which each add the highest percentage increase in the amount of votes explained – is not overlooked. No linear relationship between the three dimensions can be detected and it hence seems reasonable to assume that each of the dimensions following the first two can be dismissed in the further analysis.

Turning to the spatial map of the governments' voting behaviour in Figure 3.1, a number of interesting results appear. Each government is here represented by a dot and, as some countries have had more than one government between January 1999 and April 2004, the number 1 or 2 is used to show whether the dot represents the first or second government in this period.

The first observation to make from Figure 3.1 is that the distribution of governments along the first and second dimension is rather scattered, though, perhaps with a clustering in three areas. Starting from the left side of the first dimension, one clustering of countries includes the first governments in

Table 3.3 Council voting explained by OC

Dimension	**Cumulative % explained**	**APRE**
1	61.5	0.692
2	73.0	0.749
3	78.4	0.792
4	83.4	0.891
5	86.9	0.902
6	89.0	0.924
8	90.1	0.947
9	91.1	0.971
10	91.1	0.984

Note: APRE = aggregate proportional reduction of error.

Belgium, Luxembourg, Denmark and Austria. This group is located between the values of −.281 and −.380 on the first dimension, and .050 and −.138 on the second dimension. In other words, this group of governments is located quite far left on the first dimension but centrally on the second dimension. The second group of governments that seem to have voted together is placed in the upper middle part of the picture, between −.169 and −.005 on the first dimension and .304 and .112 on the second dimension. This group includes the first governments in France and Portugal as well as the governments of the UK, Germany, Spain and Sweden. Ireland and Greece could also be included in this group if one focused mainly on the distribution in the first dimension. It is interesting to see that some of the same countries represented in the first group are also to be found together in the third, yet this time the new governments have moved towards the lower right corner. The group is located between the values of .221 and .314 on the first dimension and −.330 and −.069 on the second, and includes the second governments in Austria, Belgium, Denmark, Italy, France and Portugal. This means that government changes in those countries were reflected in their voting behaviour in the Council. They all moved from one area on the left side of the first axis to another area on the right side of the axis.

Taking a step back and observing not just the government changes in this last group but the effect of government changes in all countries, it becomes clear that, generally, a change in government has meant a change in a country's ideal point estimate in the first dimension. In fact, a change in government presaged quite a drastic change in voting behaviour for all of the countries that experienced a government turnover. Each of the governments followed by a 1 are in the first dimension placed on the left hand side of the spatial maps, whereas all of the governments followed by a 2 are to be found on the right. This observation corresponds nicely with the rightward shift in many European governments in 1999–2004 (see Appendix 3.B for a list of parties in government and government changes from 1999 to 2006). However, before jumping to any premature conclusions about the content of this policy dimension, a more cautious, yet still significant, conclusion can be drawn: the Council members cannot be voting primarily according to geographically defined preferences in this dimension, as this would have meant a consistent position across the government changes. The observed change in the voting behaviour shows that a change in government means a change in behaviour in the Council.

The second dimension does not reflect the same change in voting behaviour when there has been a government turnover but, interestingly, it appears as if the governments which are located centrally at the first dimension take up more extreme positions on the second dimension. Conversely, most of the governments located at the extremes on the first dimension appear to be quite centrally located on the second dimension. In other words, there almost seems to be a reverse order of the dimensions in terms of the

governments' locations at the extremes and towards the centre. However, it is difficult to tell from the spatial map in Figure 3.1 on its own whether this indicative pattern is indeed of significance. Also, a few cases do not correspond entirely with the trend: the first Portuguese government (Portugal1) and the second Dutch government (Netherlands2) are located at the extremes in both the first and the second dimensions. Again, the scatterplot matrix in Appendix 3.C can help to address this question: since no relationship exists between the first and the second dimension reflected in the upper middle picture of Appendix 3.C, the change in the governments' location from the first to the second dimension does not appear to follow any specific pattern. In other words, the impression of a change from the centre to the extreme – and vice versa – is not significant according to the matrix in Appendix 3.C.

Clearly, all of the observations made so far indicate something about what structures governments' voting behaviour: the location of each government's ideal point on the first dimension in Figure 3.1 immediately suggests that preferences on the classic Left/Right political scale – familiar from the domestic political level – also drive the decision-making in the Council. Almost all of the governments are placed as one would expect with even a limited knowledge of the political picture in Europe: the centre-left governments are placed on the centre-left side of Figure 3.1, whereas the centre-right part consists of the more liberal and conservative governments. The only two odd results in this regard are that the second government in the Netherlands is located at the most extreme right, and that Spain's centre-right government is found just left of the centre. However, despite these two cases, all other 24 governments are placed much in line with what could be expected from the parties' positions at the national level. Additionally, the radical changes in the position of those countries which experienced a change in their governments also support the immediate impression that the first dimension is a Left-Right political axis. All of the government changes in the EU countries in this period involved a substitution of a centre-left or left-wing government with a centre-right or right-wing government, which is also what the spatial maps indicates (and see Appendix 3.B).

Moving on to the second dimension, however, the reading of the figure becomes more difficult. No immediate explanation comes to mind with regard to the distribution on this dimension, and it is hard to come to any other conclusion than that this distribution is simply 'noise'. A pro-/anti-EU division is not detectable, and neither does a geographical cleavage, division according to political systems, market economy or any of the other proposed characteristics seem to explain this dimension. Furthermore, since the 'goodness-of-fit' reported in Table 3.3 shows that this second dimension captures another 11.5 per cent of the votes after the first dimension has been estimated, this distribution cannot be interpreted as an ad hoc coalition formation suggested by some theorists either. Ad hoc coalitions would have meant that no patterns could be detected and, hence, OC would not have

been able to specify the ideal points in this dimension. Therefore, the conclusion from a 'reading' of the second dimension in Figure 3.1 must be that either the distribution reflects a cleavage in the Council which has not yet been adequately identified in the literature, or else the dimension is simply 'noise'.

Recorded behaviour, May 2004–December 2006

As also explained by Mattila in Chapter 1, several sources have reported that the introduction of 10 new members has added a significant degree of complexity to the negotiations, simply because a larger number of preferences needs to be accommodated and due to a change in the position of the lowest common denominator within most policy areas. In order to investigate whether this holds true, Table 3.4 shows the amount of legislation adopted, the level of contest and frequency of 'A' and 'B' points on the Council's agenda.

The numbers in the first row in Table 3.4 contradict the expectations of a significant decrease in the amount of legislation adopted after enlargement. Indeed, when compared to the numbers from January 1999–April 2004 (Table 3.2), the quantity of legislation adopted by the Council did decrease in the time immediately following the enlargement, but was then followed by a drastic increase in 2006 to a total of 209 pieces of legislation. As can be recalled from Table 3.2, the years prior to enlargement had seen between 160 and 170 pieces of legislation per year, coming to a total of 934. A relatively

Table 3.4 Descriptive statistics of legislation adopted by the Council, January 1999–December 2006

	May–Dec 2004	**Jan–Dec 2005**	**Jan–Dec 2006**
Number of items of legislation passed	86	121	209
Contested 1*	9	13	60
	10.5%	*10.7%*	*28.7%*
Contested 2**	19	52	97
	22.1%	*43%*	*46.0%*
'A' points	84	117	194
	97.7%	*96.7%*	*91.0%*
'B' points	2	4	19
	2.3%	*3.3%*	*9.0%*

Notes:
*: Disagreement voiced through voting and through abstentions (under QMV).
**: Disagreement voiced through voting and formal statements. Formal statements are included in the minutes following the adoption of a proposal.
Italics: Percentage of legislation per year.

large number of these – 139 acts – were passed in the very last months before enlargement, suggesting that much legislative 'preparation' had had to be done before the new member states could gain legal influence.

Beside of the steep 'recovery' in the numbers of legislation adopted per year, Table 3.4 includes another important finding which is contradictory to what was expected by most decision-makers and observers prior to May 2004: the level of contest reported in the 'Contested 1' row has not increased drastically with the expansion, although – again – 2006 did finish with a relatively high percentage (28.7 per cent). Still, whereas most of the periods prior to enlargement included a level of contested decisions of around 20 to 30 per cent when considering only the 'Contested 1' row (that is, oppositions recorded only in the form of 'no' votes or abstentions in legislation falling under the QMV rule), these figures fell to 11 per cent in both 2004 and 2005. Therefore, as also concluded by Mattila in Chapter 1, the data do support the frequently heard statement that the enlarged Council has not experienced an elevated level of disagreement in the Council meetings in this regard; but it also remains to be seen whether the drastic increase in opposing votes from 2005 to 2006 will continue and therefore exceed the level of contest from prior to May 2004.

Contrary to the disagreement recorded as opposing votes, the figures under 'Contested 2' rose radically in 2005 – to 43 per cent – and continued at that same high level in 2006 (46 per cent). Admittedly, the period prior to the enlargement did see some variation in these figures, and it will be interesting to observe whether the numbers will fall back to a lower number in 2007. However, when presented with these results, several EU practitioners explained that the use of formal statements has indeed helped to avoid a drastic increase in oppositions through voting, suggesting that the relatively low numbers in 'Contested 1' after the enlargement may be the result of an increased reliance on oppositions voiced through formal statements recorded in the Council minutes.

A last result from Table 3.3 is related to the use of the 'A' and 'B' agenda point procedures. It has been argued by several practitioners that in order to avoid too much discussion and instead ensure an efficient policy agenda, the 'A' point procedure is now used more often than prior to the enlargement; 'B' points are largely kept off the agenda, according to some of these accounts. This is also reflected in the low numbers of 'B' points in Table 3.4; however, a repeated comment in a recent evaluation of the enlargement process (Hagemann and DeClerk-Sachsse 2007a) was that there is great uncertainty with regard to which policy proposals now require the most scrutiny at the ministerial level. An emergence of 'false' 'A' and 'B' points has been highlighted, and it is suggested that this phenomenon may eventually prove counterproductive: items in the 'A' category are in certain cases no less the basis for discussions at the ministerial level than are the 'B' agenda items, and the

distinction at times only leads to confusion with regard to which items need particular attention at the ministerial level.

Coalitions, May 2004–December 2006

Figure 3.2 shows the Council members' voting behaviour from May 2004 to December 2006. As in Figure 3.1 above, the distance between two governments indicates how similar their behaviour has been in terms of either supporting or opposing the majority. For example, it is clear from the figure that Finland and Italy often found themselves in opposite coalitions, whereas Italy and Greece must have voted the same way on many occasions. Note that since less legislation was passed between May 2004 and December 2006 than in the period prior to enlargement analysed here, the data do not allow for a consideration of government changes in Figure 3.2; government changes also only took place in very few countries in this period (compare Appendix 3.B).

The distribution of the Council members in Figure 3.2 shows some indication of geographical clustering, although a strict North-South or North-South-East division is not evident. The countries located in the top part of the figure are indeed the Nordic member states accompanied by the Netherlands. Yet, Spain and Portugal are also placed in the upper part of the figure, followed by a group of the new member states that are clustered around the middle together with Ireland and Luxembourg. The UK and Belgium are both

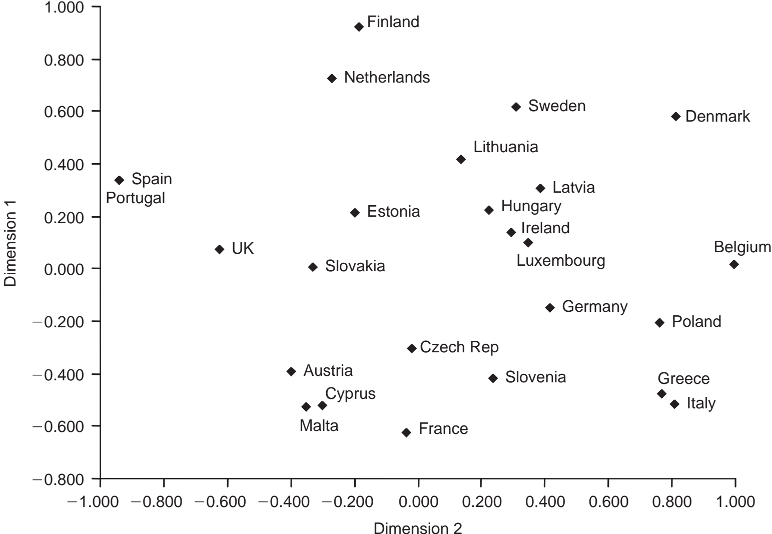


Figure 3.2 Coalitions in the Council, May 2004–December 2006

placed centrally on the axis of 'Dimension 1', whereas they find themselves at opposite ends in 'Dimension 2'. Austria, Malta and Cyprus form another small group just left of the centre in the bottom part of the figure, while most of the remaining countries are scattered around the centre-right corner of the lower section. As mentioned, Greece and Italy are located very close to each other and must have voted similarly on most proposals.

Besides an interpretation of the respective governments' location vis-à-vis each other, another important observation to make when considering the distribution in Figure 3.2 is that the range in the values on both of the two axes are double those reported in Figure 3.1 for the pre-enlargement years. In the pre-enlargement period the governments were distributed between the values of −.4 and .5 in both the first and second dimensions, whereas the axes in Figure 3.2 range from −1 to 1. This means that the post-enlargement period has generally seen a more dispersed Council and together with the values reported in Table 3.5 could also indicate much less stability in the apparent clusters detected in the figure.

On the whole, it seems as if the inclusion of the ten new member states has brought about considerable changes in the Council in terms both of the voting behaviour and coalition-formation of old and new member states. Although there is some resemblance to a map of Europe in Figure 3.2 – and therefore the suggestion that the governments do act somewhat according to a geographical pattern as concluded by both Mattila, and Naurin and Lindahl elsewhere in this book – such a pattern in the positioning of the countries is not as clearly defined as in the time prior to the 2004 enlargement according to any existing research. On the other hand, it would have been surprising if the old member states had been left unaffected in their voting behaviour and if the new governments had simply taken up positions according to a North-South divide, a North-South-East cleavage or even a party political

Table 3.5 Council voting explained by OC, May 2004–December 2006

Dimension	**Cumulative % explained**	**APRE**
1	55.4	0.569
2	61.2	0.624
3	63.7	0.651
4	70.1	0.715
5	72.6	0.746
6	75.8	0.781
8	79.4	0.802
9	84.2	0.859
10	86.1	0.874

Note: APRE = aggregate proportional reduction of error.

configuration as identified in the period preceding the enlargement. More time and a more established system may be needed in order for such patterns to emerge, if at all.

Conclusions

Official evaluations of the integration of the new member states into the respective EU institutions have concluded that the decision-making processes run relatively smoothly (Commission 2006d). It is reported that the expansion of the main legislative body – the Council of Ministers – has by and large been a success. The findings in this chapter show that while expansion of the Council may not have led to any apparent policy gridlock in terms of the overall amount of legislation adopted, other issues may need to be considered in order adequately to conclude whether the institution has indeed been able to continue with 'business as usual', which – interestingly – still seems to be the current benchmark for success. For example, it was found that although a large number of acts are still adopted by the Council each year, official disagreement in voting situations has not been found to increase, as could have been expected with the inclusion of ten new decision-makers. Thus other measures must be in place to ensure a smooth legislative process, since the representation of more divergent preferences surely cannot have led to a decrease in the level of contest in the meetings. One finding that may help to explain this point is that much legislation appears to be passed even in cases where a number of Council members voice serious concerns in the formal statements following the adoption of a decision. Formal statements are included in the official minutes of the Council meetings and the use of these has risen since enlargement. It therefore appears as if the Council records now show an even greater emphasis on the culture of cooperation, while at the same time governments have been able to ensure the recording of their true political positions. Hence, to a larger degree when adopting legislation in the Council a two-sided political game increasingly seems to be accepted even in the official records.

This chapter also finds that the bases on which coalitions are now being formed have changed since enlargement. Including all stages of the legislative process as well as oppositions voiced through the formal statements, party-political cleavages were found for the period leading up to enlargement, such that the national political positions of centre-left and centre-right governments were also reflected in Council decision-making. May 2004 to December 2006, however, showed more of a geographical divide, although the identified cleavages are not a clear-cut North-South, or North-South-East divide as suggested by scholars analysing last stage voting records (Mattila, Chapter 1) and survey data (Naurin and Lindahl, Chapter 4).

The information that forms the basis for the evaluation presented in this chapter makes it possible to investigate more detailed areas of interest in

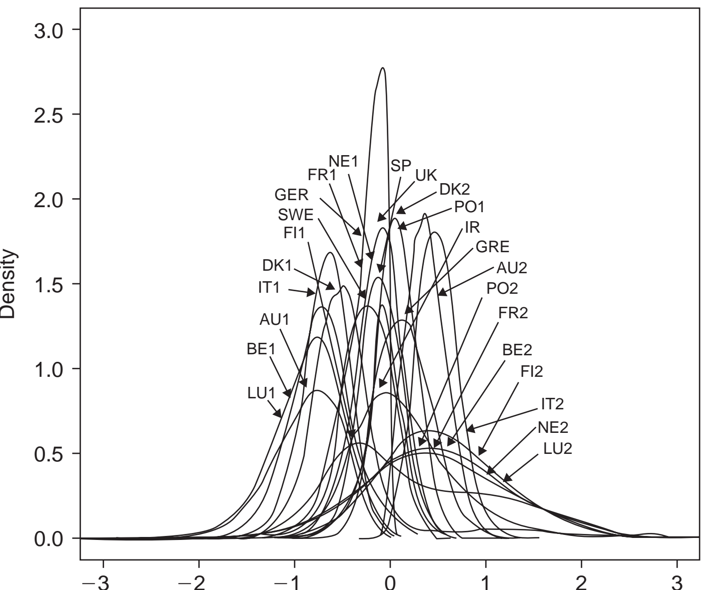
addition to the aggregate figures reported above. One important issue, for example, is the way in which respective policy fields have been affected by the enlargement. It is already reported elsewhere that the adoption rate of policies varies greatly across different areas and that policy areas that traditionally include a larger amount of legislation falling under the unanimity rule have seen bigger drops in adoption rates after enlargement than those policy areas predominantly falling under QMV. Is it for example possible that although a policy gridlock may not exist in terms of the total volume of adopted legislation in the period after the 2004 enlargement, another type of policy gridlock may have occurred with regard to the actual content of the policies? It is still relatively early to draw any strong conclusions on these issues and the above results from the very aggregate level of Council decision-making do not allow any such deductions to be made, yet it would certainly be useful if future evaluations and political debates could also include the reporting, elaboration and analysis of such topics.

Notes

1. See for example Steunenberg et al. (1999).
2. Although Hayes-Renshaw and Wallace (2006) use both interviews and Council minutes in their work, the quantitative part of their analysis relies on a dataset consisting of information from the Council's monthly summaries.
3. See for instance the difference in the conclusions from Mattila (2004) and Zimmer et al. (2005).
4. An example is the governments' political, social and economic positions as measured by Benoit and Laver (2006).
5. Of course, a country which expresses its opposition through voting is not coded to be opposing twice if it also expresses disagreement with regard to a proposal recorded in the form of a negative formal statement.
6. See for instance Council document number 8118/00: Decision of the European Parliament and of the Council establishing a scheme to monitor the average specific emissions of CO2 from new passenger cars. Reference numbers are PE-CONS 3608/00 ENV 48 ENT 28 CODEC 145 + COR 1 and corresponding documents from meetings held in relation to this decision can be found based on these references though the PreLex database.
7. This figure results from the following: for January 1999–April 2004 the number of voting situations is simply multiplied by 15 as there were 15 governments represented in the Council. Similarly, for May 2004–December 2006 the number of voting situations was multiplied by 25. Adding those to resulting outcomes leads to the total figure of 25,235 (obtained by the addition of $15 \times 934 = 14{,}010$, and $25 \times 449 = 11{,}225$, respectively). The data are obtained through the Council's website (http://europa.eu/documents/eu_council/index), the inter-institutional database PreLex (http://ec.europa.eu/prelex) and from the Council's Access Service (access@consilium.eu.int). Since 1999, it been possible to trace a legislative proposal through the public register of the Council and/or the PreLex database. For this purpose, it is sufficient to know the COM reference number of the initial Commission

proposal, the title of the proposal or the inter-institutional file number. The inter-institutional file number will provide all the documents linked to the same proposal/dossier (also from working groups) and can be found through PreLex (when the COM number is known), or on the top of the page of the Council minutes.
8. An extensive description of the optimal classification method (and the similar technique NOMINATE) can be found in Poole (2005), and a detailed explanation of the MCMC model can be found in Clinton et al. (2004).
9. Many aspects of this ideal point analysis should be elaborated (such as for example the reporting of the standard errors), yet, due to the obvious constraints when presenting such results in a single chapter, I will here merely refer to Clinton et al. (2004) for analyses and comparisons of the different ideal point estimation methods. Furthermore, Hagemann and De Clerk-Sachsse (2007a) provides analyses of the benefits and problems with applying ideal point estimations methods to data from the Council.

Appendix 3



Appendix 3.A Density plot of the EU governments' ideal point estimates, January 1999–April 2004

Notes: 1 or 2 following country abbreviations indicate first or second government in the period 1999–2004.

AU: Austria; BE: Belgium; DK: Denmark; F: Finland; FR: France; GER: Germany; GRE: Greece; IR: Ireland; IT: Italy; LU: Luxembourg; NE: the Netherlands; PO: Portugal; SP: Spain; SWE: Sweden; UK: United Kingdom.

Appendix 3.B Parties in government, 1999–2006

Country	1999	2000	2001	2002	2003	2004	2005	2006	Change
Germany	SPD + Die Grünen (PES)	SPD + Die Grünen (PES)	SPD + Die Grünen (PES)	SPD + Die Grünen (PES)	SPD + Die Grünen (PES)	SPD + Die Grünen (PES)	SPD + Die Grünen (PES)	CDU + SPD + CSU (EPP – ED)	18/09/2005
France	PS + PCF + PRS + MDC + Verts (PES)	PS + PCF + PRS + MDC + Verts (PES)	PS + PCF + PRS + MDC + Verts (PES)	PS + PCF + PRS + MDC + Verts	UMP + UDF + ind.s (EPP – ED)	UMP + UDF + ind.s (EPP – ED)	UMP + UDF + ind.s (EPP – ED)	UMP + UDF + ind.s (EPP – ED)	05/05/2002
UK	LP (PES)	LP (PES)	LP (PES)	LP (PES)	LP (PES)	LP (PES)	LP (PES)	LP (PES)	None
Italy	DS + PPI + RI + UDR + PDCI + FV + SDI (PES)	DS + PPI + RI + PDCI + FV + D + Udeur (PES)	DS +PPI + RI + PDCI + FV + D + Udeur (PES)	FI + AN + LN + CCD + CDU (EPP – ED)	FI + AN + LN + CCD + CDU (EPP – ED)	FI + AN + LN + CCD + CDU (EPP – ED)	FI + AN + LN + CCD + CDU (EPP – ED)	FI + AN + LN + CCD + CDU (EPP – ED)	13/05/2001
Spain	PP (EPP – ED)	PP (EPP – ED)	PP (EPP – ED)	PP (EPP – ED)	PP (EPP – ED)	PP (EPP – ED)	PSOE (PES)	PSOE (PES)	14/03/2004
Poland						PO + PiS (UEN)	PO + PiS (UEN)	PO + PiS (UEN)	
Netherlands	PvdA + VVD + D66 (PES)	PvdA + VVD + D66 (PES)	PvdA + VVD + D66 (PES)	PvdA + VVD + D66 (PES)	CDA + LPF + VVD (EPP – ED)	CDA + VVD + D66 (EPP – ED)	CDA + VVD + D66 (EPP – ED)	CDA + VVD + D66 (EPP – ED)	22/07/2002 + 22/01/2003 + 07/07/2006
Greece	PASOK (PES)	PASOK (PES)	PASOK (PES)	PASOK (PES)	PASOK (PES)	PASOK (PES)	ND (EPP – ED)	ND (EPP – ED)	07/03/2004
Belgium	CVP + PSC + SP + PS (PES/ EPP – ED)	VLD + PRL/ FDF + SP + PS + Ecolo + Agalev (ELDR)	VLD + PRL/ FDF + SP + PS + Ecolo + Agalev (ELDR)	VLD + PRL/ FDF + SP + PS + Ecolo + Agalev (ELDR)	VLD + SP + PS + MR (ELDR)	VLD + SP + PS + MR (ELDR)	VLD + SP + PS + MR (ELDR)	VLD + SP + PS + MR (ELDR)	13/06/1999
Czech Rep.						ČSSD + KDU – ČSL + US – DEU (MER)	ČSSD + KDU – ČSL + US – DEU (MER)	ČSSD + KDU – ČSL + US – DEU (MER)	02-03/06/2006

Portugal	PS + PP (PES)	PS + PP (PES)	PS + PP (PES)	PS + PP (PES)	PSD + CDS + PP (EPP – ED)	PSD + CDS + PP (EPP – ED)	PS + PP (PES)	PS + PP (PES)	17/03/2002 + 20/02/2005
Hungary						MSZP + SZDSZ (PES)	MSZP + SZDSZ (PES)	MSZP + SZDSZ (PES)	None
Sweden	SAP (PES)	SAP (PES)	SAP (PES)	SAP (PES)	SAP (PES)	SAP (PES)	SAP (PES)	SAP (PES)	21/09/2006
Austria	SPÖ + ÖVP (EPP – ED)	SPÖ + ÖVP (EPP – ED)	ÖVP + FPÖ (EPP – ED)	ÖVP + FPÖ (EPP – ED)	ÖVP + FPÖ (EPP – ED)	ÖVP + FPÖ (EPP – ED)	ÖVP + FPÖ (EPP – ED)	ÖVP + FPÖ (EPP – ED)	05/02/2000 + 25/04/2004
Slovakia						SDK + SMK + KDH + ANO (PES)	SDK + SMK + KDH + ANO (PES)	SDK + SMK + KDH + ANO (PES)	17/06/2006
Denmark	SD + RV (PES)	SD + RV (PES)	SD + RV (PES)	V + KF (EPP – ED)	V + KF (EPP – ED)	V + KF (EPP – ED)	V + KF (EPP – ED)	V + KF (EPP – ED)	20/11/2001
Finland	SDP + KOK + SFP + VAS + VIHR (ELDR)	SDP + KOK + SFP + VAS + VIHR (ELDR)	SDP + KOK + SFP + VAS + VIHR (ELDR)	SDP + KOK + SFP + VAS + VIHR (ELDR)	SDP + KOK + SFP + VAS + VIHR (ELDR)	KESP + SDP + SFP (ELDR)	KESP + SDP + SFP (ELDR)	KESP + SDP + SFP (ELDR)	16/03/2003
Ireland	FF + PD (UEN)	FF + PD (UEN)	FF + PD (UEN)	FF + PD (UEN)	FF + PD (UEN)	FF + PD (UEN)	FF + PD (UEN)	FF + PD (UEN)	17/05/2002
Lithuania						LDDP + NS (PES)	LDDP + NS (PES)	LDDP + NS (PES)	10/10/2004
Latvia						PP + JL + ZZS + LPP (EPP – ED)	PP + JL + ZZS + LPP (EPP – ED)	PP + JL + ZZS + LPP (EPP – ED)	07/10/2006

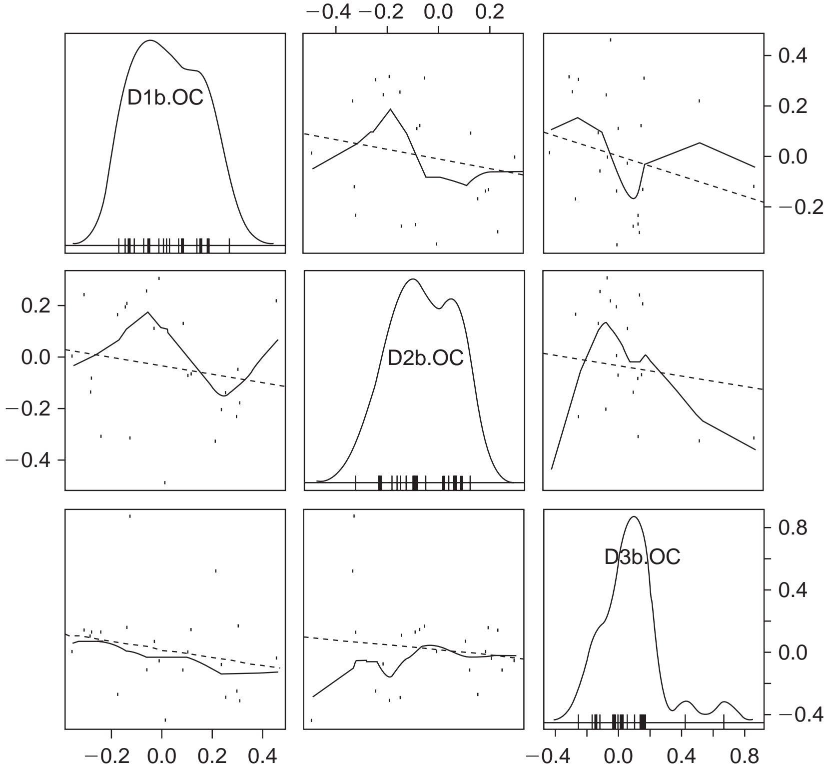
(*Continued*)

Appendix 3.B (Continued)

Country	1999	2000	2001	2002	2003	2004	2005	2006	Change
Slovenia						SDS + SLS + DeSUS + NSI (EPP – ED)	SDS + SLS + DeSUS + NSI (EPP – ED)	SDS + SLS + DeSUS + NSI (EPP – ED)	03/10/2004
Estonia						ER + RP + PUE (ELDR)	ER + RP + PUE (ELDR)	ER + RP + PUE (ELDR)	02/03/2003
Cyprus						AKEL + DIKO + EDEK (INDPT.)	AKEL + DIKO + EDEK (INDPT.)	AKEL + DIKO + EDEK (INDPT.)	21/05/2006
Luxembourg	CSV + LSAP (EPP – ED)	CSV + DP (EPP – ED)	CSV + DP (EPP – ED)	CSV + DP (EPP – ED)	CSV + DP (EPP – ED)	CSV + DP (EPP – ED)	CSV + LSAP (EPP – ED)	CSV + LSAP (EPP – ED)	13/06/1999 + 13/06/2004
Malta						PN (EPP – ED)	PN (EPP – ED)	PN (EPP – ED)	12/04/2003

Notes

Austria: SPÖ: Social Democratic Party of Austria; ÖVP: Austrian People's Party; FPÖ: Freedom Party of Austria. Belgium: Agalev: (Flemish) ecologists; CVP: (Flemish) Christian People's Party; Ecolo: (Walloon) ecologists; FDF: (Brussels) Democratic Front of Francophones; PRL: (Walloon) Liberal Reformist Party; PS: (Walloon) Socialist Party; SP: (Flemish) Socialist Party (from 2001, SPA); VLD: Flemish Liberals and Democrats. Czech Republic: ČSSD: Social Democrats; KDU-CSL: Christian Democrats; US-DEU: Liberals. Denmark: KF: Conservative People's Party; V: Venstre, 'Left', or Liberal Party; RV: Radical (Left-Social) Liberal Party; SD: Social Democracy in Denmark. Estonia: ER: Estonian Reform Party; RP: Res Publica; PUE: People's Union of Estonia. Germany: SPD: Social Democratic Party; Die Grünen: The Greens. Finland: KOK: national Coalition Party; SDP: Finnish Social Democratic Party; SFP: Swedish People's Party in Finland; VAS: Left-Wing Alliance; VIHR: Green League. France: PS: Socialist Party; UDF: Union for the French Democracy (confederation to 1998; then single party); RPR: Rally for the Republic (disbanded 21 Sep 2002); PCF: French Communist Party; PRS: Radical Socialist Party (then PRG); PRG: Radical Party of the Left; MDC: Citizens Movement; DL: Liberal Democracy; les Verts: The Greens. Greece: PASOK: Panhellenic Socialist Movement; ND: Nea Dhimokratia. Hungary: MSZP: Hungarian Socialist Party; SZDSZ: The Alliance of Free Democrats. Ireland: FF: Fianna Fáil; PD: Progressive Democrats. Italy: DC: Christian Democracy; FI: Forward (Forza) Italy; LN: Northern League; AN: National Alliance; CCD: Christian Democratic Center; CDU: United Christian Democrats; PPI: Italian People's Party; RI: Italian Renewal; UDR: Democratic Union for the Republic; FV: Federation of Greens; PDCI: Party of the Italian Communists; SDI: Italian Democratic Socialists; Udeur: Union of the Democratic European Reformers. Latvia: JL: New Era Party ZZS: Union of Greens and Farmers; LPP: Latvia's First Party. Lithuania: LDDP: Democratic Labour Party of Lithuania. Luxembourg: CSV: Christian Social People's Party; LSAP: Luxembourg Socialist Workers' Party; DP: Democratic Party. Malta: PN: Nationalist Party. Netherlands: CDA: Christian Democratic Appeal; PvdA: Labour Party; VVD: People's Party for Freedom and Democracy; D66: Democrats 66; LPF: List Pim Fortuyn. Portugal: PSD: Social Democratic Pary; PS: Socialist Party; CDS-PP: Social Democratic Center-Popular Party. Slovenia: SDS: Slovenian Democratic Party, SD: United List of Social Democrats, SLS: Slovenian People's Party, DeSUS: Democratic Party of Pensioners of Slovenia, NSI: New Slovenia. Slovakia: SDK: Slovak Democratic Coalition; SMK: Party of the Hungarian Coalition; KDH: Christian Democratic Union; ANO: Alliance of the New Citizen. Spain: PP: Partido Popular; PSOE: Partido Socialista Obrero Español. Sweden: SAP: Social Democratic Labour Party; M: The Moderate Party; FP: The Liberal People's Party; KD: The Christian Democrats; C: The Centre Party. United Kingdom: LP: Labour Party. ( ) indicates affiliation with EP party group: EPP-ED = European People's Party-European Democrats; ELDR = European Liberal Democrat and Reform Party; PES = Party of European Socialists; UEN = Union for Europe of the Nations.



Appendix 3.C Correlations between the 1st, 2nd and 3rd dimensions, OC

4 East-North-South: Coalition-Building in the Council before and after Enlargement

Daniel Naurin and Rutger Lindahl

Introduction

Research on coalition patterns in the Council of the EU has taken a leap forward over the last couple of years. A decade ago, Winkler complained that 'there is surprisingly little clear evidence of coalition formation in the EU' (Winkler 1998, p. 399). A few years later another group of scholars noted that 'most of the suggestions [concerning coalitions] made in the literature seem to be based on anecdotal evidence, rather than on structured documentation' (Elgström et al. 2001, p. 121). The closed nature of the Council and the lack of reliable systematic data contributed to this situation. Furthermore, a common view on the topic was that there would be few stable patterns to be found anyway, as coalitions were assumed to 'shift from issue to issue' (Spence 1995, p. 380). Such a view also fitted well with the ideal picture of the Council as a rational European problem-solving institution.

Since then, several studies (also referred to in the previous chapters of this volume) investigating voting behaviour and member states' initial bargaining positions have indicated that there may be more structure to the interactions than the ideal picture foresaw. In particular, a geographical North-South dimension seems to have characterized the EU-15 according to several studies. Such a finding is not necessarily incompatible with the rational ideal of the Council as an interest-driven problem-solving machinery, as geographical patterns may coincide with policy interests. But there seems to be less fluidity here than was previously expected.

The extent to which issue-specific interests, political ideologies or cultural factors drive coalition formation in the Council is a question that falls beyond the scope of the present chapter. Instead, we further analyse the descriptive question of whether there are discernible coalition patterns in the interactions between member states in the Council. Our main contribution here is to complement previous studies with new survey data on cooperation between member states. These data capture not only the input (initial bargaining positions) and the output (voting behaviour) of the negotiations,

but also the actual process of coalition-building. We are thereby better able to scrutinize the social aspects of coalition-building as well. As we will show, in some respects this yields a new picture of the coalition patterns in the Council, in particular concerning the network positions of the big states.

Furthermore, we also study the effect on the coalition patterns of the 'Big Bang' enlargement of ten new member states in 2004. We find that geographical patterns dominate the picture both in the period prior to enlargement and in its aftermath. The longitude dimension (North-South) is evident in the relations between the old member states, but the enlargement also brought an additional latitude dimension (East-West) to the picture. Our data refute previous speculations according to which the new Eastern European states should have aligned themselves with the Southern states in the Council.

Previous research

There have been three main ways in which EU scholars have approached the question of coalition patterns and power in the Council of the EU. First, a range of studies have calculated the theoretical power of different hypothetical coalitions, based on member states' voting weights (see Hosli 1996, 1999; Sutter 2000; Aleskerov et al. 2002; Hosli and van Deemen 2002). For example, the Shapley-Shubik index is a voting power index which is based on the number of times a particular actor is 'pivotal' in a coalition, in other words it has a sufficient number of votes to turn a losing coalition into a winning one. The voting power indexes may be used to estimate the voting power of an exogenously specified coalition. For example, Hosli (1999) calculates the voting power of the Benelux countries and the Nordic countries acting as 'blocs' in the Council. But the indexes cannot be used for identifying existing coalitions. In practice, Hosli is in this case merely guessing that the Benelux and the Nordic countries are acting in blocs. According to the empirical studies of coalitions in the Council described below, this is in fact not usually the case, which illustrates the need to add empirical data to the theoretical voting power analyses.

Second, some scholars have looked at voting patterns (Mattila and Lane 2001; Mattila 2004; Hayes-Renshaw et al. 2006; Aspinwall 2006; Mattila, Chapter 2 above). Data on the explicit votes given by member states in the Council are available from 1994 and can be used to analyse who tends to vote with whom, against a qualified majority. Mattila and Lane (2001) found a North-South dimension in the explicit voting during the years 1995 to 1998. Sweden, Denmark, the Netherlands and the UK were at opposite ends in respect to the Mediterranean states, in particular Spain and Italy. A notable aspect was also that Finland stood slightly apart from the North group, and that there was no sign of any Benelux cooperation in the voting data. In a later article, on the other hand, using voting data from 1995 to 2000,

Mattila (2004) found evidence of both a Left-Right and a pro-/anti-EU dimension affecting member states' propensity to vote openly against the majority (right-wing EU-sceptic governments voting against the (left-wing) majority more often than left-wing EU supporters). In Chapter 2, analysing the voting data after the enlargement in 2004, Mattila again finds a North-South pattern.

Hagemann (Chapter 3) has assembled a dataset containing not only formal votes and abstentions, but also formal statements to the Council minutes for the years 1999–2006. She finds a Left-Right dimension structuring coalition patterns in the EU-15 Council before the 2004 enlargement. Several countries substituted left-wing governments for right-wing governments during this period, which subsequently led to these governments shifting place in the coalition space. After the enlargement, however, this pattern was no longer discernable.

A third way of capturing coalition patterns is by looking at the expressed positions (revealed preferences) of member states. One of the main critiques against the voting power indexes has been that they fail to consider actors' preferences that condition the range of coalitions that are feasible in practice. Analysing how far and how close the member states position themselves in relation to each other makes it possible to detect potential conflict dimensions in the Council. An important effort at gathering such data has been made by the Decision-Making in the EU (DEU) project (see, for instance, Thomson et al. 2006; König and Junge (Chapter 5) and Thomson (Chapter 13) in this volume). Using expert interviews, this research group was able to collect data on the initial positions of the member states on 70 Commission proposals (including 174 different issues) dealt with in the Council during 1999 and 2000, thereby enabling analyses of position patterns.

The most visible dimension in the coalition patterns coming from the DEU dataset is, again, the North-South dimension (Thomson et al. 2004; Zimmer et al. 2005; Kaeding and Selck 2005). The North group includes the same countries as in the voting data studies (to wit, Denmark, Sweden, the Netherlands and the UK), and additionally Germany (Finland being positioned between the North and the centre group). The Mediterranean states, including France, are at the other end of the scale. Thomson et al. (2004) on the one hand, and Zimmer et al. (2005) on the other, both using the DEU data, make different interpretations of the fact that Mediterranean states position themselves closer to each other than to member states further to the North. According to Thomson et al. this is mainly a question of Northern countries preferring market-based solutions to policy problems and Southern states advocating regulatory approaches. Furthermore, these authors argue that even though the North-South dimension is the most important conflict dimension (compared to pro-/anti-EU opinions, Left-Right position of governments or economic development), it is nevertheless not a very strong one, as it was only significantly correlated to the positioning of the member

states in about one-third of the 174 issues. Zimmer et al. (2005), on the other hand, argue that Thomson et al. underestimate the degree of structure in the DEU data and claim that the North-South division is mainly one of net-contributors to (North) and recipients of (South) the EU budget. The large distance between France and Germany in the data means that the two countries often take different initial positions on the issues on the agenda. One article concluded on the basis of this finding that 'the historically important Franco-German axis, if it ever existed in the real world of EU policy making, seems to have lost momentum' (Kaeding and Selck 2005, p. 282).

The three contributions to this section of the volume (Hagemann, Mattila and the present one) are the first empirical studies of coalition formation since the 2004 enlargement. Before the enlargement took place, some scholars tried to predict the effect on the coalition patterns in the Council. Most systematic was the attempt of Zimmer et al. (2005), who predicted the preferences of the new member states on a range of policy dimensions, by means of secondary literature and expert interviews. Comparing the new member states' predicted positions to the positions of the EU-15 countries in the DEU dataset Zimmer et al. foresaw that 'the coalition of subsidy-dependent states will be fortified' (2005, p. 415). The new Eastern European members would align with the South. They would have similar preferences not only with respect to subsidies, but also on issues concerning market regulation, consumer protection and environmental policy. As an outcome of this strengthening of the 'Southern bloc', the authors suspected that 'redistributive conflicts will become more virulent and the EU will become more producer-friendly and protectionist in the near future' (ibid., p. 404). While no such South-East versus North pattern is evident in either Hagemann's or Mattila's contributions to this volume, we will test this hypothesis further below.

Measuring coalitions

Although studies of voting and bargaining positions represent great progress in the research on coalitions and conflict dimensions in the Council, there are nonetheless caveats with both approaches. The most obvious deficiency with the voting data is that the ministers only vote explicitly in about 20 per cent of the cases, and in a large part of those cases there is only one member state opposing the decision, leaving most of the action in the Council outside the analysis. Furthermore, the data do not include proposals which failed to assemble a large enough majority to go through the Council. An effect of the latter is that there is a bias against big state coalitions in the findings, as two big states opposing the same proposal will usually be able to gather enough votes to stop it, which means it will not turn up in the records. Consequently, according to the multidimensional scalings of the voting data (see, for example Mattila in Chapter 2, and Mattila and Lane 2001), Germany

and the UK are at opposite ends of the plots, indicating that they most often belong to opposite coalitions.

Another problem with using voting data and formal statements is that the pattern of two countries voting the same way is not necessarily evidence of their forming a coalition, in the strictly semantic sense of 'an alliance for combined action' (*Oxford English Dictionary*). The no-votes may be uncoordinated, or the two states may even be against the proposal for conflicting reasons. Voting behaviour is also likely to be affected by factors other than coalition-building, such as incentives for constituency signalling (Hayes-Renshaw et al. 2006).

Bargaining positions are also problematic as indicators of coalitions. The fact that two countries take a similar position on an issue is not enough to enable conclusions to be drawn that they have acted, or will act as a coalition, as they may formulate and promote their positions independently. Therefore the large distance between France and Germany with respect to initial bargaining positions found in the DEU studies does not necessarily indicate that these countries belong to opposing coalitions. Furthermore, if we conceptualize the member states' initially expressed positions to Commission proposals as 'preferences', as some DEU researchers prefer, this seems to be an even more problematic approximation of coalitions than bargaining positions. A coalition then would simply be a group of countries who happen to want the same thing. But if coalitions are just mirror images of the distribution of wants it is difficult to see what role they play for the actors in the process and the substance of the notion of 'coalition-building'.

In this chapter we will use a complementary method for analysing coalitions in the Council. While the previous studies have looked at the input (preferences/initial bargaining positions) or the output (votes, formal statements) of the negotiation process, we will focus on the process itself. Using survey data containing questions about actual cooperation between member states' representatives, we believe that we succeed in coming closer to the target of measuring coalition-building. In this way, contrary to previous studies, we will also be able to capture the social aspects of coalition-building, which may not only be driven by rational interests but also by norms, path-dependency mechanisms, and feelings of cultural affinity and identity.

The data

Interviews were conducted in two rounds with representatives from all member states in 11 working groups to the Council of the EU, during February and March 2003 and February and March 2006. Higher level (including COREPER[1]) and lower level groups were included in the sample, working within economic policy, internal market issues, agriculture, foreign and security policy, environment and justice and home affairs (see Figure 4.1). In order to facilitate comparisons over time we strove to keep the sample of working

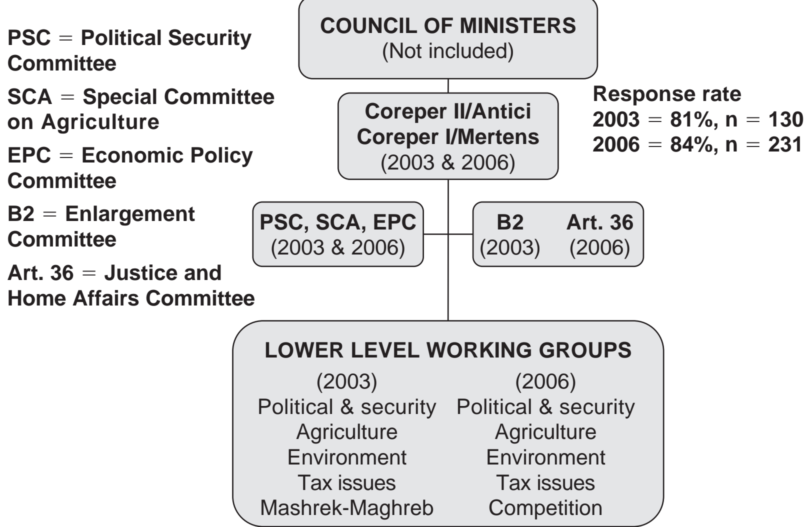


Figure 4.1 Council working groups included in the sample

groups as similar as possible in 2003 and 2006. Nine of the eleven working groups were the same in both interview rounds.

The interviews were short, 10 to 15 minutes, and conducted over the telephone. As a consequence, only a few questions could be asked. The reason behind this methodological choice was that we preferred to assemble a relatively large number of interviews in order to be able to apply quantitative analyses. Given a limited research budget and the fact that the respondents are usually extremely busy, short telephone interviews provided a reasonable solution.

The response rate was a success in both interview rounds – 81 per cent in 2003 and 84 per cent in 2006 – yielding 130 and 231 respondents, respectively. The sample of respondents is also fairly evenly distributed across member states. There is a small bias towards Northern Europeans, but the controls we have added to check whether this affects the results indicate that this is not the case except marginally.[2]

The interviews were conducted by doctoral and masters students in political science. In 2003, all interviews were performed from Göteborg, Sweden, and the project was described as being conducted by the Centre for European Research at Göteborg University. In 2006, in order to test for potential interviewer effects on Sweden's position in the cooperation networks (Sweden was surprisingly highly ranked as an often-mentioned cooperation partner in the 2003 survey), a one-third share of the interviews were made from the Robert Schuman Centre for Advanced Studies at the European University

Institute in Florence, Italy. The remaining two-thirds of the interviews were conducted from Göteborg. No interviewer effect giving rise to biased results was detected (Sweden actually came out in a slightly higher position as an often-mentioned cooperation partner in the Florence interviews as compared to the Göteborg interviews).

Names and contact details of the respondents were collected from websites and through contacts with permanent representations in Brussels. This was rather daunting detective work, especially for the lower level working groups. The selected interviewees were first approached by letter, outlining the purpose of the project and the types of questions addressed by it. Some questions were not entirely revealed in the letter since we were seeking spontaneous rather than prepared answers in those cases (this applies in particular to the central question of which member states the respondents cooperate with most often). The respondents were subsequently contacted over the telephone and asked if they were able to participate in an interview. Usually several phone calls were needed before the person would be able to allocate time to this purpose. With a few exceptions, the interviews were conducted in English.

In both surveys (2003 and 2006) the following question was asked: '*Which member states do you most often cooperate with within your working group, in order to develop a common position?*' The respondents were only asked to mention the member states they cooperated most often with, not to give them points or rank them in any way. It would have been much more difficult to obtain answers had we asked for rankings and points, since this is rather sensitive information. Depending on the order in which they spontaneously mentioned their most frequent cooperation partners, we transformed their answers into figures, by the following formula:

1st mentioned = 10 points
2nd mentioned = 9 points
... [and so on] ...
10th mentioned = 1 point
$>$10th mentioned = 0 points

The idea being that the countries that you cooperate most often with are the ones which first come to your mind.[3] Based on this single question we can analyse both cooperation patterns – who is cooperating with whom – and the stock of network capital of individual member states.

Findings

Network capital

From the question of which member states the respondents cooperate with most often, and the subsequent transformation of the answers into figures,

we were able to calculate a ranking of most frequently mentioned cooperation partners. This ranking represents what we designate as the unweighted network capital index, that is, a measure of the quantity of cooperation partners to which a member state has access.[4] The results for 2003 and 2006 are given in Table 4.1.

Looking at the first column in Table 4.1, showing the results for the 2003 survey (the purpose of the gaps in the column is to facilitate comparisons with the EU-15 country positions in 2006), we see three large countries at the top: the UK, France and Germany (the differences between them are insignificantly small). As expected, size is an important factor, larger states being more often consulted as cooperation partners than smaller states.

Table 4.1 Unweighted network capital by country (index points)

EU-15 2003		**EU-25 2006**	
1. UK	3.72	1. Germany	3.52
2. France	3.59	2. UK	3.46
3. Germany	3.55	3. France	3.30
4. Sweden	3.15	4. Sweden	2.58
5. Netherlands	2.63	5. Netherlands	2.31
6. Denmark	1.79	6. Denmark	2.14
7. Spain	1.69	7. Spain	1.79
8. Finland	1.34	8. Italy	1.71
9. Italy	1.21	9. Finland	1.60
		10. Poland	*1.56*
		11. Czech Rep.	*1.46*
		12. Estonia	*1.33*
		13. Hungary	*1.17*
		14. Lithuania	*1.14*
10. Belgium	0.98	15. Greece	1.10
		16. Slovakia	*1.10*
		17. Latvia	*1.04*
11. Austria	0.88	18. Portugal	1.00
12. Portugal	0.83	19. Belgium	0.94
13. Ireland	0.72	20. Austria	0.83
14. Greece	0.67	21. Ireland	0.82
15. Luxembourg	0.54	22. Luxembourg	0.72
		23. Slovenia	*0.56*
		24. Cyprus	*0.46*
		25. Malta	*0.44*

Note: The unweighted network capital for 2003 and 2006 was calculated from the question 'Which member state do you most often cooperate with within your working group, in order to develop a common position?'.

On the other hand, as can be seen by the positions of, for instance, Sweden and the Netherlands, size is not everything.

The second column gives the same unweighted network capital index for 2006, after the accession of ten new member states. Most striking are the similarities with the 2003 ranking. The correlation coefficient between the two indexes for the EU-15 countries is .98. The only difference here is that a new block of countries is introduced in the middle category, and some at the lower end. Enlargement does not seem to have affected the ranking of the EU-15 countries at all. The first nine countries in the list are the same, and the ordering between them is nearly unchanged. Germany does jump to the top, but the differences between the big three are still insignificantly small. Italy and Finland shift place. The same countries hover in the bottom half, with Greece and Portugal doing a little better post-enlargement than before (mainly owing to the points assigned to them by the two new Mediterranean countries Cyprus and Malta). The ranking that we found in 2003 thus seems to be stable over time with respect to the EU-15 countries. Poland, the largest of the new member states, is best placed in the rankings of newcomers. However, it is only in tenth place, which is relatively low considering its size and voting weight.

Cooperation patterns

The next question is who cooperates with whom – are there any identifiable cooperation patterns in the data? This question is analysed here by means of the explorative method of multidimensional scaling (MDS). MDS is a statistical technique which uses the pairwise relationships between the units of analysis (in this case, the number of times, and in which order, member state representatives mention each other as cooperation partners) to derive different dimensions on which the units (member states) align. Usually the outcome is presented in a two-dimensional space, since this is the easiest way to interpret the findings (although higher-dimensional solutions tend to explain more of the variation). The closer the countries are to each other in this two-dimensional space the more they claim to cooperate with each other. In order to moderate the effect of 'wishful thinking' – whereby member state representatives from country X indicate that they have a close cooperation with country Y, while country Y's representatives rank country X rather low – the reciprocal cooperation points are multiplied before the analysis. Furthermore, to facilitate the interpretation of the network, we have joined through connecting lines in the figures those member states which cooperate most closely with each other (defined as being on each other's top-three list).

The degree of accuracy of the MDS-solution is measured by the Stress-I value. The lower the Stress-I value, the more accurate is the displayed picture's description of the relationships between the objects. In our case, the Stress-I values for the two-dimensional solutions are .16 and .19 for 2003 and

2006, respectively. This is only at the margins of the acceptable threshold range according to the established rules of thumb, and far from excellent (Kruskal 1964; compare Kruskal and Wish 1978, pp. 49 ff.)[5] It indicates that the two-dimensional solutions give a general picture of the cooperation patterns in the Council, but outliers – individual respondents making a different choice of cooperation partners than that predicted by the solutions – are fairly common. Figure 4.2 shows the MDS-plot for the 2003 data.

The connecting lines thus indicate countries that cooperate particularly closely. What does this picture convey? First of all, there is a clear geographical pattern. Drawing a line from Finland at one end of the spectrum towards Italy at the other indicates a North-South dimension. No other conflict dimension is immediately apparent here. In this respect the findings resemble the analyses made on voting and positions data. Whatever it stands for, the North-South dimension has clearly been a central feature of the politics of the EU-15 Council. It is the most striking dimension in all three empirical ways of capturing coalition-patterns – voting, positions and cooperation.

In another respect, however, this picture is unlike the previous analyses based on voting and positions data. It gives a more comprehensive description of the coalition patterns in the sense that it includes a centre-periphery perspective. This is especially visible after the connecting lines indicating

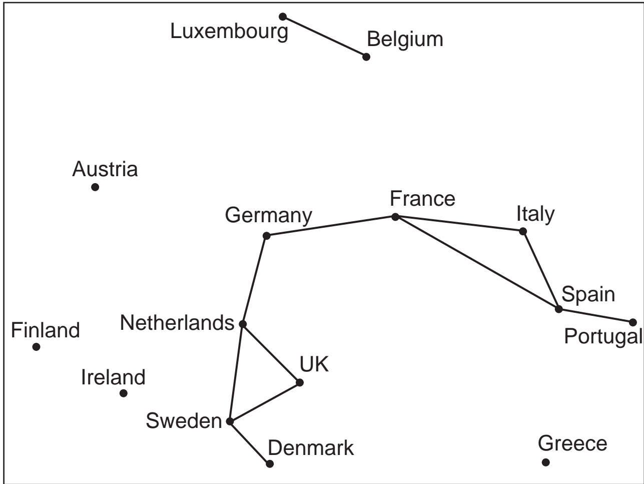


Figure 4.2 The cooperation space of EU-15 in 2003

Note: The multidimensional scaling is based on the 'cooperation points' given to each member state by respondents from the other member states (Stress-I value is .16). These were calculated from the question: 'Which member states do you most often cooperate with within your working group, in order to develop a common position?' The lines connecting some of the countries indicate that they have a particularly close relationship, defined as being in the top three of each other's rankings.

special relationships have been added: in fact, there are two centres rather than one. Dominating the political arena of the EU-15 Council is a North-Core triangle, which includes the UK, the Netherlands and Sweden, and a South-Core triangle with France, Spain and Italy. Visibly holding the two triangles together, with one arm in both camps, is Germany. We know from the previous section that these are the member states with the highest network capital (most often mentioned as cooperation partners). Portugal and Denmark are connected to the two respective centres, while the remaining states belong to what can be labelled as the periphery.

When looking at cooperation patterns, the Franco-German axis, right at the centre of the picture, certainly does not seem to have lost momentum. In fact, Germany is number one on the French list of most frequently mentioned cooperation partners, and France is number one on the German list. Just as with the voting patterns and the position patterns, there are no tight Benelux or Nordic coalitions. Sweden, Denmark and the Netherlands are closer to each other and to the UK than to Finland, Belgium and Luxembourg, respectively.

How did the Big-Bang enlargement in 2004 affect these patterns? Did it introduce a latitude (East-West) dimension to complement the longitude (North-South) dimension? Or have the new member states lined up with the South as predicted by Zimmer et al. (2005)? Figure 4.3 shows the MDS-plot for 2006.

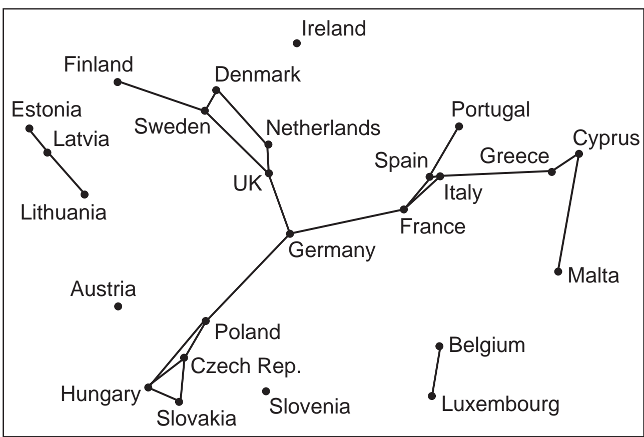


Figure 4.3 The cooperation space of EU-25 in 2006

Note: The multidimensional scaling is based on the 'cooperation points' given to each member state by respondents from the other member states (Stress-I value is .19). These were calculated from the question: 'Which member states do you most often cooperate with within your working group, in order to develop a common position?' The lines connecting some of the countries indicate that they have a particularly close relationship, defined as being in the top three of each other's rankings.

Rather than leading to major turmoil in the cooperation patterns in the Council, the introduction of ten new member states in 2004 seems hardly to have affected the relationships between the EU-15 countries at all. Figure 4.3 is actually very similar to the picture of the 2003 data, except that two new blocks of countries have appeared – the Baltic states and the Visegrad states – and that Cyprus and Malta have joined Greece in the Southern periphery. The geographical patterns are clear; it is almost a map of Europe that we see. The countries with the highest network capital are closer to the centre. Germany's bridge-building role is even more striking now as Germany connects not only North and South but also East via its relatively close ties to Poland.

Drawing a line from Hungary to Cyprus it is immediately visible that the North-South dimension has become an East-North-South one. Table 4.2 formally demonstrates the presence of a new latitude dimension in the Council. One technique which may be used to investigate whether a particular factor is systematically related to the items in an MDS configuration is to perform a linear multiple regression using this factor as the dependent variable and the coordinates of the MDS solution as independent variables. By looking at the multiple correlation coefficient we get a measure of how well the coordinates of the configuration agree with (or 'explain') the factor that we are interested in testing (geographical dimensions in this case) (Kruskal and Wish 1978, p. 36). As can be seen in Table 4.2, while the longitude dimension is highly correlated with the MDS configurations, both in 2003 and 2006, the latitude dimension is statistically significant only in 2006. This new Eastern

Table 4.2 Geographical dimensions in the cooperation space of the Council (unstandardized MDS coefficients)

	MDS Dimension 1	**MDS Dimension 2**	**Multiple correlation coefficient (R)**
2003			
North/South (longitude)	−11.208***	−3.481	0.837***
	(−5.166)	(−1.206)	(14.070)
East/West (latitude)	−3.097	−6.319	0.452
	(−0.958)	(−1.468)	(1.537)
2006			
North/South (longitude)	−10.688***	5.147*	0.833***
	(−6.713)	(2.192)	(24.936)
East West (latitude)	−8.142***	−0.419	0.566**
(Cyprus excluded)	(−3.147)	(−0.117)	(4.953)

Note: Unstandardized coefficients. Significance levels: ***$p < .01$, **$p < .05$, *$p < .10$; t-statistics in parentheses for the MDS dimensions, F-statistics in parentheses for the multiple correlation coefficient. Longitude and latitude coordinates for the approximate geographic centre of the entity (state) from CIA World Factbook, 2007.

Table 4.3 Most frequently mentioned cooperation partners in the South and East groups (index points)

Most popular cooperation partners of the Southern states (FR, ES, IT, PT, GR, CY, MT)		**Most popular cooperation partners of the Eastern states (EE, LV, LT, PL, CZ, SK, HU, SI)**	
1. France	5.00	1. Poland	3.49
2. Italy	4.68	2. Czech Rep.	3.36
3. Spain	4.52	3. Estonia	2.92
4. Greece	3.89	4. Slovakia	2.61
5. UK	3.12	5. Lithuania	2.65
6. Portugal	2.95	6. Sweden	2.56
7. Germany	2.85	7. Hungary	2.50
8. Cyprus	1.66	8. Germany	2.47
9. Malta	1.52	9. UK	2.24
10. Belgium	1.45	10. Latvia	2.22
11. Luxembourg	0.96	11. Finland	1.82
12. Denmark	0.71	12. Denmark	1.69
13. Ireland	0.69	13. Austria	1.33
14. Sweden	0.64	14. Netherlands	1.11
15. Netherlands	0.58	15. Ireland	0.93
16. Slovenia	*0.51*	16. Slovenia	0.78
17. Hungary	*0.22*	*17. France*	*0.64*
18. Slovakia	*0.20*	*18. Spain*	*0.55*
19. Finland	0.18	19. Belgium	0.22
20. Latvia	*0.15*	*20. Italy*	*0.18*
21. Czech Rep.	*0.11*	*Portugal*	*0.18*
Poland	*0.11*	*22. Malta*	*0.16*
23. Austria	0	Luxembourg	0.16
Estonia	*0*	*24. Cyprus*	*0.11*
Lithuania	*0*	*25. Greece*	*0.07*

Note: Table 4.3 is based on the 'cooperation points' calculated from the question: 'Which member states do you most often cooperate with within your working group, in order to develop a common position?' The two columns show the average points given by the respondents from the South group and the East group.

dimension applies only to the former communist states, however, and it fails to attain statistical significance when Cyprus is included in the analysis.

However, Figure 4.3 also shows that there is not one Eastern bloc but two, as there is a clear distance between the Baltic and the Visegrad states. The Nordic countries and the UK are higher ranked on the Baltic states' list than Poland and the other Visegrad countries. The former Yugoslav republic of Slovenia, on the other hand, displays no strong connection to any of these groups.

There is definitely no North versus South-East conflict pattern visible in the interaction space of EU-25. The new economically less developed Eastern

European member states have lined up closer to the supposedly market-liberal, green and net-contributing North than to the market-regulating, polluting, net-receivers of the South (to use Zimmer et al.'s distinguishing characteristics). This is especially visible when looking at the rankings of most frequently mentioned cooperation partners for the East and the South groups respectively (Table 4.3). The new Eastern European countries are at the bottom of the South groups' ranking and vice versa.

Conclusions

This chapter has analysed coalition-building in the working groups of the Council before and after the 2004 enlargement. Two surveys were submitted to working group representatives from all member states asking them which states they usually cooperate with in order to develop a common position. This analysis complements previous studies looking at the input to (bargaining positions/preferences) or the outcome of (votes, formal statements) negotiation processes by focusing on the actual process of coalition-building.

Compared to the voting and positions/preference patterns of the earlier studies, the cooperation patterns shown here give what is to some extent a new picture of the political interaction space of the Council. While it confirms previous findings with respect to the importance of the geographical dimension, both before and after enlargement, it brings the big states back into the centre of the picture. Complementing the cooperation patterns with information on which member states retain the most network capital (in other words, those which are the most popular cooperation partners), Figures 4.2 and 4.3 represent images of centre-periphery in the Council. Particularly striking is the central network position of Germany, at the crossroads between North, South and East. The fact that German and French representatives consistently mention each other as their most important cooperation partner demonstrate the vulnerability of conclusions on coalition patterns drawn from data on initial bargaining positions. Rather than placing them in conflicting coalitions, the fact that France and Germany often take opposite positions in the early phases of the process probably makes it even more important for them to cooperate to find common solutions.

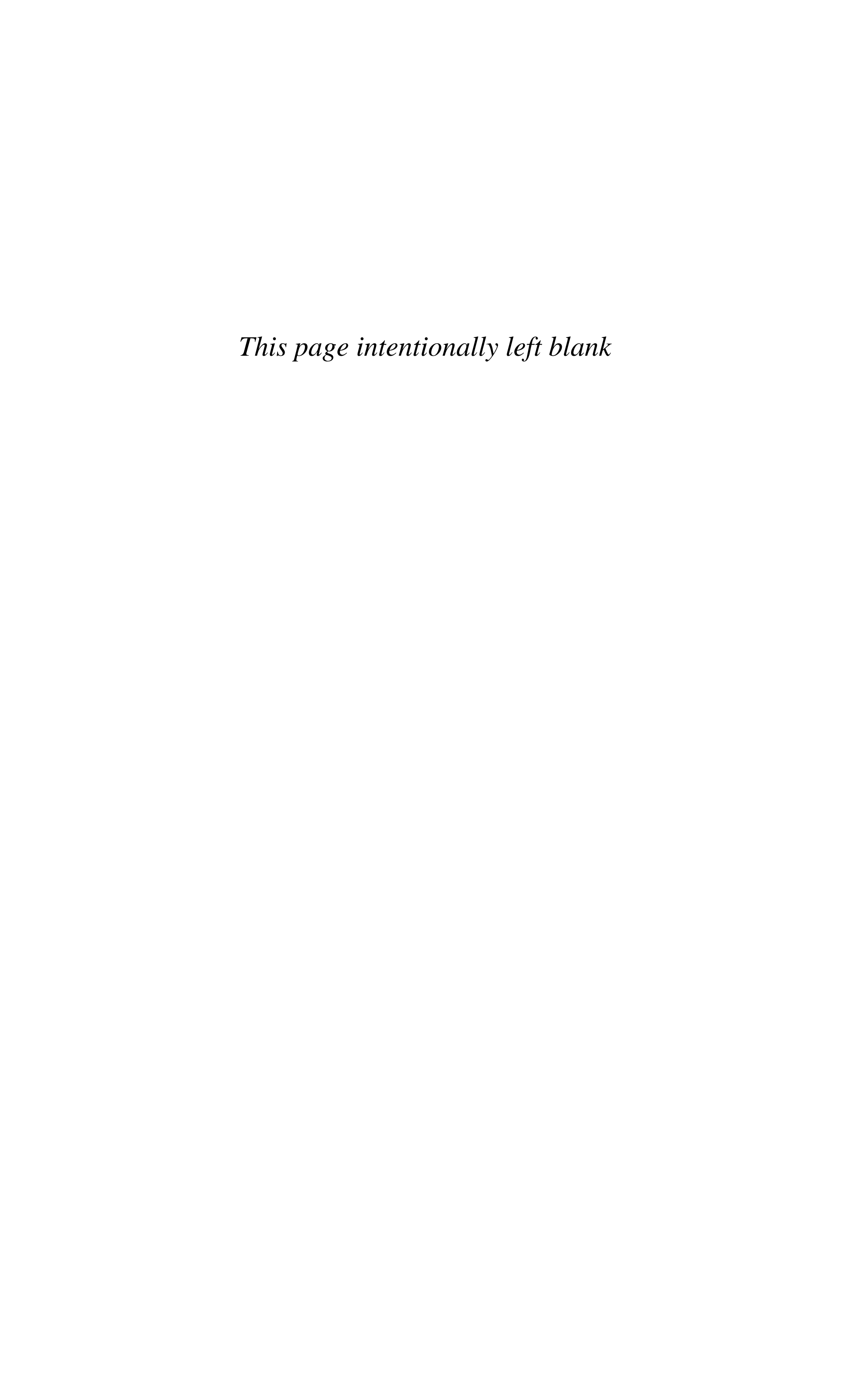
Previous predictions on the effect of enlargement on the coalition patterns based on positions/preference data were also found wanting when looking at actual choices of cooperation partners. The new Eastern European countries cooperate more often with the North than with the South, contrary to the predictions. One explanation could be that the preference configurations were not accurately predicted in the first place. But the different findings may also stem from the fact that the data used in this chapter consider not only material interests but also social aspects of coalition-building. It seems only reasonable that incorporating into the analysis of coalition-building factors such as norms, culture, trust and identity, modifies the picture. The purpose

of this chapter, however, was not to reveal the driving forces behind coalition-building (including the interpretation of the geographical dimensions), but to describe the existing patterns before and after the enlargement.

Notes

1. In those cases where we were unable to interview a COREPER II or COREPER I ambassador we substituted them (when possible) with their assistants (known as 'Antici' or 'Mertens' respectively).
2. For details about the data see www.councildata.cergu.gu.se.
3. We have also tested some alternative ways of calculating – such as assigning weighted points to the first six countries, the first three, or giving just one point to all countries mentioned – the result being more or less the same.
4. It is unweighted because no consideration is given to who the network partners are in this case. Cooperating closely with Malta weighs equally to cooperating closely with Germany.
5. Adding a third dimension did not substantially improve the fit, or the understanding, of the data.

Section Two
Consensus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5
Veto Player Theory and Consensus Behaviour

Thomas König and Dirk Junge

Introduction

Why do member states so frequently support Commission proposals? Do all outcomes perfectly match their preferences, or do member states abstain from using their veto power due to a culture of consensus? And can we include omitted variables, such as the voting weights of the member states and the saliencies they attach to the issues at stake in order to account for the high adoption rate of Commission initiatives? In the literature on Council decision-making, consensus has become the keyword for explaining policy change by EU legislative outcomes (Hayes-Renshaw and Wallace 1995; Westlake 1995; Lewis 2000; Heisenberg 2005; Hayes-Renshaw et al. 2006). Some scholars focus on the micro-level and point to findings based on roll-call data, according to which member states almost always vote for the adoption of Commission proposals (Mattila and Lane 2001, p. 44; Heisenberg 2005, p. 77; Hayes-Renshaw et al. 2006, p. 7). At the macro-level, the most recent study on EU decision-making by Thomson et al. (2006) suggests that conventional veto player models, which stress the procedural distribution of agenda-setting and veto powers, can hardly predict outcomes and tend to underestimate the willingness of member states to support policy change (Achen 2006a; Junge and König 2007). These findings call into question the explanatory power of veto player theory, and lead us to inquire whether a more accurate veto player model could explain member state consensus.

These findings have prompted several authors to reach drastic conclusions on the explanatory power of veto player theory, or even rational choice theory, but there is still much confusion in the literature on whether the predictive power of a theory should be examined at the micro (decision-making) or macro (outcome) level. Micro-studies usually focus on the voting behaviour of member states and have used roll-call data to test their claims. A major deficit of these studies is that roll-call data do not capture independent information about the preferences of the member states. Hence,

roll-call analysts can only speculate on whether consensus in the Council prevails due to the support of member states for policy change, or whether other factors must be included in order to explain their agreement (see for example, Mattila and Lane 2001, p. 38). In the extreme case, it is conceivable that the Commission would only initiate legislation for which agreement among member states already exists. Compared to micro-studies, macro-studies often use preference measures of the political actors involved, focusing on policy outcomes of EU legislation with respect to various interpretations of the agenda-setter, amendment and veto rights (for instance, König and Pöter 2001; Selck 2004b; Steunenberg and Selck 2006; Schneider and Bailer 2006; König and Proksch 2006). However, a false prediction of a macro-phenomenon does not tell us why and to what extent the theory, some elements of the theory, or other factors produce the error. Therefore, it is still an open question why and to what extent veto player theory can(not) predict Council consensus (Achen 2006; Junge and König 2007).[1] The present chapter attempts to answer this question and is innovative in two respects:

(i) We present a multidimensional veto player model that considers the saliencies and voting weights of the actors involved, which were disregarded by previous model applications. By increasing the accuracy of the model, we are able to identify whether the error is determined by some elements of the model specification or by the model itself.
(ii) Distinguishing between the micro- and macro-level, we examine the predictive power of both actor behaviour and outcomes, and control for domain- and country-specific characteristics. This will clarify whether and to what extent these factors can explain consensus in the Council.

In order to specify the reasons for the errors of veto player theory, we will combine detailed information on Commission proposals from the DEU study of Thomson et al. (2006) with Council voting records. Our results show that the observed Council voting pattern indeed indicates a higher support for policy change than the conventional model. Compared to the scholarly discussion about the interpretation of agenda-setting and amendment rights, this phenomenon causes the largest part of the error, which can hardly be improved by considering actors' voting weights and saliencies. Furthermore, our analysis reveals that neither domain- nor country-specific factors support the view of specific 'cultures' or 'styles' of Council decision-making – factors which are made responsible for consensus by constructivist approaches emphasizing the importance of informal norms (see for instance, Heisenberg 2005; Lewis 2000, 2003a and 2005a). We conclude that more general incentives for cooperation must be identified for a better understanding of member state behaviour in the Council.

Council voting: explaining decision-making and legislative outcomes

Legislative research on Council decision-making has become a prominent topic both inside and outside the EU literature. One reason for the popularity of EU legislative decision-making is that the EU has become the world's second most important economic power, with a growing legislative impact on an increasing number of citizens' lives. Today, the EU embraces over 450 million citizens and deals with a wide range of issues of direct importance for everyday life, such as agricultural, economic and trade policies. Another reason for the prominence of EU research is the complex institutional framework for EU legislative decision-making, which attracts a growing number of scholars testing theories developed for the analysis of political systems – veto player theory in particular (Tsebelis 1995, 2002). In spite of the growing prominence of veto player theory in comparative research, there are several ongoing debates about the interpretation and explanatory power of the theory for Council decision-making. These are briefly summarized below:

- Scholars continue to debate the interpretation of the agenda-setter (Commission, European Parliament or Council Presidency) and the amendment right of the Council;
- Others dispute the explanatory power of the theory itself and argue that country- and domain-specific effects or informal norms better explain member state behaviour.

In our view, these positions are not mutually exclusive since both of them address the accuracy of the veto player models. On closer inspection of these models, veto player analysts share the assumption that actors have an ideal notion of the outcome and decide their support of a policy based on their relative distance from the status quo and the proposal (Hotelling 1929; Enelow and Hinich 1984; Hinich and Munger 1997; Poole 2005). To analyse policy change and the support of a Commission proposal, they also commonly use the concept of 'winset', which contains all policy alternatives that are preferred to the status quo.[2] They differ, however, in the identification of the specific alternative that will be selected out of the winset: although the models conventionally introduce a powerful agenda-setter who can select the alternative that is closest to the ideal point, some scholars use the Commission while others the EP or a bargaining outcome in the co-decision procedure to identify the agenda-setter (for different interpretations see Moser 1996, 1997a, 1997b; Steunenberg 1994, 1997, 2000a, 2000b; Crombez 1996, 1997, 2000; Tsebelis 1994, 1996; Tsebelis and Garrett 1996, 1997, 2000; Scully 1997a, 1997b; Rittberger 2000; Napel and Widgren 2006). Most of these models were applied to reveal the intensely debated power effects of the cooperation and co-decision procedures; conversely, scholarly

consensus has largely been reached on the accurate interpretation of the consultation procedure.[3]

To specify the model's error, we propose to differentiate between the micro- and macro-level, which allows us to take a closer look at the most fundamental arguments underpinning veto player theory – its prediction of actors' voting behaviour, of the winset and agenda-setting – and whether these are consistent with the observed outcomes. More specifically, we propose investigating the extent to which each of these arguments contributes to the error rate of the theory that previous studies have found. For this purpose, we specify whether and to what extent the prediction of actors' voting behaviour changes the predictive power of a model for outcomes. To illustrate this relationship between the micro- and macro-level, Figure 5.1 shows a conventional spatial model of EU legislative decision-making. Typically, these models conceive a game between the Commission, the members of the Council, and the EP. Most often, they assume that the Commission and EP are unitary actors, while the Council is composed of representatives of member states having diverging interests.

As shown by their location on the dotted line in the middle of the figure, the Council members C1 to C7, the Commission and the EP have different ideal positions on the one-dimensional policy. Above and below this

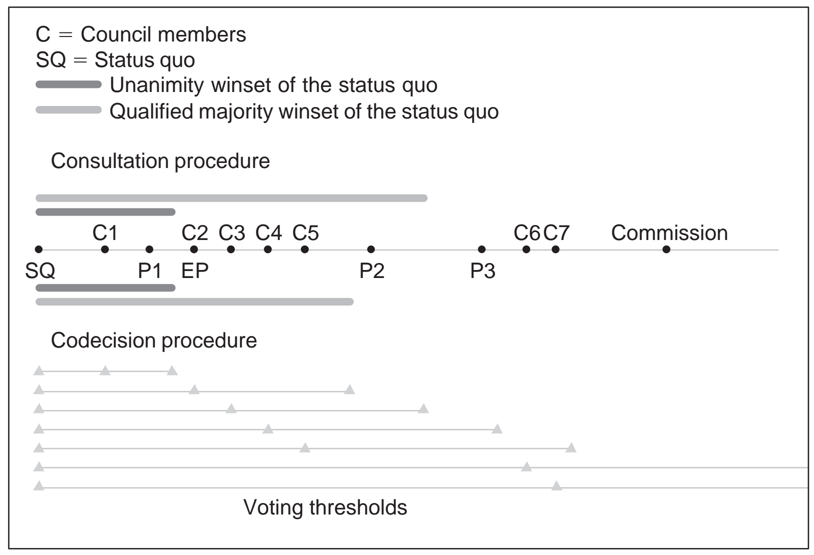

Figure 5.1 Sources of error in spatial models of EU legislative decision-making voting and agenda-setting: one-dimensional policy space

line, we illustrate the winsets for the consultation and co-decision procedure under qualified majority and unanimity, respectively. Below the winsets of the co-decision procedure, we also list the room for manoeuvre of each Council member vis-à-vis the status quo. Theoretically, the voting behaviour of each actor on the final policy proposal is determined by the relative distance between the actor's ideal position, the proposal and the status quo: thus, if the proposed policy is closer to the ideal position than to the status quo, the actor is predicted to support the proposal; otherwise, the actor will reject the proposal and prefer the preservation of the status quo.

The winset can be identified with regard to the legal basis of the proposal, which defines the procedural provisions and the voting rules. For many initiatives, a qualified majority of the Council is required for adoption, which is defined as 72 per cent of the Council votes (in our simplified version five out of seven members). In the co-decision procedure, the EP is an additional veto player and also has to agree to the proposal. Hence, a proposal P1 would be adopted under all voting rules and legislative procedures, P2 would only be adopted in the consultation procedure, while P3 fails to find the required support in any procedure. Accordingly, if P1 is the observed outcome of the legislative process, it is consistent with the theory, but if P3 is the observed outcome, we can conclude that the voting component of the theory is incorrectly defined because it predicts rejection in any case. On closer inspection, the distance between the winset and the observed outcome is the proportion of error which we can attribute to the actors' voting behaviour. For example, if P2 were the observed outcome under unanimity, our error would be due to two member states with incorrectly predicted voting behaviour (C1 and C2). Thus, we are able to identify the contribution of the theoretical arguments to the error term.

The number of conflict dimensions

Compared to the simple one-dimensional model, Commission proposals often raise more than one controversial issue, which offers a trading of interests (Tollison and Willet 1979). These trades establish additional opportunities to find compromise and compensation for member states, which means that they increase the likelihood of consensus. Accordingly, the multidimensional characteristic of Commission proposals is of crucial importance for explaining consensus in the Council. Figure 5.2 illustrates how trades of interests can increase the likelihood of agreement.

In the two-dimensional space illustrated in Figure 5.2, actors also have preferences on a second issue, which allows them to trade between issues.[4] Like the voting thresholds in Figure 5.1, the circles illustrate actors' indifference curves to the status quo as the reference outcome, and their potential for trade. The dark grey area is the unanimity winset, whereas the lighter grey areas show the majority winsets under co-decision and consultation.[5] We can

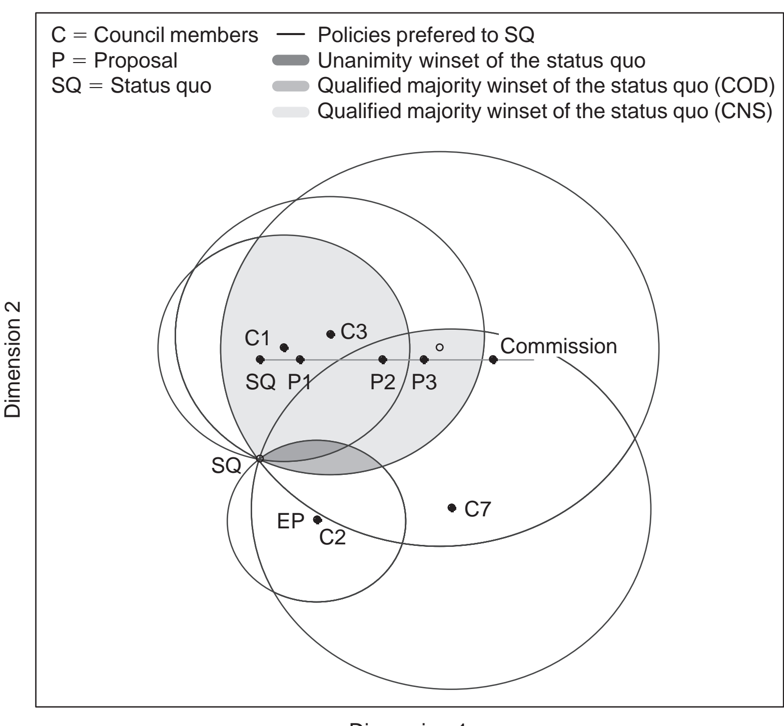

Figure 5.2 A spatial model of legislative decision-making in the EU: decisive players in a two-dimensional policy space

observe that the additional dimension offers compensation on the second issue. As a consequence, the two-dimensional model would also predict adoption of policy P3 under qualified majority in the consultation procedure. If P2 is the observed outcome under unanimity, the error term results from a falsely predicted voting behaviour of C2.

Saliencies and voting weights

Few veto player models have yet included the voting weights of member states, and no application of the model to the EU has considered issue salience, which reflects what Euclidean distances in the policy space *mean* to the actors involved. Quite often, one unit of distance in one dimension might have a different meaning for an actor than one unit of distance in another dimension. We capture the relative importance of these units on different dimensions by considering each actor's saliencies as represented

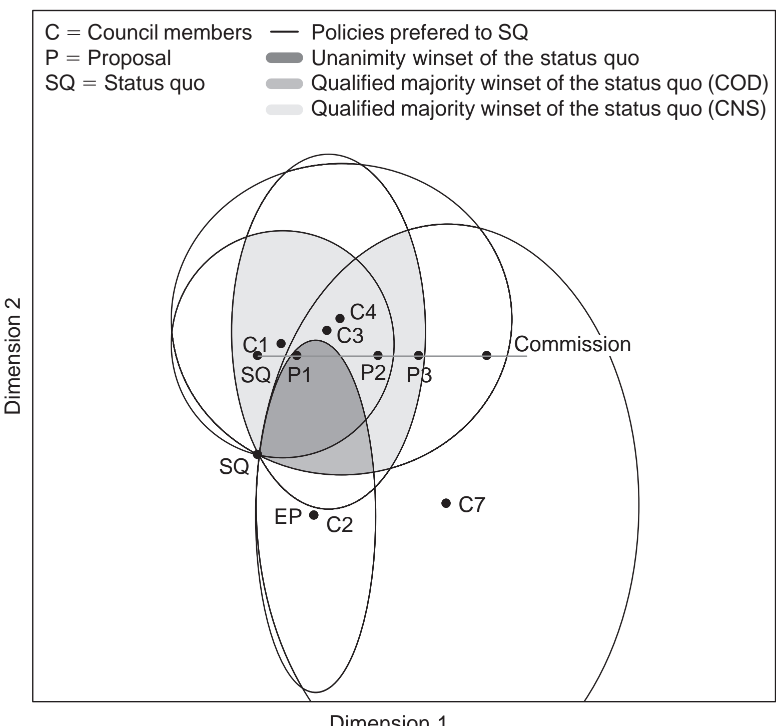

Figure 5.3 A spatial model of legislative decision-making in the EU: decisive players with differing priorities in a two-dimensional policy space

by elliptically shaped indifference curves in Figure 5.3.[6] The actors have the same positions as in Figure 5.2, but the three actors C2 and C3 and C7 are more concerned about the first issue, while the actor C4 is more interested in the second. This requires that the actors receive higher compensation for concessions made on the issue that is more salient to them. In our example, we find that an observed outcome P1 is predicted to be accepted in this model under unanimity rule and in the co-decision procedure as well. If P2 is again the observed outcome under unanimity, the more accurate model would have the same error term caused by falsely predicted voting behaviour of C2.

The Treaty of Amsterdam provides Germany, Italy, France and the United Kingdom with ten votes, while Denmark, Ireland and Finland have three, and Luxembourg has only two. Under qualified majority rule, 62 of the 87 votes are needed for the adoption of a Commission proposal. Figure 5.3 also shows that accounting for voting weights can change the location of the winset and hence the set of policies that will be accepted according to the

model: if Council member C1's assent is required in the majority coalition due to voting weights in the consultation procedure, outcome P3 would no longer be consistent with the spatial voting model.

In order to test the predictive power of a theory, we believe that an accurate specification of the theory is essential. Our examples show that ignorance of the number of dimensions and the exclusion of saliencies and voting weights might impact the error term of a model. In our view, a more accurate modelling of a theory is a necessary precondition for testing competing claims about EU legislative decisions, whether these claims concern the identification of the agenda-setter or the theory itself. To date, König and Pöter (2001) have examined four competing interpretations of the agenda-setter in the cooperation procedure, but they do not find much variance in their predictive power. Using the DEU dataset, their finding has been corroborated by Selck (2003, 2004b) and Steunenberg and Selck (2006), who predict outcomes in the consultation and three different agenda-setting interpretations of the co-decision procedure. As with the evaluation of the one-dimensional Tsebelis model by König and Proksch (2006), their outcome predictions also reveal a high level of error – irrespective of which interpretation they employed. All of these macro-studies concentrate on outcome predictions, which barely offer insights into the sources of error at the micro-level.

Other empirical studies on Council voting records have critically referred to these models, but do not provide an alternative approach with a higher predictive power (Mattila and Lane 2001; Mattila 2004; Hayes-Renshaw and Wallace 2006). Some of these reject the theoretical claim of veto player theory and argue that informal norms, consensus, thick trust and reciprocity in the Council are more important than the (rational choice) theory suggests (Heisenberg 2005; Lewis 2000, 2003a, 2005a). In our view, these studies face similar methodological problems when they only point to outcome irregularities at the macro-level, which does not allow for conclusions at the micro-level, and sources of error, or when they use roll-call data that do not contain information about actors' preferences. In the absence of micro-foundations and information about the preferences, it remains unclear whether the observed voting pattern is inconsistent with the preferences of member states, whether member states have other incentives, or whether informal norms dictate member states' behaviour.

However, our more accurate modelling might capture some of their criticism about the oversimplifying nature of veto player models since we consider (some) country- and issue-specific characteristics by including the actors' voting weights and saliencies in our analysis. Whether the more accurate model changes the error in previous models is however an empirical question that we propose to answer by combining detailed information on Commission proposals from the DEU study with the Council voting records for those cases.

The DEU data: a representative quantitative case study?

A major goal of the DEU study has been the evaluation of competing decision-making theories that predict the outcome of Commission proposals. For this purpose, an international team collected estimates on the preferences of the 15 member states plus the Commission and EP, including their positions on each issue of the legislative proposal, as well as the saliencies they attached to these issues (Thomson et al. 2006). The dataset also contains information on the location of the status quo and the outcome of the proposals, which were subject to either the co-decision or consultation procedure and discussed in the Council between January 1999 and December 2001. Each of these 66 proposals represents a case that attracted some public awareness during the time period under scrutiny. A second selection criterion was the presence of some controversy between the actors involved in the decision-making.[7] Thus, the DEU data are neither a large-N nor a single-case study. While the data contain the ingredients for testing veto player theory, another question is whether the sample is representative for EU legislative decision-making. Table 5.1 compares the DEU and CELEX sample distribution with respect to the Council voting rule, the involvement of the EP, policy domains and other characteristics of EU legislative decision-making. CELEX is the official database on Commission initiatives capturing major characteristics of the legislative process (König et al. 2006).[8]

According to Table 5.1, most of the DEU cases were decided under the consultation procedure and about 65 per cent by qualified majority rule in the Council, which applies voting weights of the member states. With respect to the distribution of all Commission proposals from 1984–2004 and for the period of study from 1999 to 2000, we find that the DEU sample approximately reflects the overall frequency with which these procedures were applied in EU legislation. Moreover, half of the DEU proposals are regulations, followed by a large number of directives, while the share of decisions is lower than the overall share according to CELEX (because decisions often address technical issues with lower levels of conflict, their share had been reduced in the DEU study). However, since no theory relies on the type of legislative instrument, this should not bias the findings. Furthermore, the dominant role of the agricultural sector is approximately reflected in the DEU sample, even though legislative activity in the agricultural domain greatly decreased in the second half of the 1990s. Proposals of the Internal Market, ECOFIN and JHA are overweighted in the DEU sample, because these domains represent the politically most important activities in the EU and raise many conflicts among member states. None of the proposals is still pending, and only one has been rejected.

Upon closer inspection of the DEU data, each proposal contains one or more contested issues. Estimates for the dimensionality of the proposal, the preferences (ideal positions and saliencies) of the 17 actors involved, the

Table 5.1 Distribution of policy proposals in CELEX and DEU (absolute frequencies with percentages in parentheses)

		DEU 1999–2000 (%)	**CELEX 1984–2004 (%)**	**CELEX 1999–2000 (%)**
Procedure	Consultation	40 (60.60)	8,644 (78.10)	2,405 (67.30)
	Co-decision	26 (39.40)	1,529 (13.80)	1,043 (29.21)
Voting rule	Unanimity	23 (34.80)	4,341 (39.24)	1,883 (52.73)
	QMV	43 (65.20)	6,721 (60.75)	1,563 (43.77)
Type	Decision	7 (10.60)	2,942 (25.93)	1,225 (34.30)
	Regulation	33 (50.00)	6,393 (56.35)	1,280 (35.84)
	Directive	26 (39.40)	2,011 (17.72)	1,066 (29.85)
Domain	Agriculture	14 (21.21)	2,553 (22.50)	262 (7.34)
	Internal market	13 (19.69)	174 (1.53)	73 (2.04)
	Fisheries	7 (10.60)	865 (7.62)	105 (2.94)
	ECOFIN	6 (9.09)	112 (0.99)	27 (0.76)
	JHA	5 (7.57)	118 (1.04)	33 (0.92)
	General	6 (9.09)	63 (0.55)	21 (0.59)
	Others	15 (22.72)	7,177 (64.89)	3,050 (85.41)
	Total	66 (100.00)	11,062 (100.00)	3,571 (100.00)

reference and outcomes were gathered using expert interviews. For each issue, the interviewees were asked to assign the extreme values on a scale from 0 to 100 to the actors with the extreme positions. They then located the actors with intermediate positions (for more details see Thomson et al. 2006). As with any expert study, the DEU data raise measurement concerns, but a first cross-validation revealed that the DEU estimates are highly reliable and independent of the institutional affiliation of the experts (König et al. 2006).[9]

The DEU dataset comprises reliable information on 162 contested issues in 66 proposals, which are representative for EU legislative decision-making. More specifically, we find that 21 per cent of all proposals are one-dimensional, 38 per cent are two-dimensional, and 41 per cent of the proposals have higher dimensional policy spaces with between three and six issues. For all cases, the actors have different saliencies, and since 79 per cent of these cases are multidimensional, this should be reflected in the shape of the actors' utility functions.

This overview suggests that previous applications of the theory, which ignored the number of dimensions, the saliencies and sometimes the voting weights of the actors involved, were possibly biased. A higher number of dimensions usually increases the potential for policy change and the power of the agenda-setter, while the inclusion of voting weights and saliencies – if they entail indifference – generally limits the number of winning coalitions and policy change (Junge and König 2007).[10] Another data problem concerns missing values, and, like all empirical studies, the DEU data also

Table 5.2 Procedures and voting rules in the reduced DEU dataset

Procedure		**Number of proposals**	**Percentage**	**Number of issues**	**Percentage**
Co-decision	QMV	14	29.17	35	33.02
	Unanimity	5	10.42	12	11.32
Consultation	QMV	18	37.50	42	39.62
	Unanimity	11	22.92	17	16.04
Type	Directive	20	41.67	47	44.34
	Regulation	23	47.92	50	47.17
	Decision	5	10.42	9	8.49
Domain	Agriculture	11	22.92	29	27.36
	Internal Market	11	22.92	28	26.42
	Fishery	6	12.50	11	10.38
	ECOFIN	5	10.42	8	7.55
	JHA	2	4.17	3	2.83
	Common rules	2	4.17	4	3.77
	Other	11	22.92	23	21.70
Total		48	100.00	106	100.00

omits values for more than half of the 162 issues, that is for the reference outcome and the position of at least one actor. In some cases, such omissions can pose a significant problem for the evaluation of decision-making theories because the models usually assume complete information on the variables of the game (König et al. 2005). Research on missing values emphasizes the superiority of multiple imputation techniques against listwise deletion, but the question is which imputation method should be applied. In the following, we employ the currently most prominent imputation algorithms AMELIA for the imputation of missing actor positions (King et al. 2001). However, if proposals contain missing values for the reference outcome, they are dropped from our analysis (compare also Steunenberg and Selck 2006). Accordingly, we had to drop 18 proposals from the sample. Table 5.2 shows whether this reduction in the data affects the representativeness of the study.

In spite of the sample reduction due to missing values, the relative proportion of cases in each subcategory remains approximately the same. Consequently, we do not expect a particular bias from the reduction of the sample due to missing values. Furthermore, we find enough cases in most subcategories to estimate the effects for each group and control for a possible bias on the overall estimation.

The evaluation: predictive power at the macro- and micro-level

Evaluating the predictive power of theories is a challenging endeavour, and several evaluative criteria exist (Morton 1999; König 2005; Achen 2006a).

Errors may be caused by misconception of the policy process and rules, such as excluding important actors or relevant issues, disregarding particular elements, such as saliencies and voting weights of actors, or by the theory itself. To exclude or minimize the conceptual sources of error, it is necessary to test an accurately specified theory, which does not mean that the accurate theory is empirically more correct or has a higher explanatory power. Concerning the explanatory power of the theory, a major question is how errors can be identified at different levels of the theory. While predictive power at the macro-level of aggregated outcomes – whether measured in terms of point prediction, distance to observation and so on – is helpful when comparing the explanatory power of rival interpretations of the legislative process, this approach provides no insight into which elements of the theory produce the error, and how fundamental the observed errors are. For this reason, we propose assessing the impact and error of different elements by testing individual voting predictions against the voting records in the Council and aggregated outcome predictions against the observed outcomes for the policy proposals from the DEU data. This allows us to specify which elements of the theory create the predictive errors, and to what extent alternative approaches can be expected to reduce the error.

Outcomes and voting behaviour

For the purposes of evaluating the theory, we distinguish between predictions of outcomes and actor behaviour. A closer inspection of these different elements of the theory in Table 5.3 shows that all DEU Commission initiatives were adopted by the member states, independently from the Council voting rules and the inclusion of the EP. All specifications of the model – whether they consider saliencies and/or voting weights or not – underestimate the 100 per cent Council consensus and predict a higher status quo-preference, particularly in the event of unanimity rule in the Council. The inclusions of voting weights even slightly increases the error rate, and the best model disregards both actors' saliencies and voting weights.[11] It should be noted that of the original sample only one initiative has been rejected by the veto of the EP under the co-decision procedure, but member states always agreed on the Commission's initiatives.[12]

Looking at the voting behaviour of member states, this result is also confirmed by the 719 recorded Council votes, according to which member states voted against a Commission proposal on only 14 occasions.[13] Again, none of the legislative initiatives were ultimately blocked by the no-vote of a member state, meaning that member states only cast no-votes under Council qualified majority rule.[14] Compared to the official voting statistics, veto player theory predicts 194 no-votes of the member states (176 if saliencies are included), in particular in the event of Council qualified majority voting. Thus, the models including actors' saliencies perform better at the actor-level. Unsurprisingly, the less frequent no-votes under the unanimity rule produce a relatively high

Table 5.3 Observed and predicted outcome and voting pattern by procedure

Macro-level			**Consultation**		**Codecision**		
			QMV	**Unanimity**	**QMV**	**Unanimity**	**Sum**
	Observation	Agreement	18	11	14	5	48
		Rejection	0	0	0	0	0
		Sum	18	11	14	5	48
(No saliencies & no weights)	Prediction	Agreement	7	3	11	2	23
		Rejection	11	8	3	3	25
		Sum	18	11	14	5	48
		Error	11	8	3	3	25
(No saliencies & weights)	Prediction	Agreement	6	3	10	2	21
		Rejection	12	8	4	3	27
		Sum	18	11	14	5	48
		Error	12	8	4	3	27
(Saliencies & no weights)	Prediction	Agreement	6	3	11	2	22
		Rejection	12	8	3	3	26
		Sum	18	11	14	5	48
		Error	12	8	3	3	26
(Saliencies & weights)	Prediction	Agreement	6	3	10	2	21
		Rejection	12	8	4	3	27
		Sum	18	11	14	5	48
		Error	12	8	4	3	27
Micro-level							
	Observation	Agreement	260	164	206	75	705
		Rejection	10	0	4	0	14
		Sum	270	164	210	75	719
(No saliencies)	Prediction	Agreement	172	133	166	55	526
		Rejection	98	32	44	20	194
		Sum	270	165	210	75	720
		Error	96	32	40	20	188
(Saliencies)	Prediction	Agreement	173	137	178	56	544
		Rejection	97	28	32	19	176
		Sum	270	165	210	75	720
		Error	95	28	28	19	170

number of wrongly predicted outcomes of Commission proposals. Theoretically, at least one veto player should have voted against the proposal, but we observe that the Council still accepted the 48 Commission proposals, even in the event of unanimity rule in the Council.

Overall, we find that the theory correctly predicts more than 75 per cent of all member state votes, but the 23 per cent falsely predicted votes produce more than 56 per cent false predictions at the outcome-level. In our view, two major conclusions can be drawn from these results: (i) even if it were possible

to find the appropriate interpretation of agenda-setting, the outcome predictions of the theory would not change, because agenda-setting is restricted by an apparently incorrect argument of the theory of voting behaviour; (ii), the voting predictions, which reflect whether the agreement is in the interest of an actor, indicate that this is the case for most member states, and only for a minority is a veto predicted – which nevertheless causes the error at the macro-level. For this reason, we finally take a closer look at the countries and policy domains.

Policy domains and countries

A number of scholars point to specific characteristics of Council decision-making, such as their embedding in particular policy domains or a specific political culture in some member countries, which should explain consensus in the Council decision-making process (Heisenberg 2005; Lewis 2003a; Mattila and Lane 2001). This suggests that veto player theory disregards basic characteristics of Council decision-making, which result from sector-specific EU integration or are determined by country-specific factors. Table 5.4 lists the predictions of the model for each policy domain assuming that member states only vote in favour of a Commission proposal when they prefer policy change.

Again, the model predicts much less agreement than is actually observed: at the proposal level, only one proposal from the internal market was rejected by the EP. However, even though Heisenberg (2005) observes that the Council often votes much less explicitly on policy proposals in ECOFIN than in the agricultural sector, the error rate of voting predictions does not vary much across the domains. Accordingly, the voting behaviour is not changed as a result of a different domain-specific distribution of interests or even (different) norms to handle conflict. Again, the model excluding actors' saliencies and voting weights has a higher predictive power thanks to two additional correct predictions in the agricultural and other sectors. Other studies refer to a country-specific voting pattern, such as the division between North and South (Mattila and Lane 2001) or between large and smaller states (Hosli 1995, 1996), but according to Table 5.5, the voting pattern is hardly determined by specific member states. Although the number of British dissenting votes is slightly higher than for other member states, the error rate does not provide striking evidence for a particular country-specific voting behaviour.

These results demonstrate that neither conceptual misspecification of the model nor policy domains or countries provide further insight into the reasons for differences between observed and predicted voting behaviour of member states and outcomes. Although some policy domains contain a lower number of cases, and although some only have cases decided under unanimity rule, there is no significant relationship between the error rates at the micro- and macro-level. Similarly, we do not find a particular country being responsible for the error. Therefore, approaches that focus on domain- or

Table 5.4 Observed and predicted outcome and voting pattern by policy domain

			Agri	IntMa	Fish	ECOFIN	JHA	General	Others	Sum
Macro-level										
	Observation	Agreement	11	11	6	5	2	2	11	48
		Rejection	0	0	0	0	0	0	0	0
		Sum	11	11	6	5	2	2	11	48
(No saliencies & no weights)	Prediction	Agreement	4	6	4	0	1	0	8	23
		Rejection	7	5	2	5	1	2	3	25
		Sum	11	11	6	5	2	2	11	48
		Error	7	5	2	5	1	2	3	25
(No saliencies & weights)	Prediction	Agreement	3	6	4	0	1	0	7	21
		Rejection	8	5	2	5	1	2	4	27
		Sum	11	11	6	5	2	2	11	48
		Error	8	5	2	5	1	2	4	27
(Saliencies & no weights)	Prediction	Agreement	3	6	4	0	1	0	8	22
		Rejection	8	5	2	5	1	2	3	26
		Sum	11	11	6	5	2	2	11	48
		Error	8	5	2	5	1	2	3	26
(Saliencies & weights)	Prediction	Agreement	3	6	4	0	1	0	7	21
		Rejection	8	5	2	5	1	2	4	27
		Sum	11	11	6	5	2	2	11	48
		Error	8	5	2	5	1	2	4	27
Micro-level										
	Observation	Agreement	163	159	87	75	29	30	162	705
		Rejection	2	6	3	0	0	0	3	14
		Sum	165	165	90	75	29	30	165	719
(No saliencies)	Prediction	Agreement	103	120	70	54	21	27	131	526
		Rejection	62	45	20	21	9	3	34	194
		Sum	165	165	90	75	30	30	165	720
		Error	60	43	21	21	9	3	31	188
(Saliencies)	Prediction	Agreement	103	123	71	54	25	27	141	544
		Rejection	62	42	19	21	5	3	24	176
		Sum	165	165	90	75	30	30	165	720
		Error	60	40	20	21	5	3	21	170

Table 5.5 Observed and predicted outcome and voting pattern by country (absolute frequencies)

			Bel	Den	Ger	Greece	Spain	France	Ire	Ita	Lux	Nether	Aus	Port	Fin	Swed	UK	Sum
Macro-level																		
	Observation	Agreement	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48
		Rejection	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		Sum	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48
(No saliencies & no weights)	Prediction	Agreement	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23
		Rejection	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25
		Sum	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48
		Error	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25
(No saliencies & weights)	Prediction	Agreement	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21
		Rejection	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27
		Sum	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48
		Error	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27
(Saliencies & no weights)	Prediction	Agreement	22	22	22	22	22	22	22	22	22	22	22	22	22	22	22	22
		Rejection	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26
		Sum	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48
		Error	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26	26
(Saliencies & weights)	Prediction	Agreement	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21
		Rejection	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27
		Sum	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48
		Error	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27
Micro-level																		
	Observation	Agreement	46	45	47	48	47	47	48	48	47	46	47	48	48	48	45	705
		Rejection	2	2	1	0	1	1	0	0	1	2	1	0	0	0	3	14
		Sum	48	47	48	48	48	48	48	48	48	48	48	48	48	48	48	719
(No saliencies)	Prediction	Agreement	34	34	29	37	36	35	34	36	35	34	37	37	39	37	32	526
		Rejection	14	14	19	11	12	13	14	12	13	14	11	11	9	11	16	194
		Sum	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48	720
		Error	14	14	18	11	13	12	14	12	12	12	10	11	9	11	15	188
(Saliencies)	Prediction	Agreement	35	36	30	42	38	37	36	39	37	32	35	37	39	37	34	544
		Rejection	13	12	18	6	10	11	12	9	11	16	13	11	9	11	14	176
		Sum	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48	720
		Error	13	12	17	6	11	10	12	9	10	14	12	11	9	11	13	170

country-specific characteristics will hardly improve interest-based theories, such as the veto player theory.

Conclusion

This study took a closer look at the error rate of veto player models, which can hardly predict the outcome of Commission proposals. Several studies point to the consensus in the Council, but few use estimators for the preferences of the actors involved. Our analysis distinguishes between the predictive power for the micro- and macro-level in order to specify the error term of a theory. We also introduced a veto player model that allows us more accurately to investigate potential causes of the theory's performance with respect to voting, agenda-setting and domain- and country-specific effects, by accounting for actors' voting weights and saliencies. Combining data on actors' voting behaviour on Commission proposals and their outcome, we examined whether and to what extent the error rate of the theory is determined by a specific argument, the theory itself, or other omitted variables.

The findings reveal that there is little room for improvement in terms of a more accurate identification of the agenda-setter, on which most of the previous debates have focused. We also find that the pattern of anomalies across policy domains and countries can hardly improve these shortcomings and help to explain Council consensus. On closer inspection of the micro-level, our analysis suggests that a more fundamental property of EU legislative decision-making deserves further attention. While the error of veto player theory is obviously not caused by a general misconception of decision-making incentives, the theory fails to predict the status quo behaviour of some member states for some proposals. Further incentives therefore seem to provide an answer for the gap between the observed consensus in the Council, and a few but decisive errors in the theory regarding the final vote on Commission proposals.

Notes

1. Since the outcome predictions result from the interplay of all components of the theory, they cannot be disentangled ex post. However, in order to assess the theory, we need information about the size of the error term, that is, whether the behaviour of one or several veto players has been falsely predicted.
2. In the literature on voting models, some debate exists on the identification of the status quo. Some scholars propose using the current provision (Steunenberg 1994; Crombez 1996), while others consider possible amendments as reference (Tsebelis 1994; König and Pöter 2001).
3. For more details, see Dinan (1994, p. 274). A recent study by Farrell and Héritier (2006) provides a helpful overview of the different interpretations of the co-decision procedure.

4. The horizontal reference line in the middle of Figure 5.2 illustrates the policy space from Figure 5.1.
5. Note that voting weights are excluded at this stage of the analysis.
6. The ratio of the diameters of the ellipses equals the inverse of the ratio of the saliencies attached to the respective dimensions in the example.
7. To guarantee some public awareness and controversy, proposals were selected for the study only if they had been mentioned by Agence Europe, a news service on European Union Affairs, and revealed at least a minimum level of conflict in the interviews (Thomson et al. 2006).
8. In a recent study, König et al. (2006) checked the reliability of CELEX data using another EU legislative database PreLex and found that more than 90 per cent of all cases correspond across these different sources of information – even though PreLex documents the legislative process while CELEX contains legislative events.
9. Comparing the DEU with data on seven cases negotiated in the conciliation committee, the authors find a surprisingly high similarity regarding the point locations of the EP, Commission, status quo, outcome and the Council pivot. Even though most experts were rapporteurs, while the DEU experts came primarily from the Council, and even though these experts were asked at different points in time, the point location of 15 positions is the same (deviation of 0–5 on the scale ranging between 0 and 100), 13 positions are very close (deviation of 6–25), four positions are not comparable due to missing values, and only three measures indicate a large deviation (50, 50 and 70). On closer inspection of these three deviating cases, two of them list a scant Council qualified majority position, while the minority position is again almost identical with the Council estimate. This suggests that the Council may have introduced the minority position in the bargaining of the conciliation process (König et al. 2006).
10. The reason is that the scope for possible trades is reduced if actors are indifferent on some, but not on all dimensions.
11. It should be noted that voting predictions are not affected by voting weights (in contrast to outcome predictions), and we therefore do not distinguish between predictions with and without voting weights with respect to voting predictions in the table.
12. Note that our tables list the acceptance rate of the member states, not the overall acceptance rate (which includes acceptance of the EP under co-decision), because we explore acceptance as a function of member state behaviour here. We therefore list that single proposal as accepted (by the member states).
13. Abstention under QMV is a vote against a proposal, whereas it supports adoption under unanimity rule. Denmark did not participate in the adoption of the regulation CNS/1999/154 on the jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, by virtue of the protocol concerning it annexed to the Amsterdam Treaty, and is therefore not counted for that decision.
14. The total error of the voting predictions exceeds the difference between predicted and observed rejections because some of the observed rejections are also erroneously predicted by the theory.

6

The Mechanisms of Consensus: Coming to Agreement on Community Asylum Policy

Jonathan P. Aus

Introduction: Dublin II as a rationalist 'puzzle'

This chapter addresses a rationalist 'puzzle', namely the question why the Justice and Home Affairs Council reached political agreement on the so-called Dublin II Regulation (Council 2003a) in spite of the Regulation's likely redistributive effects on the number of asylum applications processed by individual member states. Given the expected consequences of this legislative act, intergovernmental negotiations conducted on the basis of calculated national interests alone would have ended in political deadlock.

The empirical material presented below suggests that the Dublin II Regulation was not adopted by purely self-interested, strategically calculating actors. Instead, intergovernmental political agreement on Dublin II was made possible by activating Council-specific informal rules and procedures. National delegations' adherence to an informal supranational code of conduct explains why instances of 'positive integration' (see, for example, Scharpf 1996) do occur in spite of seemingly irreconcilable differences between member states' governments.

Images of the Council: arena or institution?

The principal legislative body of the European Community (EC), the Council of Ministers, is often portrayed as an *arena* where member states' governments gather, negotiate, and occasionally reach joint decisions on Community policy (see, *inter alia*, Thomson et al. 2006; König and Junge, Chapter 5 in this volume). This prompts the question of whether the Council is a venue for purposive-rational actors bargaining over the substantive profile of Community Regulations, Directives and Decisions.

Empirically informed studies of decision-making processes in the Council are hardly reconcilable with this image. While drafting and ultimately deciding upon secondary Community law, national civil servants and

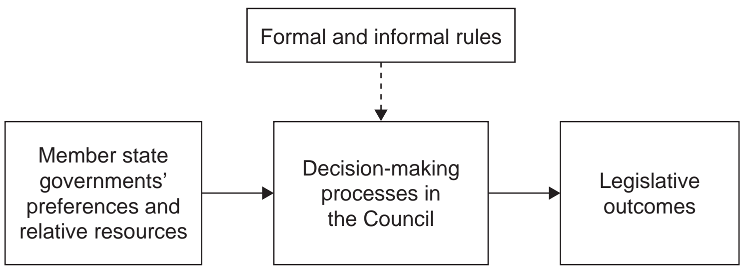

Figure 6.1 Council-specific rules as intervening variables

politicians frequently adhere to supranational principles, norms and procedures. Avoiding isolation, accommodating difference, and reaching agreement along the lines proposed by the permanently involved Commission and rotating Council Presidency are dominant features of the Council's political culture. The behaviour of national delegations is apparently influenced by a Council-specific consensus-gathering approach. Viewed from a rationalist perspective, this may result in rather puzzling policy outcomes.

How can we address such rationalist puzzles? In line with an *institutionalist* perspective on political institutions (March and Olsen 1989, 2006a; Olsen 2007), one may argue that the Council constrains and channels the behaviour of its members in more or less predictable ways. National government representatives may not necessarily shift their primary allegiance to Brussels, yet in their secondary role as ordinary Council members they may nevertheless voluntarily comply with established rules and standard operating procedures. Over time, both formal and informal Community rules take on a life of their own. Once learned, internalized and creatively applied by the actors, these rules become, methodologically speaking, intervening variables in the decision-making process. Figure 6.1 illustrates this point.

The basic idea is that decision-making processes and legislative outcomes in the European Community are, to a variable extent and under certain conditions, influenced by Council-specific 'ways of doing things' (see Heisenberg, Chapter 14). National preferences and the administrative resources at the disposal of member states' governments certainly matter. Yet intergovernmental negotiations are also affected by Council-specific rules and procedures for arriving at collectively binding decisions.

Informal rules and procedures in the Council

The bulk of Council meetings are conducted behind closed doors and thus hidden from the public's (and the researcher's) eye. Article 6 of the Council's *Rules of Procedure* accordingly states that '[the] deliberations of the Council shall be covered by the obligation of professional secrecy, except in so

far as the Council decides otherwise' (Council 2004, p. 26). As the habit of convening unofficial Council meetings in chateau-like surroundings amply demonstrates, members of this institution apparently value the intimacy of informal consultations (Puetter 2003).

Beyond its relevance for the democratic accountability of supranational legislators (Naurin 2004), this organizational peculiarity has severe methodological implications. Certain types of official records accessible via the public register, for instance the voting records contained in the *Monthly Summary of Council Acts* issued by the Council Secretariat, tend to conceal more than they reveal. Why is this the case? Because recourse to formal voting under qualified or double majority rule and to formal vetoing under unanimity are systematically avoided in intergovernmental practice (Heisenberg 2005; Hayes-Renshaw et al. 2006; compare also Hagemann (Chapter 3) and Mattila (Chapter 2) in this volume, who both use the voting data in their studies). Under normal circumstances, member state governments' efforts 'are aimed at either building consensus as far as possible about eventual decisions, or else at preventing measures from getting to the ministerial level of negotiation until and unless there is more or less a consensus' (Hayes-Renshaw and Wallace 2006, p. 295). From what we know from the statistical analyses carried out on voting data, the first pattern holds true for roughly 70–80 per cent of all decisions made by the Council since the mid-1990s, including those formally subject to qualified majority voting. In spite of this important empirical observation, the mechanisms of consensus are not well understood.

The origins of consensus-seeking behaviour in the Council can be traced back to the inner workings of the Council of Ministers of the European Coal and Steel Community (ECSC). With a view to the *modus operandi* of this political institution, Ernst B. Haas accordingly noted that 'the essence of the Council's conception of its own role [is] the attainment and maintenance of consensus among its own members. Consequently, it does *not* regard itself as a continuing diplomatic conference, whose members are free to dissent and to block joint action' (1958, p. 490, emphasis in the original; see Jaipal 1978 for a comparative view to the UN Security Council). The Council of the European Economic Community (EEC) inherited and continued to adhere to this informal set of rules.

In the mid-1960s, however, a temporary unilateral blockade of Community decision-making gave rise to member states' efforts to preserve the consensus-gathering approach. The so-called 'empty chair crisis' (triggered by French President de Gaulle against the background of non-negotiable demands over the financing of the Common Agricultural Policy) was thus followed up on Council level by the 'Luxembourg compromise' (Palayret et al. 2006), a political commitment reading as follows:

> Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more

> partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community . . . (Council 2000a, p. 24)

The 'Luxembourg compromise' of 1966, in other words, codified the notion that the embarrassing practice of isolating and outvoting individual governments must be avoided under all circumstances. In effect, unilateral attempts to 'push for a vote' are considered as inappropriate behaviour (see Lewis 1998, 2005a). Not unlike the situation in 'consensus democracies' such as Sweden, then, the Council's political culture is 'a culture of consensus [rather than] a culture of competition' (Lijphart 1998, p. 104; compare Almond and Verba 1963; George 1969).

The European Court of Justice would later argue that 'the rules regarding the manner in which the Community institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the member states or of the institutions themselves' (Case 68/86, 'UK vs Council', par. 38), but such legalistic reasoning was apparently not shared by everyone. A different and certainly more political rationale would determine the future style of decision-making in the Council. According to the *Council Guide* drawn up by the Council Secretariat, it is the duty of the Presidency to 'postpone the vote if it observes that the conditions have not been met' (Council 2000a, p. 21). In this case, the members of the Council will typically settle for a face-saving 'agreement not to agree' and delegate the relevant dossier back to the Committee of Permanent Representatives (COREPER). While this 'consensus-reflex' among participants in supranational decision-making processes might surprise the outside observer and ordinary citizen alike, it nevertheless captures a core feature of the Council's negotiating culture. As Edwards reminds us with reference to Nuttall's work on the General Affairs Council, it is 'the predisposition of diplomats to regard a failure to agree as the worst of outcomes' (1996, p. 133). In a similar vein, Bostock, a former member of COREPER I, describes the 'dominant objective' of the latter committee as 'maximizing agreement at its level and maximizing the chances of agreement in meetings of the Council' (2002, p. 225).

For better or worse, a certain lack of appreciation for the informal institutional dynamics of the Council seems to be commonplace among so-called national experts, that is, specialized national civil servants occasionally attending Council meetings at working group level or seconded to the Council Secretariat for a couple of years. National experts' political horizons rarely exceed the more or less narrow confines of their respective national ministry and portfolio (Egeberg 1999). In regard to the Justice and Home Affairs (JHA) domain, for example, these 'national experts' comprise senior policemen and women, border control experts, prosecutors, and so on. In the case of an intra-executive conflict between national experts and 'permanent reps',

the Council's hierarchical administrative machinery, and COREPER's central role therein, facilitates a more conciliatory policy style. One of the Brussels-based attachés interviewed by Fouilleux et al. described her (rather typical) approach towards national experts as follows: 'When national experts are present, I never let them have the microphone. If I let the experts take the microphone, they would just say what we want from the negotiation and the meeting would be over' (2007, p. 104). Likewise, the member states' ambassadors interviewed by Lewis referred to national experts as 'spies' and 'watchdogs' (2005a, p. 947).

As previously mentioned, Council-specific rules of appropriate behaviour should be kept in mind while evaluating quantitative studies of decision-making in the Council drawing on voting statistics compiled by the Council Secretariat (Hagemann (Chapter 3) and Mattila (Chapter 2) in this volume; Matilla and Lane 2001; Matilla 2004). With the partial exception of agriculture and fisheries, these studies are conceptually misleading insofar as they reproduce the arena or 'hard bargaining' image of the Council on the basis of systematically biased data (see Hayes-Renshaw et al. 2006, p. 177 and p. 183; Hayes-Renshaw and Wallace 2006, p. 282). The reader who is less familiar with the internal dynamics of the Council will effectively be drawn away from one of the most challenging research questions identified by case-oriented scholars, namely 'the question of how far one can identify common norms, values or beliefs in the Council as a counterweight to specific and more egotistic preferences' (Hayes-Renshaw and Wallace 1997, p. 257).

The Council's *Code of Conduct* provides insights into an array of such common norms and standard operating procedures that are either ignored or systematically downplayed by rationalist scholars. Among them we find the convention that 'delegations shall refrain from taking the floor when in agreement with a particular proposal; in this case silence will be taken as agreement' (Council 2003b, p. 7). How do we control for the embarrassment caused by being the single 'hold-out' to an otherwise collectively endorsed solution? Perhaps even more remarkable is the routine of conducting bilateral 'confessionals' between the Presidency and the Council Secretariat, on the one hand, and particularly reluctant delegations, on the other. The Council's sense of appropriateness goes so far as to define its differentiated code of conduct as 'legally binding' (Council 2004, p. 22). Whether such instances of rule-driven behaviour can find an adequate representation within an analytical framework based on the behavioural 'micro-foundation' of strategic calculation is at least debatable (see Tallberg, Chapter 10 in this volume, for an affirmative answer).

Rational choices in zero-sum games

A former practitioner once remarked that members of the Council in general and COREPER in particular have chosen 'the Roman god Janus, facing in

two directions, [as their] patron saint, mascot or role model' (Bostock 2002, p. 217). Member states' representatives in the Council perceive it as their *duty* to reach agreement. Membership in the supranational European Community apparently brings with it certain obligations, including that of insuring the proper functioning of the Council as a collective decision-making body. Yet at the same time, national governments (in their own views quite legitimately) pursue national interests. The EU institution where Hungarians strategically calculate the interests of Hungary and Swedes try to maximize the utility of Sweden is clearly the Council. Against this background, decision-making processes within this political institution may usefully be analysed not only from an institutionalist, but also from a *rationalist* perspective.

The game-theoretical variant of the latter perspective offers stylized representations of different kinds of policy interactions between self-interested, strategically calculating actors (Morrow 1994; Scharpf 1997). When it comes to politically divisive issues, such as national contributions to the EU budget, intergovernmental negotiations in the Council (and European Council) can be modelled as non-cooperative constant-sum or zero-sum games. Game theorists conceptualize this modus of interaction as a game of pure conflict: 'In a constant-sum game there is a given total to be divided among the agents, so that a gain to one will necessarily mean losses for others' (Elster 1986, p. 8).

The intergovernmental negotiations leading up to the formal adoption of the Dublin II Regulation described in detail below can be modelled as a non-cooperative zero-sum game. From a rationalist perspective, one could have expected that interstate negotiations over the substantive profile of a Community Regulation affecting the distribution of asylum applicants among the member states would have ended in deadlock, with each member state trying to shift the costly burden of refugee protection to other member states. The underlying rationale for the deadlock hypothesis is that at least one national government would have preferred non-agreement over agreement.

Reaching international agreement becomes even more difficult if the benefits that member state X can expect from a given legislative outcome entirely depend on the implementation of contractual obligations by member state Y in administrative practice. In the de facto absence of European Community law enforcement capabilities in the JHA domain, the national authorities in charge may simply ignore a given Council Regulation (see Scharpf 1997, pp. 117–18). For the purpose of illustration, one may think of utility-maximizing member state practices such as the non-transposition of Single Market Directives into national law (Falkner et al. 2005). With a view to inadequate refugee protection capacities in Central and Eastern Europe, one may alternatively point to the possibility of involuntary defection of Community rules, *inter alia* due to administrative inexperience in dealing with a sudden

influx of asylum seekers (Zürn 1997, p. 56; Byrne 2003, p. 343). Both options will trigger the same reaction among the agents: supplementary mechanisms for monitoring the effective enforcement of the agreement (a task that will typically be delegated to the Commission which may ultimately refer the case to the European Court of Justice) must be incorporated into the agreement itself – which leads to more complex negotiations on Council level (Gehring 1994, pp. 231–5).

Drawing on Fritz Scharpf's reflections on the lack of social policy harmonization in the EU, one may specify the rationalist hypothesis on the limits of positive integration in EU Justice and Home Affairs as follows: 'European policy processes will often encounter constellations where no solution is available that would be preferred over the status quo by all, or most, member governments. In such constellations of conflicting interests, in which only win-lose solutions are possible [...] negotiating systems and systems depending on qualified majorities requiring a high level of consensus will [...] be blocked' (1999, p. 76). In regard to the prospect of successful issue-linkage, Scharpf maintains that 'if package deals can be reached at all, they will typically have to involve two or more distinct policy areas with complementary asymmetries in their interest constellations' (1997, p. 129). The following analysis documents to what extent these rationalist hypotheses empirically hold in regard to the negotiation of the Dublin II Regulation.

Methodological notes

Like any other modern bureaucracy, the General Secretariat of the Council keeps written records of any given procedure it administers – even oral exchanges. If the Council acts as a supranational legislative body, as in the case of Council Regulations such as Dublin II, these records must be made available in the Council's Public Register (http://register.consilium.eu.int) once the legislative act has been adopted (Council 2001a). This is good news for researchers, since it enables the identification of national delegations' negotiating positions with the help of 'hard' primary sources (compare Moravcsik 1998, pp. 80–5). Sources of this kind provide direct and reliable evidence of national governments' behaviour while drafting supranational legislation. The following 'process tracing' exercise (George and Bennett 2005, pp. 205–32) is based on official records supplemented, where necessary or deemed useful for the purpose of empirical triangulation, by expert interviews and 'soft' sources such as newspaper reports (compare Beach, Chapter 12 in this volume).

The majority of official records referred to below were drawn up by an EU civil servant in the General Secretariat of the Council (Directorate-General H, Directorate I) temporarily assigned to the Asylum Working Party. The subsequently declassified reports compiled by this *fonctionnaire* can be qualified as the observations of a neutral participant – of a participant, that is, who

has been professionally trained in monitoring decision-making processes in the Council and has no interest in the political substance of the negotiations other than assisting the rotating Presidency in pursuing its work programme.

Council Secretariat personnel assisted at least the following organizational units of the JHA Council in drafting the Dublin II Regulation: the Asylum Working Party, the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), the informal group of JHA Counsellors, the Committee of Permanent Representatives, Part Two (COREPER II), and, last but not least, the Justice and Home Affairs Council itself. In order to help the reader in tracing the negotiations, the working structures of the JHA Council during the so-called transitional period (1999–2004) are presented in Annex 6.1. The symbols indicate whether a given organizational unit of the Council primarily dealt with Schengen-related issues, whether legislative acts could be based on the EC Treaty, and how this affected the position of Denmark, Ireland, the United Kingdom, Norway, and Iceland, respectively. Denmark, for example, cannot formally participate in asylum-specific measures such as Dublin II due to its categorical 'opt-out' of Title IV of the EC Treaty. As we shall see in due course, this did not prevent the Danish government from presiding over the JHA Council during the second half of 2002 and leading the Dublin II negotiations to a successful conclusion.

The negotiation of the Dublin II Regulation in the JHA Council

The Commission's proposal

On 26 July 2001, the Commission formally presented its legislative proposal on Dublin II to the Council (Commission 2001a). In addition to consultations with the United Nations High Commissioner for Refugees (UNHCR) and international non-governmental organizations (INGOs), the Commission held discussions with national experts in order to weigh the chances of getting its draft Regulation through the Council. Fulfilling a request by the Council, the Commission's services also studied the malfunctioning Dublin Convention or 'Dublin I' mechanism (Commission 2000c, 2001b). The latter accord had been negotiated on an intergovernmental basis between the member states during the late 1980s (Hurwitz 2000). With its entry into force on 1 September 1997, the Dublin Convention replaced Schengen's asylum chapter (Hailbronner and Thiery 1997).

As regards the hierarchy of criteria laid out in the draft Regulation, the Commission did not deviate significantly from the Dublin Convention. The Commission thus actively promoted the authorization principle and the principle of first contact, respectively, as the procedural core of the emerging Common European Asylum System. The Commission, in other words, *inter alia* proposed that member states with external borders, rather than

member states surrounded by other EU countries, should bear the processing burden. For the purpose of illustration, let us assume that an asylum seeker has managed to cross the external Schengen border in Italy in an irregular fashion and subsequently travels on to Germany via Austria where he or she lodges his or her asylum application. According to the principle of first contact, Germany is definitely not responsible for considering the claim. Neither is Austria. Instead, the applicant will be physically 'transferred' back to Italy where his or her asylum application should be processed. If applied effectively, this scheme leads to a redistribution of asylum seekers 'by default' (Lavenex 2001, p. 863) from North to South, and from West to East. The Commission justified its proposition by arguing that 'the member states are responsible to all the others for their actions regarding control of the entry and residence of third-country nationals' (Commission 2001a, p. 14).

The Commission's staff knew that its legislative proposal would need to find the unanimous approval of twelve to fourteen member states' governments (EU-15 minus Denmark and possibly minus Ireland and the UK). They would ultimately need to subscribe to the supranationalist slogan 'All for one and one for all!' – the latter part of which would be particularly hard to sell to external border countries such as Spain. The Commission's services were also aware of the fact that 'discussions [within the JHA Council] on physical burden sharing according to factors such as each state's population, population density or GDP have not produced any concrete results' (Commission 2000c: no. 49). This outcome had been sharply criticized by principal receiving countries, such as Germany and the Netherlands, for quite some time, the former having unsuccessfully attempted to introduce an effective burden-sharing regime in the EU since 1994 (Thielemann 2005). The initial absence of common European rules and the subsequent ineffectiveness of Schengen II and Dublin I, respectively, resulted in a highly unequal distribution of asylum applications between the member states. The relative share of each member state during the ten-year period preceding the negotiation of the Dublin II Regulation is reproduced in Annex 6.2.

Beyond the search for a text acceptable to at least the majority of member states' governments, one may point to the Commission's institutional self-interest in any kind of legal instrument consolidating and deepening the Community's involvement in the JHA domain. In fact, the Commission was only one step short of gaining the sole power of proposing Community legislation on asylum, subject to qualified majority voting in the Council and co-decision with the European Parliament, provided that the Council had unanimously adopted 'first stage' Community legislation on asylum. On 1 December 2005, the Commission had, in spite of a considerable delay not foreseen by the Treaty of Amsterdam, met its integrationist objective of applying the 'Community method' to the governance of asylum in Europe (Commission 2005c).

Intergovernmental negotiations in the Council, October 2001–December 2002

Initial scrutiny under the Belgian Presidency

Selected Southern member states' governments, first and foremost the Italian administration, supported the institutionalization of an alternative hierarchy of criteria for processing asylum applications in the European Community. The Italian representative to the Council's Asylum Working Party expressed Italy's discontent with the Commission's proposal at the very first reading of the draft Regulation on 2 October 2001. Both Italy and Greece formally entered substantive reservations (read: objection or veto) on article 10 of the draft bill on this occasion. The Italian delegation justified its position as follows: 'Member States' duty to guard their borders should not be confused with determining the Member State responsible for examining an asylum application' (Council 2001b, p. 13).

In voicing its opposition to the Commission's legislative proposal, the Italian government found a weak ally in UNHCR, recommending an allegedly simple and more humane solution according to which 'the responsibility for considering an asylum claim [shall lie] with the Member State with which and in whose jurisdiction the claim is lodged' (UNHCR 2001, p. 7). The same position was promoted by INGOs such as Amnesty International (2002) and the multifaceted NGO community represented at EU level by the European Council on Refugees and Exiles.

Occupied with coordinating the EU's response to the terrorist attacks in America, the Belgian Presidency could not resolve these substantive issues. However, it managed to arrange for the formal 'opt-in' of both Ireland and the UK (Council 2001c, 2001d).

Intergovernmental deadlock and issue-linkage under the Spanish Presidency

Precisely at a time when the politically marginalized European Parliament and its Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had in principle approved the Commission's draft 'not least because of the absence of viable alternatives' (European Parliament 2002, p. 15), the incoming Spanish Presidency (first half of 2002) broke with the Commission's approach. Framed as a 'compromise text', the Spanish Presidency suggested that the responsibility for processing asylum applications from third-country nationals not subject to visa requirements should lie with the member state in which the application is lodged (Council 2002a, p. 12). As mentioned above, this had also been the preferred solution of UNHCR and the NGO community. Whereas the Spanish Presidency's new draft received a warm welcome from the Greek and Italian delegations, it triggered a negative response *inter alia* from Germany, the Netherlands, Sweden and the UK. During the Asylum Working Party's meeting on 16 April 2002, for example,

the latter countries called on the Spanish Presidency to 'put the criteria back in the order proposed by the Commission' (Council 2002b, p. 15).

Since intergovernmental negotiations at Asylum Working Party level had so far resulted in deadlock, the Spanish Presidency referred the entire dossier to a higher and politically more sensitive level, that is to the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA). Instead of moving closer to agreement, however, discussions at SCIFA level merely made the conflict of interest between the member states more visible. In fact, the Greek and Italian delegates to the SCIFA meeting on 23–24 May 2002 supported the Spanish Presidency's position by arguing that the EU should 'avoid penalising Member States due to their geographical situation' (Council 2002c, p. 13). On the other hand, the German and Austrian delegations called for the introduction of data transmission equipment compatible with the fingerprint database EURODAC in order to enforce the principle of first contact in administrative practice (see Commission 2003a). The gap between the promoters and opponents of the Commission's initial draft was widening.

By June 2002, the Spanish Presidency had to report to the Permanent Representatives Committee (COREPER) that 'the proposal ... has been discussed in depth in the Council Working Parties, without any agreement being reached'. Furthermore, the Spanish government openly questioned whether 'irregular border crossing and unlawful presence in the territory [should] be maintained as criteria for defining the Member State responsible for examining the asylum application' (Council 2002d, pp. 2–3). The most straightforward answer to this question was again provided by Italy, still vehemently opposed to any Community Regulation that would create a substantive link between external border control and member states' responsibilities for processing asylum applications. In a formal letter dated 17 June 2002, the Italian government argued as follows:

> If the criterion is maintained whereby responsibility rests with the country of first entry, we will find ourselves in the plainly absurd situation where, on the one hand, there is integrated management of border controls by all Member States and, on the other hand, border States alone are responsible for any avoidance of the controls, which, it should be noted, are not usually carried out at crossing points in the Schengen area [...] We are thus convinced that the responsibility criterion relating to unlawful border crossing should not be included among the criteria or, failing that, should be of an entirely residual nature, insofar as there has been a clear failure to comply with the common provisions. (Council 2002e, p. 3)

The letter by the Italian delegation had been drawn up in response to the JHA Council's failure to reach an agreement on Dublin II at its meeting on

13 June 2002 in Luxembourg. During this Council meeting, however, the ministers of the interior and justice had cleared the way for a new framing of the issue at hand. In what one might describe as an effort to transcend the conflict by means of issue-linkage, the ministers 'emphasised the close link between this question [the Dublin II Regulation] and the issue of combating illegal immigration, both of which will be discussed by the European Council meeting in Seville [...]' (Council 2002f, p. 13).

As the JHA Council had envisioned, both issues *were* discussed by the heads of state or government during their meeting in Seville, Spain. In conclusion, the European Council asked the JHA Council and the Commission to attach top priority to implementing practical measures for curbing illegal immigration. In an unusual display of political power, the EU leaders even threatened to sanction third countries that would not comply with EU demands (see Aus 2007a, p. 56). Furthermore and 'in parallel with closer cooperation in combating illegal immigration', the European Council urged the JHA Council 'to adopt, by December 2002, the Dublin II Regulation' (European Council 2002, p. 12). From now on, the draft Dublin II Regulation on asylum, legally based solely on article 63 (1) (a) of the EC Treaty, was politically associated with EU efforts at preventing irregular border-crossings and punishing human smugglers.

Continued stalemate under the Danish Presidency

Reaching an 'early agreement' on Dublin II would presumably not have been possible if Greece had presided over the relevant meetings of the JHA Council during the second half of 2002. The main reason why Denmark, the only EU country with a categorical 'opt-out' of Title IV of the EC Treaty (covering, *inter alia*, 'First Pillar' measures on asylum), presided instead was not so much a lack of political will, but rather a lack of resources on the part of the Greek administration. One of my interviewees recalled the deliberations on this subject matter as follows: 'There was some talk before [the start of the Danish Presidency in July 2002] whether they will chair or not. Should they not chair, it would have meant a whole year for the Greek, as it happened with the [informal] Euro 12 [or Eurogroup] for the Euro. But the Greek officials were terrified to have to check for ideas on all these things on JHA' (author's interview, 11 May 2004).

Having a strong national interest in the adoption of a Community Regulation which, subject to a parallel agreement between the EC and Denmark, would allow the Danish government to remove as many asylum seekers to neighbouring Germany as possible, the incoming Danish Presidency (July–December 2002) declared that it would 'make a special effort to reach agreement on the Commission's proposal' (Danish Presidency 2002, p. 13). Before returning to the Commission's initial draft and doing away with the Spanish Presidency's amendments, however, the Danish government

proposed inserting a so-called safety clause into the Regulation. This typically Danish 'opt-out' idea was presented to the *SCIFA* members on 22–23 July 2002 and found the following legal expression:

> A Member State can request for suspension of the relevant provisions of this regulation relating to the obligation for it to take back or take charge of asylum seekers if this Member State during the preceding 3 years has received more asylum seekers than what is equivalent to its share of the total number of asylum seekers received in the EU during the same period, with an addition of 35% [...] A Member State's share of asylum seekers is equivalent to its share in percent of the total Gross Domestic Product of all Member States. (Council 2002g, p. 3)

The Danish Presidency also used this SCIFA meeting to set up an Informal Drafting Group – presided over by Denmark and comprising national officials, a Commission representative, and a member of the Council Secretariat. However, the informalization of the decision-making process did not yield any concrete results. After having met twice, on 11 and 19 September, the Informal Drafting Group merely decided to delete the rather complicated and potentially dysfunctional safety clause proposed by the Danish government (Council 2002h).

A few days later, the Danish Presidency tabled yet another innovative amendment to the Commission's draft. On 20 September, the Presidency proposed 'to merge Articles 10, 12 and 13 into one single provision thereby not giving precedence to any of the three responsibility criteria set out in these articles' (Council 2002h, p. 2). Yet this did not satisfy member states' governments either. After all, the whole point about adopting a new Community Regulation was to establish clear criteria for determining member state responsibility. At the SCIFA meeting of 25–26 September, the French delegation thus dryly noted that 'the new drafting blurs the hierarchy of criteria, irregular entry should take precedence', whereas Greece, Italy, Finland, Ireland, the Netherlands and the UK entered general scrutiny reservations (Council 2002i).

In spite of all this confusion, the Danish Presidency delegated the unfinished dossier to COREPER in light of the forthcoming JHA Council meeting on 14–15 October 2002 (Council 2002j). The Council of Ministers therefore ended up holding a fruitless 'debate focused on the hierarchy of criteria [...] Following the discussion, the Council charged the Permanent Representatives Committee to pursue work in order to allow an agreement at the next JHA Council on 28/29 November' (Council 2002k, p. 21). With approximately six weeks left for the Danish Presidency to hammer out an agreement as requested by the European Council, the subject matter had been delegated back to the Council's working parties.

The end game, or the art of reaching political agreement in the Council

Refusing to yield to strong political pressure, the Greek and Italian delegations upheld their general reservations on the envisioned hierarchy of criteria. They would maintain this position until the decisive Council meeting.

The informal group of JHA Counsellors was well aware of these unresolved problems. Nevertheless, the 'mini-COREPER' of the JHA domain tried to revitalize the negotiations by drawing up a supplementary political declaration. This declaration, agreed upon by 29 October 2002 and formulated in the spirit of the Seville European Council conclusions, would later appear as an attachment to the JHA Council's minutes. According to the draft declaration, the Council was supposed to state that it would '[take] into account the concerns of certain Member States, whose geographical position exposes them to illegal immigration, that an effective application of the Dublin II Regulation, in particular Article 10 of the Regulation, may lead to an overburdening of their asylum systems'. This, of course, was precisely the outcome that peripheral countries like Greece and Italy were trying to avoid. Against this background, the JHA Counsellors suggested that the JHA Council should 'express its solidarity with Member States particularly exposed to irregular crossing of the external borders'. How precisely the concept of interstate solidarity could manifest itself in financial terms remained unclear, however. The draft declaration merely promised that a number of pilot projects aimed at 'combating and deterring illegal immigration' would be launched in the near future 'in addition to the adoption of the Dublin II Regulation' (Council 2002l, pp. 34–6).

Much to the chagrin of the Danish Presidency, the Greek and Italian delegations remained unconvinced. They simply would not accept the Dublin II Regulation in its current form in exchange for a legally non-binding declaration on interstate solidarity attached to the Council minutes. After all, every single delegation knew that the member states, rather than the EU as such, were spending a total of approximately €3 billion annually on border control measures – a lot of money in comparison with the 'structural inadequacy of the resources currently available for immigration and asylum policies in the Community budget' (Commission 2003b, p. 18). The Greek and Italian representatives consequently upheld their general reservations on the hierarchy of criteria at the SCIFA meeting of 5 November and at the COREPER II meetings of 7, 14 and 21 November (Council 2002m, 2002n, 2002o). Just days before the last Council meeting on ministerial level under the Danish Presidency, the JHA Council's working structures had failed to produce a common draft.

In spite of the prolonged deadlock among national delegations, the Danish Presidency decided to present both the disputed draft Dublin II Regulation and the supplementary political declaration to the JHA Council at its meeting on 28 November 2002 (Council 2002p). The minutes of this meeting reveal that the Danish Presidency activated a rather unusual procedure, namely that 'the Presidency decided to launch a silent procedure in order to reach a

political agreement on its compromise proposal...' (Council 2002q, p. 5; see also Council 2002r, p. 7). The so-called 'silent procedure', a variant of the written procedure, originated in the domain of foreign and security policy. According to this procedure, 'a decision is deemed to be adopted at the end of the period laid down by the Presidency depending on the urgency of the matter, except where a member of the Council objects' (Council 2000a, p. 28). The official records document that the silent procedure ended on 6 December 2002, resulting in the administrative recognition of a political agreement among member states' governments (Council 2003c, p. 2).

A participant of the Council meeting on 28 November recalls: 'With the help of the [Council] Legal Service, and also the Danish ambassador, someone asked at one moment: "Can we not do a written procedure?" And the answer was: "Well, no, because the written procedure is a *formal* thing for adoption. But we can do a parallel thing: an *informal* one – the same thing, but informally, for a political agreement, that can always be done!", and that's what we did.'

One day after the Council meeting, the Council Secretariat sent out a fax to all Permanent Representations. It contained the following passage:

> Following the report from the Presidency on the JHA Council of 28 November 2002, the text of the above mentioned proposal for a Council Regulation and the draft minutes to the Council minutes ... shall be deemed agreed in the absence of comments by delegations by noon, Friday, 6 December 2002.

The interviewee explains the political purpose of this fax: 'So we gave them a week, but it was a silent procedure. Politically, if someone opposed, he had to say so. That was the key! If we would have had a formal written procedure, the outcome would have been to the contrary! First of all, it would have been for [formal] adoption, and [in this case] they are obliged to answer Yes, No, or Abstention. But here, being *informal*, because it was used to *confirm a political agreement*, the genius thing was to say: "If you oppose, say so!"' (author's interview, 11 May 2004). As the Danish Presidency had intended, no one ever replied to this fax.

The aftermath of this successfully concluded informal silent procedure is of merely legal significance and provides no further insights into the politics of Dublin II. Having confirmed the political agreement, COREPER advised the Council to adopt the Dublin II Regulation as a so-called 'A item', that is as a supranational legislative act to be approved of without further debate. The Regulation was formally adopted by the Economic and Financial Affairs (ECOFIN) Council on 18 February 2003 (Council 2003d). Following its publication in the *Official Journal* and in line with article 29 Dublin II, the Regulation entered into force in March 2003 and has applied to asylum applications lodged in the European Community as of September 2003.

Conclusion: strategic calculation and rule-following in the Council

What are the social mechanisms underlying national delegations' negotiating behaviour? Does the history of the negotiation of the Dublin II Regulation shed light on the conditions under which strategic calculation and rule-following come to the fore? And what, if anything, does this case tell us about the interaction between the logic of consequentiality and the logic of appropriateness in the Council? By interpreting the empirical material presented above from both a rationalist and institutionalist perspective, this section seeks answers to these questions.

Dublin II and the logic of consequentiality

Until the informal silent procedure was launched by the Danish Presidency, at least one delegation preferred non-agreement over agreement. Numerous delegations entered 'general reservations' on different versions of the draft Regulation, especially in regard to the hierarchy of criteria contained in article 10 Dublin II, in accordance with their mutually exclusive strategic interests. Given the unanimity requirement in the Council and in light of the 'win or lose' character of the negotiations, this resulted in prolonged legislative deadlock. The course of intergovernmental negotiations from October 2001 through November 2002 thus largely meets rationalist expectations.

The rationalist 'deadlock hypothesis' presented in a previous section of this chapter was based on the assumption that the negotiation of secondary Community law within particular Council formations generally does not allow for trading concessions across issue-areas. Whereas this assumption must not be entirely discarded, it nevertheless needs to be relaxed (see König and Junge, Chapter 5 in this volume). In the end, reaching intergovernmental agreement on Dublin II was made possible by reaching simultaneous agreement on future EU measures concerning illegal immigration and external border control. The wide range of items on the agenda of the JHA Council allowed certain delegations to employ their initial 'reservations' on Dublin II as bargaining chips in a complex game involving current and future Community measures on asylum and immigration. The notion of 'diffuse reciprocity', then, may account for the fact that individual governments do not exercise their right to veto even in politically divisive cases such as the Dublin II Regulation.

Alternatively, the final legislative outcome may, from a rationalist perspective, be interpreted in light of the concept of strategic non-compliance. This involves formally subscribing to a given set of supranational rules and procedures while planning to ignore or circumvent them in administrative practice (see Hayes-Renshaw et al. 2006, p. 172 on the hypothesized positive relationship between anticipated non-compliance and contested voting). Within a strategic non-compliance game, actors agree to things they will

never carry out in order to appease their partners on the other side of the negotiating table. If skilfully employed, no one will notice that 'the devil is quoting the scripture'. The benefits of premeditated non-compliance must be weighed, however, against the potential costs of losing one's reputation as a reliable contracting party (Chayes and Chayes 1993, p. 177). In effect, deliberate cheating is a more reasonable course of action for *homo oeconomicus* in one-off encounters than in repeated games.

Lending empirical support to the notion of strategic non-compliance, one can observe that certain national authorities are apparently not applying the Dublin II Regulation in 'good faith' (Papadimitriou and Papageorgiou 2005). It may raise some eyebrows that those authorities who were once vehemently opposed to the draft Dublin II Regulation are now the slowest throughout Europe when it comes to sending the fingerprints of asylum seekers and apprehended irregular border-crossers to the EURODAC central unit (Aus 2006) – a practice that, in the eyes of the Commission, 'may lead to results contrary to the underlying principles of the [Dublin II] Regulation' (Commission 2005d, p. 11). The Commission, well aware of the unfavourable Dublin Convention legacy, has tried to quell such 'opposition through the backdoor' by issuing the Dublin III Regulation (Commission 2003c). The main aim of this Commission Regulation is to facilitate the effective enforcement of 'transferring' asylum seekers across the member states of the EU and associated third countries like Norway. Only time can tell whether or not the Dublin II Regulation and subsequent Commission Regulations will be evoked in history books as supranational legal science fiction.

Dublin II and the logic of appropriateness

Not unlike other political institutions, the Council has, over time, developed its own rules of procedure and code of conduct. The Council Secretariat functions as the institutional memory of these rules and routines. Paradoxically, the Secretariat's political influence increases the more it manages to create the erroneous impression that 'le Secrétariat du Conseil n'existe pas' (see Beach, Chapter 12). Yet the Council, dedicated as it is to facilitating intergovernmental agreement, does not itself determine specific policy outcomes (compare March and Olsen 2006a, p. 8).

In accordance with the logic of appropriateness, however, the initial opponents of Dublin II exercised an institutionally expected degree of self-restraint during the silent procedure. They did not 'rock the boat' – even though they did not applaud the compromise proposal presented by the Danish Presidency. Nevertheless, both the proponents and increasingly isolated critics of Dublin II were, to borrow a term coined by Ernst B. Haas half a century ago, fully 'engaged' with the Council and adhered to its informal code of conduct (1958, p. 522). Speaking up during the silent procedure would have been perceived as inappropriate behaviour. The appropriate thing to do, on the other hand, was gracefully to accept the unavoidable and to silently

drop all remaining reservations (compare Lewis, Chapter 9, and especially his interview data on negotiating instructions that read, 'oppose as long as not isolated'). Compliance with Council-specific informal rules and procedures, to put it in a nutshell, explains why 'some dogs do not appear to bark' (Hayes-Renshaw and Wallace 2006, p. 286).

The Janus face of the Council revisited

Helen Wallace once described the Council as a 'complex and chameleon-like beast' (Wallace 2002, p. 342). In this chapter, I have argued that the complexity of Council proceedings can be reduced by resorting to two stylized images, arena and institution, in which political behaviour is driven by strategic calculation and rule-following, respectively. Each image helps us to describe particular facets of this chameleon-like creature, but only rationalist and institutionalist perspectives combined can grasp the true 'nature of the beast' (Risse-Kappen 1996). Unfortunately, we are not yet in a position to study decision-making processes in the Council within an integrated framework. For the time being, the best we can arguably do is to provide a 'double interpretation' of the empirical material and to delineate the domain of application under which the two perspectives hold empirically (Zürn and Checkel 2005; Aus 2007b).

The in-depth analysis of the negotiation of the Dublin II Regulation suggests a typical choreography of decision-making processes in the JHA Council. Potentially redistributive legislative dossiers relating to the establishment of an Area of Freedom, Security and Justice in the EU apparently go through a phase of purposive-rational intergovernmental exchange followed by a phase of value-rational adherence to institutionalized rules. From a theoretical point of view, this signals the sequential ordering of different logics of action (compare Jupille et al. 2003; Schimmelfennig 2003; Checkel 2006; Aus 2007a). If we could generate more knowledge about this form of interaction between the logic of consequentiality and the logic of appropriateness, it would allow us to provide an empirical foundation for March and Olsen's conjecture that 'different phases follow different logics and the basis of action changes over time in a predictable way' (2006b, p. 704). More comparative case studies are needed to validate such claims.

Notes

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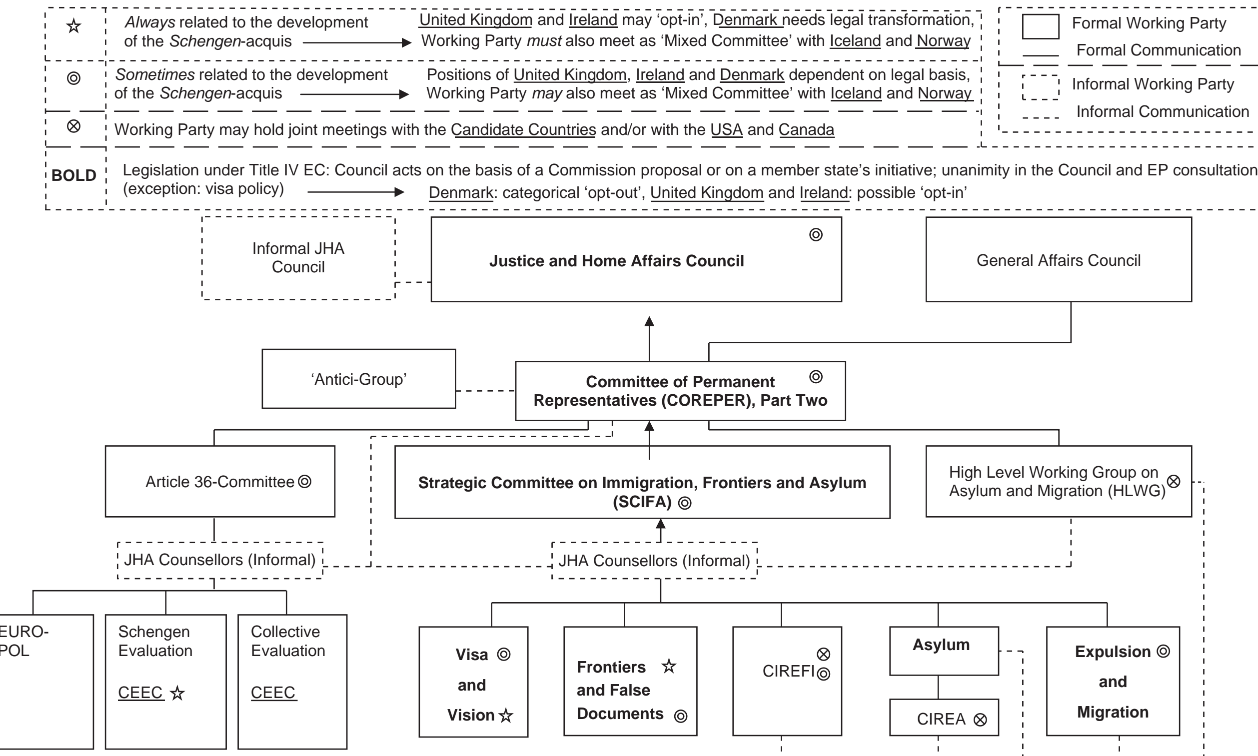
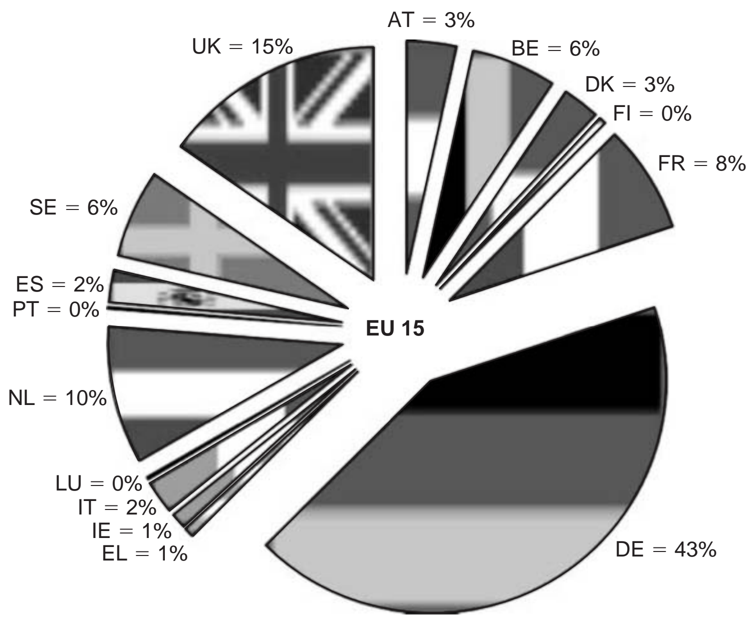
Annex 6.1 Working structures of the JHA Council, 1999–2004

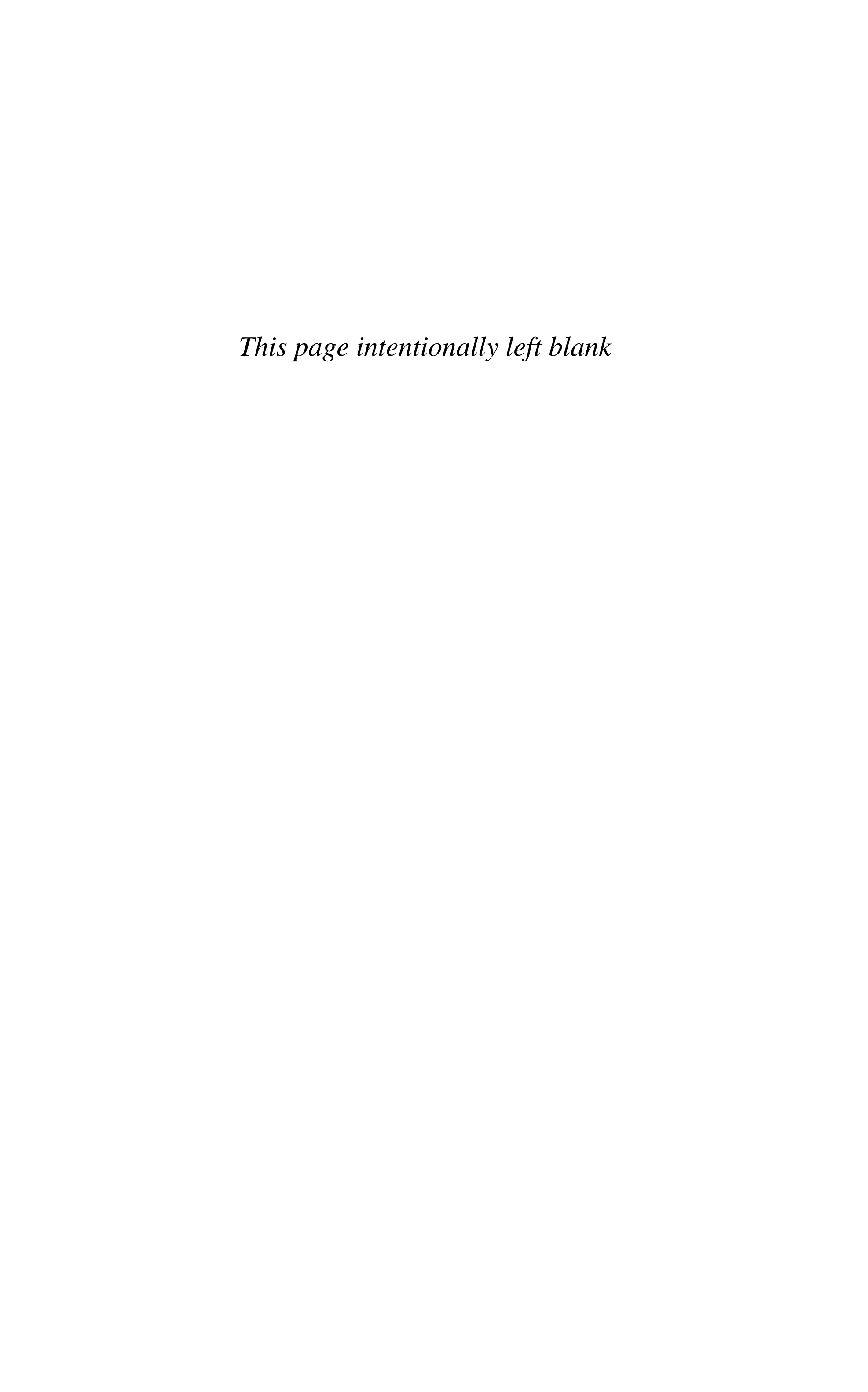


Annex 6.2 Distribution of asylum applications between member states, 1992–2001



Note: N = 3,745,860.
Source: UNHCR (2002).

Section Three
Deliberation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7

Deliberation and Bargaining in the Article 113 Committee and the 1996/97 IGC Representatives Group

Arne Niemann

Introduction

A growing number of works in European Integration Studies emphasize the (potential) relevance of deliberation/communicative action in European policymaking.[1] While only a few studies have addressed deliberation in the Council framework – which is surprising given the latter's centrality in EU decision-making – the Council system appears to be rather conducive to the development of discursive processes due to dense patterns of socialization and the existence of deep-seated common norms and values.[2] As the study of deliberation progresses, we are increasingly facing complex methodological and empirical questions: How can we identify deliberation, and how can we distinguish it from other action modes such as bargaining? Other closely related questions emerge as well: How can deliberative processes be substantiated empirically? When and under what conditions can we expect deliberation in the Council framework to take place? And finally, how much deliberation can we expect within the Council framework?

This chapter seeks to address the above questions. It will do so by analysing the negotiating style in two broad case studies: (a) EU negotiations in the Article 113 Committee on the 1997 WTO Basic Telecommunications Agreement; and (b) negotiations in the 1996–97 IGC Group of Representatives on the scope of the Common Commercial Policy. By looking at different stages of these negotiations and also by examining areas of differing political salience, varying distributions of conditions relevant for the occurrence of deliberation can be captured and compared. First, I briefly introduce and define my notion of deliberation and other key concepts; second, I specify indicators for deliberation, my hypothesized conditions for deliberation and the research techniques and methods used. In the third and fourth parts of the chapter, the methodological signposts established in the second part are squared with my empirical data regarding the Article 113 Committee and the 1996-97 IGC Representatives Group.

Deliberation and bargaining: conceptualizations and definitions

The notion of bargaining – commonly equated with 'strategic action' (see Elster 1991) – has been drawn upon to describe a considerable spectrum of interaction processes. More 'distributive' (or 'harder') forms of bargaining assume actors who seek to maximize their self-interests. Preferences are generally viewed as stable. Parties that engage in 'hard' bargaining behave cooperatively only as long as negotiations correspond to their individual interest calculus. Parties will only accept an agreement that increases their utility compared to no agreement, but they may prefer an agreement in which they gain more relative to other parties. 'Hard' bargaining behaviour typically includes concealing information and misleading other parties as well as using threats and promises (see Schelling 1960). 'Integrative' or 'softer' forms of bargaining (see Walton and McKersie 1965) place emphasis on the pursuit of common interests rather than exclusive self-interests. The focus is on mutual, absolute benefits rather than relative gains. While 'distributive' bargaining is characterized by zero-sum games, 'integrative' bargaining attempts to convert negotiations into non-zero-sum games. More integrative forms of bargaining include mutual concessions, paying rewards for concessions or increasing scarce resources (Pruitt 1983).

My notion of deliberation is based on Habermas's concept of communicative action. Within the framework of communicative action, participants are not primarily oriented towards achieving their own individual success; they pursue their individual objectives insofar as they can coordinate or harmonize their plans of action on the basis of shared definitions of the situation. Thus, behaviour is not coordinated via egocentric calculations of success, but rather through acts of reaching mutual understanding about valid behaviour (Habermas 1981, pp. 385–6). In order to achieve this type of understanding, certain 'validity claims' need to be fulfilled. Habermas distinguishes three types of validity claim or criteria: first, that a statement is true, that is, it conforms to the facts; second, that a speech act is right with respect to the existing normative context; and third, that the manifest intention of the speaker is truthful, that is, that s/he means what s/he says (Habermas 1981, p. 149). Communicative behaviour, which aims at reasoned understanding, counterfactually assumes the existence of an 'ideal speech situation', in which nothing but the better argument counts and actors attempt to convince each other (and are open to persuasion) with regard to the three types of validity claims. If a listener doubts the validity of a statement, the speaker must explain him/herself and come up with reasons which are questionable in a rational discourse. By arguing in relation to standards of truth, rightness and sincerity, agents have a basis on which to judge what constitutes reasonable choices of action, through which they can reach agreement (ibid., p. 149). While in bargaining, 'learning'

(to the extent the term is appropriate here) is incentive-based and manifest as the adaptation of strategies to reach basically unaltered and unquestioned goals, deliberation aims at more deeply-rooted, reflexive learning, that is, changed behaviour as a result of challenged and scrutinized assumptions and objectives.

My notion of deliberation is a rather narrow one, based on a 'pure' communicative rationality or 'thick' Habermasian thinking. It can be distinguished from that of other authors who use a wider (and less pure) conception and suggest that deliberation/arguing may also be strategically motivated (compare Joerges and Neyer 1997a; Gehring 1999). I argue that non-strategic communicative rationality does exist and that its analysis would be impeded (and become indistinguishable from concepts like 'rhetorical action') using wider and less clear-cut conceptual lenses. A variation of strategically-motivated arguing is the notion of *rhetorical action* (Schimmelfennig 2001). Accordingly, actors whose self-interested preferences are in line with certain prevailing norms can use these argumentatively to add cheap legitimacy to their position and delegitimize the position of their opponents. Whereas purely communicative actors attempt to reach reasoned understanding, rhetorical actors seek to strengthen their own position strategically and are not prepared to be persuaded by the better argument.

To sum-up: while policymakers *coerce* or *haggle* in 'hard bargaining', they *trade-off*, *compensate*, or *concede* in 'integrative bargaining', and *use norms* opportunistically to add cheap legitimacy in 'rhetorical action'. In contrast, in 'deliberation', they *argue*, *reason*, *discuss*, *debate* and *persuade* (all in a non-strategic way) regarding what constitutes valid behaviour according to shared standards of truth, rightness and sincerity.

Methodology

Working with a 'pure' notion of deliberation brings about substantial methodological challenges. First, scholars working with concepts such as communicative action have been criticized for insufficiently spelling out the conditions under which deliberation can be expected to occur and impact on outcomes (for instance Keck 1995). Progress has been made in that respect in recent years. While there is quite some overlap on these conditions among scholars, there is also a non-negligible area of disagreement.[3] For devising the hypothesized conditions below, I have drawn on my own prior work (Niemann 2000, 2004, 2006a) and the findings of related research. In general, the subsequent conditions should be regarded as approximations, and more importantly, as properties that condition choices and actions, rather than mechanical devices that click-start deliberation. Some of my hypothesized conditions are interrelated and partly overlap.

Conditions for deliberation to take place and impact on preferences[4]

Condition 1: New problems and uncertain situations. When actors face new problems or experience uncertain situations, they are motivated to analyse new information, consider different views and learn. They are particularly inclined to enter into deliberative processes since truth-seeking is essential under such circumstances (Checkel 2001b, p. 562; Risse 2000, p. 19). There are several indicators for this condition. First, it is likely to be present when (specific) issues have not previously been analysed, reflected upon or discussed by negotiators. Second, uncertainty can, to a large degree, be ascertained by the degree to which actors have become self-conscious about their interests and have defined their preferences concerning the issue at hand.

Condition 2: Cognitively complex issues. The more technical the negotiated topic, the more expert knowledge is required, the more discursive inquiry is necessary, and the more validity claims about what constitutes the right basis for appropriate action have to be made (Elgström and Jönsson 2000; Haas 1992). Yet, in order for an argumentative debate on complex issues to be possible, negotiators also need to have the requisite expertise to evaluate each others' validity claims (Niemann 2006a). In other words, issue-complexity may only foster deliberation if it is accompanied by a certain issue-expertise. The degree of issue-complexity has been judged by the extent to which an issue required pertinent technological, legal and economic expertise. Issue-expertise has been determined by ascertaining the background and relevant experience of the negotiators. As interviewees were likely to overstate these factors (especially regarding their own expertise), I verified the statements made through cross-interviews.

Condition 3: The opportunity for lengthy discussions. In many negotiations, overloaded agendas limit the time available for formal or informal discussion of issues, to the point that truth-seeking becomes very difficult (Niemann 2000, 2006a). For an argumentative discussion to take place or a reasoned consensus to emerge, time is required, for instance for laying down arguments, for challenging arguments, for counter-challenges and for reflection. Referents for this condition are more clear-cut and more easily measurable, that is, the time available for discussion during formal meetings (in the Council/IGC framework) and, in addition, the time spent on the respective issue informally (for instance in the margins of a meeting, over lunch or through bilateral communications).

Condition 4: Weak or only moderate countervailing pressures – low levels of politicization. Deliberation may be significantly obstructed when negotiators face strong pressure from outside sources (domestic or international). When issues are strongly politicized, negotiators are less likely to seek understanding about

valid behaviour, as they are pressured to satisfy certain vested interests. In addition, more private, insulated settings are regarded as conducive to truthful arguing (Checkel 2001b, p. 563) because negotiators need to worry less about the (immediate) reactions of certain constituencies or principals and tend to find it easier to retreat from initial assertions when confronted with superior evidence (Stasavage 2004) or better arguments. To approximate the degree to which condition 4 has been present, I looked at a number of criteria: first, the degree to which (key) officials in lead departments could be carried along in the deliberative process in Brussels and/or restrict the scope for deliberation (for instance by giving very narrowly-defined instructions to their Brussels negotiators); second, the extent to which domestic (or international) pressures restricted the scope for deliberation of Brussels agents through (direct) demands, for example from interest groups or political parties; finally, the degree to which the negotiations were exposed to media and public attention (for a case study of a highly politicized policy area see Chapter 8 below by Pollack and Shaffer).

Two further aspects regarding the hypothesized conditions need to be addressed: first, what is the nature of the hypothesized conditions (that is, are they 'conducive', 'necessary', or 'sufficient'), and are they all equally important? I assume that these conditions are all conducive to deliberation, and that – taken together – they are sufficient for communicative action. However, following from my prior work (for instance Niemann 2006a) and starting from a 'multiple causality assumption',[5] I hypothesize that condition 4 (weak countervailing pressures/low levels of politicization), condition 3 (possibility for lengthy discussion) and one out of the first two conditions (uncertainty or issue complexity) are necessary. The underlying assumption here is that in order for deliberation to occur, we need two key elements: an incentive (conditions 1 and 2) and time/room for development (conditions 3 and 4). Both 'uncertainty/new problems' and 'issue complexity' can give an incentive to engage in truth-seeking (hence only one of them is necessary). Once the incentive for deliberation is assured, time *and* space are needed for its cultivation and development. Therefore, I presuppose that both conditions 3 and 4 are necessary. Condition 4 seems to be the more important of these two, not least because it is relatively broadly defined. From the above it also follows that none of my hypothesized conditions is by itself sufficient.

Second, it is apparent from the above stipulation of conditions and indicators that some of these are not easily identifiable nor clearly measurable. This especially applies to the first two conditions and to indicators such as the requirement of relevant expertise. This constitutes a shortcoming with which scholars working on socialization and deliberation typically struggle. But it is also a question of epistemological stance/conviction. I acknowledge the importance of interpretative and contextual features in establishing causal

relationships and (middle-range) generalizations. Hence, I view interpretative understanding as an inherent, even though not exclusive, part of (and step towards) causal explanation (compare Weber 1949, p. 88).

Indicators for deliberation

How does one recognize communicative action when one sees it? And, perhaps more importantly, how can one distinguish it from bargaining, and – more intricately – rhetorical action or other forms of strategic arguing? Substantiating the existence of a non-strategic communicative rationality at work in (real-life) EU negotiations entails a significant methodological challenge. Moreover, genuine deliberation and hard bargaining are ideal types, which do not often appear in their pure form (Elster 1991). As different interaction modes may appear at very short intervals (or even simultaneously), it has been suggested that an analysis of individual speech acts would be required to distinguish between action modes (Holzinger 2001). The enormous time resources necessary for such an inquiry would limit any analysis to short sequences. Alternatively, I argue that it is possible to ascertain the prevalence of a certain action mode for (somewhat longer) periods of negotiations by (1) concentrating on the main arguments; (2) focusing on (only) several (important) actors; (3) analysing the extent to which the main arguments were used communicatively/strategically by these actors; (4) focusing particularly on instances of preference change and analysing which arguments fostered this change.

For the purpose of distinguishing deliberation from strategic forms of arguing, several indicators have been developed. First, as pointed out by Risse (2000, p. 18), arguments in communicative action mode are not based on hierarchy or authority. Pointing to status, rank or qualification to make an argument does not qualify as discourse. Second, the assertion that persuasion has really taken place, that is, that learning processes resulting from argumentative debate have occurred, gains further substance when what has been learned is used or applied. Hence, when negotiators use arguments by which they have been persuaded – especially when used to convince their administrations back home (compare Lewis, Chapter 9 below) – they are likely to have been truly convinced. It should be verified however that the applied arguments are not used strategically/rhetorically, for instance to seek support from the 'winner' after a 'lost' bargain by copying the winner's arguments. Third, by reconstructing actors' (true) underlying motivations one can determine more easily whether negotiators' arguments are sincere (that is, communicative) or rhetorical. The analysis of actors' motivations also helps us ascertain the broad mode of interaction. For example, if negotiators are generally motivated by norms (rather than material interests), we can (tentatively) exclude bargaining and infer elements of communicative rationality, as norms attain validity through learning processes and consensus and cannot be haggled (see Holzinger 2001, p. 271). Finally, I have explored

alternative explanations. Indicating the irrelevance of powerful alternative explanations would strengthen the rationale for deliberation. Potential alternative explanations of preference change considered here are (i) threats and coercion as in hard bargaining; (ii) logrolling, cost-cutting or side-payments as in integrative bargaining; (iii) rhetorical action; (iv) domestic political pressures, for example, from domestic industries.

Process tracing and triangulation across multiple data sources

Process tracing is usually understood as a method for the analysis of causal mechanisms, and carefully traces events, processes and actors' beliefs and expectations (George and McKeown 1985). On a more general level, it is viewed as a method that establishes a link between cause and effect beyond the level of correlation by appealing to knowledge of the real structures that produce observed phenomena (Dessler 1991). More specifically, process tracing is seen as a method for analysing the relationship between actors' cognition and their behaviour. Process tracing has been practised here through four different techniques. First, about 65 non-attributable semi-structured interviews[6] have been conducted with members of the Article 113 Committee, the IGC Representatives Group, (other) national and Community officials involved in the negotiations, and representatives from industry. Second, I used specialist publications, official documentation and major media. Third, due to a four-month placement at the Council Secretariat, I was able to witness 15 sessions of the Article 113 Committee (at different levels) and several informal meetings as a participant observer. Finally, during my internship I had access to confidential documentation (including informal evaluations and proceedings on the outcomes of meetings).

Comparative method

My analysis should be viewed as a plausibility probe, rather than a rigorous test of the hypothesized conditions, and in order further to investigate the relevance of the hypothesized conditions, the comparative method has been used. This aims to identify the differences (in terms of conditions) responsible for varied outcomes (in terms of interaction mode). When looking at cases where the level of communicative action varied, higher levels of deliberation should be accompanied by a stronger presence of each of the condition(s) for communicative action, while lower levels of deliberation should correlate with a reduced presence of the conditions. Those conditions changing as hypothesized are thus supported, whereas those conditions remaining constant or changing in the direction opposite to the one hypothesized are challenged in terms of their causal salience (compare Ragin 1987).

Table 7.1 shows the variation of conditions across sub-cases. Given the favourable conditions regarding the pre-negotiations of the Basic Telecoms Services Agreement in the Article 113 Committee (sub-case 1), this sub-case is hypothesized to be the only one dominated by deliberation. Given the

Table 7.1 Variation of conditions among sub-cases, with expected outcomes

Conditions	**Sub-cases**				
	(1) BTA: EU pre-negotiations (113 Committee)	**(2) BTA: revision of 1st EU offer (113 Committee)**	**(3) BTA: finalizing the EU offer (113 Committee)**	**(4) IGC 1996–97: CCP pre-negotiations (IGC Rep Group)**	**(5) IGC 1996–97: CCP negotiations (IGC Rep Group)**
Condition 1: new problems and uncertainty	Present	Partly present	Largely absent	Largely present	Largely absent
Condition 2: cognitively complex issues / requisite expertise	Present	Partly present	Largely absent	Partly present	Largely absent
Condition 3: (possibility of) lengthy discussions	Present	Largely present	Largely present	Partly present	Largely absent
Condition 4: weak counter-pressures / low politicization	Present	Partly present	Largely absent	Largely present	Largely absent
⇩	⇩	⇩	⇩	⇩	⇩
Expected Outcome	Dominated by deliberation	Mix of deliberation and strategic action	Dominated by strategic action	Mix of deliberation and strategic action	Dominated by strategic action

partial presence of the conditions for communicative action, sub-cases 2 and 4 should be characterized by a mix of different action modes, including deliberation, rhetorical action, 'integrative bargaining' and hard bargaining, while the (near) absence of favourable conditions should lead to negotiations dominated by strategic action in sub-cases 3 and 5.

The Article 113 Committee and negotiations of the BTA[7]

In the General Agreement on Trade in Services (GATS), states made commitments to remove most restrictions on national treatment and market access concerning value-added telecommunication services, such as voicemail and electronic mail. The negotiations on basic telecommunications services were deferred until after the conclusion of the Uruguay Round, eventually leading to the WTO Basic Telecommunications Services Agreement (BTA) in February 1997. In the EC/EU framework, pre-negotiations on a WTO basic telecoms services agreement began in late April 1994, more than a year before formal negotiations on the substance of the first official EU offer took place. In the liberalization talks, basic telecommunications services were treated as including all major sub-sectors, on a facilities and a resale basis, both landline and wireless. The general goal of the negotiations at WTO level was to reach a critical mass of offers, so that participants in the negotiations would be prepared to open their national markets by eliminating domestic monopolies and foreign ownership restrictions.

My analysis concentrates on the exchanges and discussions in the Article 113 Committee.[8] This body was established as part of the decision-making framework for the EC's Common Commercial Policy. Although formally it only has a consultative function, it is accepted that the Article 113 Committee advises the Council and takes part in shaping the Community's commercial policy (see Johnson 1998). The Committee is made up of two levels, the full members and the deputies. While the full members are responsible for overall policy, the deputies tend to deal more with the nuts-and-bolts issues. The Article 113 Committee establishes sub-committees to deal with specialized issues, such as the Article 113 Services Committee.

The analysis below is confined to the more decisive sequences concerning the formation of common EU positions and negotiating offers: first, I will look at the influential pre-negotiations (sub-case 1), followed by the revision of the first EU offer concerning restrictions on non-EU investment (sub-case 2), and the finalization of the revised EU offer: the reduction of Spain's restrictions (sub-case 3).

Pre-negotiations (sub-case 1)

The negotiating style during the (intra-EU) BTA pre-negotiations is most aptly captured by deliberation. Communicative action processes fostered preference changes on the part of those delegations that were sceptical of far-reaching liberalization at the outset, namely Spain, Portugal and Greece,

and also of the less sceptical France, Belgium, Ireland and Luxembourg. On the other hand, the Commission, the UK, Denmark, the Netherlands and, to a lesser degree, Germany supported very far-reaching WTO liberalization, as did Sweden and Finland after enlargement in 1995.

During the pre-negotiations the conditions for deliberation were highly favourable. As for condition 1, despite the fact that basic telecommunications had already been discussed, to some extent, during the Uruguay Round, there was still substantial uncertainty concerning the evolution of the telecoms sector and the potential repercussions of WTO-level liberalization. National preferences and positions were still largely in the formative stages and officials sought additional information and knowledge in order better to assess the approaching issues (interview EC-3). And this made them open-minded and communicative actors. As one participant of the Article 113 Services Committee acknowledged, 'at this stage most of us had to find out more about the problems at hand and become clear about our [delegations'] interests. In such a situation we were open for new information, [to] share knowledge, and seriously consider each others' arguments' (interview NAT-2).

In the pre-negotiation stage, the issues under discussion were usually cognitively complex (condition 2). Debate in the Article 113 (Services) Committee involved issues such as the role and salience of internet telephony, 'call-back' services and interconnection.[9] These issues required technological, economic and legal expert knowledge. One observer associated with the full members committee noted that 'many of the basic telecoms issues discussed [. . .especially at that stage. . .] were not so easy to grasp and comprehend for trade policy generalists' (interview NAT-6). The complexity of the issues fostered deliberative processes. As one official remarked, 'because the points we talked about were sometimes hard to fathom, our emphasis was often to clarify how things worked, what the likely impact of certain measures were and what was factually correct. This was not the time for bargaining or hidden agendas, but for fact-finding and open discussions' (interview NAT-1). That negotiators had the requisite expertise to engage in such processes has been suggested by the national committee representatives, and also by more neutral observers administering the talks (interview EC-6).

The time available for discussion was considerable (condition 3). The main thrust of the intra-Community pre-negotiations concerning the BTA took place in the Article 113 Services Committee and deliberations typically lasted over an hour during each meeting. Formal meetings usually took place three to four times per month, usually preceded by an informal meeting the day before. In addition, there were informal talks on the issue on other occasions, for instance in the margins of meetings, over lunch or through other bilateral contact. This is very substantial compared with the agendas of other more senior committees. As one participant of the Article 113 Services Committee noted, 'we had enough time to ask substantive questions, give detailed explanations and engage in a thorough discussion. If there was insufficient time

for something during a meeting, I could always clarify or continue it, in the break, over the phone, or in the next informal meeting' (interview NAT-9).

As far as condition 4 is concerned, discussions were characterized by a lack of politicization that could have countered deliberation. The pre-negotiations can be depicted as an insulated, private setting, where existing domestic constituencies could not (yet) come to the fore. The pre-negotiations received virtually no media attention and direct domestic pressures from organized interests were practically absent (interview EC-8). Finally, lead departments played no countervailing role. During the pre-negotiations, some national ministries in charge of the negotiations domestically even encouraged their member of the Article 113 Services Committee to sound out the Commission and other member states in order to attain more knowledge and information. The instructions given by lead departments to the members of the Article 113 Committee were neither tight nor restrictive (in terms of limiting the scope for deliberation), partly because they already contained a substantial Brussels element (compare Lewis 1998, p. 491) and were thus not resisting the gradually emerging reasoned understanding.

In their attempt to define the issues involved in international basic telecommunications liberalization, delegations gradually began to enter into an argumentative exchange. The position of the less enthusiastic delegations was based, to some extent, on the assumption that liberalization on the international level could be held back by political means. These delegations put forward three main arguments: first, it was asserted that telecommunications were so fundamental to the functioning of an economy and touched on so many political interests that the state needed to retain some control over them. Second, some officials still held the view that economies of scale would reduce costs, especially regarding the provision of local physical networks. Third and less often, it was argued that with strong international competition, national operators would tend to lose market share in economies with less-well developed telecommunications services (see Shears 1997).

The reasoning of the more liberal delegations directly undermined important aspects of the conservatives' argumentation and assumptions. First, they pointed to the vast technical progress taking place, for example, through the further development of 'by-pass' services.[10] This would make any sort of protectionist legislation inhibiting such activities very difficult and hence de facto liberalization would be hard to escape in the medium to long term (Gonzalez-Durantez 1997, p. 137). Second, it was argued that the falling costs of installing wired networks and the increasing significance of wireless communication would undermine the cost-cutting rationale of economies of scale for physical infrastructure (interview EC-26, by telephone 1999). Third, free trade and open markets would constitute appropriate economic policy since they would lead to greater economic efficiency and welfare. Fourth, it was asserted that member states had already accepted the principle of liberalization at Community level. Opening markets to non-EU third countries

thus merely constituted an extension of that logic. Finally, it was held that the Community's free movement doctrine would make it difficult for individual member states to deter third-country service suppliers once the single market in telecommunications was in place, because a service can easily be traded across the internal frontiers of the single market.

The more sceptical delegations gradually changed their minds and increasingly began to concur with the arguments of the liberal delegations during the course of the pre-negotiations. The result of this deliberative process was a nearly general, liberal consensus among officials in the 113 Committee, although delegations had not talked much about concrete offers (Council 1995). The pre-negotiations led to a modification of general expectations and influenced the subsequent broader discourse and negotiations on more specific issues. An (implicit rather than explicit) understanding was achieved that a far-reaching EU offer should be tabled in the forthcoming negotiations, including a swift opening of markets with only a few exceptions. As pointed out earlier, deliberation and bargaining are ideal types which do not often appear in their pure form. In the pre-negotiations actors often used a *mélange* of genuinely communicative as well as rhetorical arguments. However, the evidence suggests that the arguments were, on the whole, made with the intention of engaging in a reasoned discussion concerning valid behaviour. The case of (primarily) deliberation can be substantiated as follows:

(i) *Evidence from structured interviews*. During a first and second series of interviews a number of officials spontaneously characterized the pre-negotiations in terms of communicative rationality (interviews EC-2, NAT-3, NAT-9). In a third small series of more structured interviews, in which three different categorizations ('arguing/reasoning', 'bargaining', 'confrontation/compulsion') were proposed to officials who had not been interviewed before, it was consistently suggested that arguing captured the mode of interaction during the pre-negotiations most appropriately. Bargaining and compulsion were judged by most observers as largely absent.

(ii) *Negotiators' underlying motivations*. The case for deliberation can be further strengthened by reconstructing actors' underlying motivations. These were traced through interviews with Committee members. Interviews with their colleagues in capitals, meeting summaries, position papers, and, on occasion, participant observation, have been used for cross-checking. The findings suggest that actors were generally motivated by normative concerns: (moderate) protectionism/state interventionism guided expectations regarding appropriate policy in the conservative delegations, whereas 'free trade' and 'neo-liberal economic' norms mainly drove behaviour in the liberal delegations. In addition, liberal negotiators regarded themselves as experts and sought to demonstrate their expertise (interviews EC-10, NAT-28, Brussels 1999). A third motivation was

the concern for maximizing self-utility, here mainly in terms of their national economy. This motivation was significantly weaker than either normative concerns or expert-guided behaviour. Negotiators mainly attributed their relatively low 'national interest' motivation during the pre-negotiations to relatively weak politicization pressures (condition 4), new problems and uncertainties (condition 1), and the complexity of issues (condition 2), as a result of which 'material self-interests were still in the formative stages and thus mattered less in our motivations' (interview NAT-2). The pre-negotiations thus constituted a conflict of norms and a conflict of facts, rather than a conflict of interests. Neither norms nor facts can be bargained (or traded). Norms attain validity through consensus and common convictions. Facts need to be verified or enriched with new knowledge (Holzinger 2001, p. 271).

(iii) *Non-hierarchical argumentation and the avoidance of adding cheap legitimacy*. The case of deliberation is further supported by the non-hierarchical manner in which arguments were put forward. Negotiators generally refrained from pointing to their rank, status or qualification when making their arguments, and thereby avoided adding cheap authority to their statements. They also avoided adding cheap legitimacy to their arguments more generally. For example, as for the single-market argument, market-liberal negotiators held that the preclusion of third-country service suppliers would become difficult to maintain only when the internal market in telecommunications was in place. They did not portray the single market as having instantaneous implications. Neither did they describe the impact of technological change in such a manner. They refrained from suggesting that there was little choice but fast liberalization, which might have put the more conservative countries in a vulnerable negotiating position. Instead, they depicted these developments as bringing about de facto liberalization in the medium to long term only (see Gonzalez-Durantez 1997, p. 137).

(iv) *The application of what has been learned*. Learning processes resulting from deliberation are further substantiated when what has been learned is used or applied. When negotiators start to use lines of reasoning (in a non-rhetorical manner), by which they have been persuaded, they are likely to have been truly convinced. Such processes could be identified, for instance, with regard to the Luxembourg or Irish delegations, which had not been convinced of the implications of technological change at the start. However, after some time they began to acknowledge the strength of that argument and later fully concurred on this point (interview NAT-8). Eventually, they also joined in reasoning along very similar lines in the 113 Committee. That this move was not rhetorical has been asserted by the negotiators in question and also corresponds to the judgements of close colleagues in national capitals who should have been able to detect strategic behaviour. In fact, in their communications with the colleagues

back home, the respective members of the Article 113 Committee had also begun to use the 'technological change' argumentation in an effort to convince them of this rationale (interviews NAT-11, NAT-12).

(v) *Exploring alternative explanations*. The limited plausibility of alternative explanations during this stage of the negotiations further strengthens the rationale for deliberation. First, swapping concessions or pay-offs as in integrative bargaining played no role. Negotiators were still in the process of analysing their interests and forming positions. Hence, there were no (or only few) horses to trade. And, pre-negotiations were mostly concerned with facts and norms, which cannot be traded. The one-sidedness of 'persuasion' makes rhetorical action as well as threats or coercion more plausible alternative explanations. However, the aforementioned evidence has weakened the case for rhetorical action. Coercion or threats were judged absent by interviewees. Arguments concerning the single-market rationale and technological progress were neither meant, nor used, as disguised threats (see Niemann 2004, pp. 396–7). A final alternative explanation for preference changes would be pressures from domestic industry. The problem with this explanation is that domestic telecoms industries generally remained uninvolved (interview EC-11, Brussels 1999; Niemann 2004, p. 396).

Revision of the first EU offer (sub-case 2)

Following the first EU offer of October 1995, intra-EU negotiations focused on potential changes to that offer which included a number of restrictions to competition, most prominently restrictions concerning non-EC investment in Spain, France, Portugal and Belgium. The prevalence of deliberation now began to change. This change was accompanied by altered conditions concerning the negotiating environment. Perhaps most importantly, countervailing pressures from national capitals started to emerge. As processes of deliberation, in some instances, failed to trickle through to capitals, national officials, who do not attend the Article 113 Committee, could not be carried along in the process (condition 4). In addition, the scope for deliberation in the 113 Committee was more restricted as a result of more narrowly defined instructions given to the members of the committee by national capitals.

As a result of increasing importance and politicization, the Full Members Committee increasingly took charge of the negotiations, to the 'detriment' of the Services Committee. Issues remained cognitively complex, but the full members sometimes lacked the required expertise to conduct a sensible reasoned debate about valid behaviour, which adversely affected condition 2. As one full member admitted, 'quite frankly, often we lacked the necessary background knowledge to have a meaningful discussion about the pros and cons of liberalisation in this area. Then, we mostly read out the pre-prepared briefs and exchanged positions, without much interactive debate' (interview

NAT-6). In terms of the novelty of problems and the level of certainty, the negotiations had become more settled and foreseeable. Delegations had gradually identified their preferences and formulated positions. This adversely affected condition 1. As one observer noted, 'people did not have to engage in fact-finding and clarifying information to the same extent. As a result, they were less open for new information and less inclined to listen to their opposite numbers' (interview EC-3).

With the 113 Full Members Committee taking more charge of the negotiations, the time available for relevant substantive discussion diminished (condition 3). Because of tight meeting agendas, the full members typically devoted (only) about 30–45 minutes to the issue in their monthly meetings (participant observation). The impact this had on discursive patterns is highlighted by one official: 'rarely was there enough time to really get to the bottom of the matter. More often, I felt that – although there was time to go beyond the surface – we had to stop short of a more profound exchange of arguments' (interview NAT-9).

Processes of arguing and deliberation were increasingly supplemented by elements of rhetorical action which became more and more widespread. For instance, when the Full Competition Directive of March 1996 specified the 1998 deadline for the internal telecoms market, the Commission started to use the internal market argument increasingly in a rhetorical manner, more and more framing the process as 'immediate' and 'inescapable' to put pressure on the more reluctant delegations. Rhetorical arguments were important in so far as they implied that the options of the remaining sceptical delegations began to narrow.

At this stage of the negotiations more explicit reference was made to the various (underlying) interests which had by then become clearer and more explicit. Forms of concession swapping, compensations or buying acquiescence also began to appear. For example France was 'permitted' to retain some restrictions in exchange for dropping others (WTO 1996). As a result of this mix of rhetorical and discursive arguments trickling down from national administrations, along with tactics of swapping concessions and side-payments, positions began to shift and the French, Belgian and Portuguese delegations removed (most of) their restrictions (Council 1996; interview EC-5).

Finalizing the revised EU offer: the reduction of Spain's restrictions (sub-case 3)

A crucial phase of the negotiations emerged in the autumn of 1996 when the EU set out to finalize its revised offer. The most significant hindrances for (the crucial) US acceptance of the EU offer were the restrictions to market access maintained by Spain. In Spain the BTA issue had become substantially politicized (condition 4). With the change of government in April/May 1996

increasingly strong fractions of the Spanish government and administration favoured a duopoly, as selling a second licence promised to generate high revenues (interview NAT-13). The issue was no longer insulated and received quite some media attention (for instance *El País*, 10 October 1996; *El Mundo*, 25 October 1996). That many officials in the ministries involved in Madrid could not be carried along and persuaded by the deliberative process leading to the nearly general liberal consensus in Brussels further weakened condition 4. Finally, the politicization of the issue seems to have been further enhanced, as Telefónica took a more ambivalent stance although it had favoured WTO liberalization in earlier phases of the negotiation process.

Other conditions also became less conducive to deliberation. Uncertainty (condition 1) had further diminished. Positions and interests were particularly clear-cut here, as negotiators had, over time, become very familiar with the Spanish case (interview EC-6). Issues remained cognitively complex during the bilateral talks (condition 2). Yet, negotiators at the minister/commissioner level, where the talks now took place, were even less capable of dealing with items in an argumentative way than the full members. They frequently lacked the required knowledge to make truth-seeking possible, as validity claims could not be adequately evaluated (interview EC-8). More conducive to deliberation was the largely bilateral nature of that part of the negotiations, as a result of which the time available for discussions increased (condition 3). This, however, could not make up for the unfavourable three other conditions.

Spain continued to hold that the removal of foreign ownership restrictions would be detrimental to Telefónica and challenge Spain's national interest, and thus maintained its stance. The Commission reacted to what was unambiguously perceived as strategic and non-cooperative action by also assuming tougher bargaining tactics. A mix of threats/promises, trade-offs, and to a lesser extent rhetorical action can explain why Madrid eventually changed its position. DG I of the Commission was in close touch with DG IV, which was in charge of Telefónica's application for participation in the Unisource alliance of telecom operators. Under the EC's competition rules, the Commission has clearance powers over strategic alliances. It made use of these powers to increase its leverage over the Spanish government which strongly supported Telefónica's participation in Unisource (Sauter 1997). The Commission promised to clear the application if Spain made substantial concessions in the WTO telecoms negotiations and implicitly threatened to withhold clearance in the absence of such a move. The Commission also contended that given US demands concerning Spanish commitments, the entire WTO basic telecommunications negotiations might fail due to Spain's reluctance to move. Eventually, Spain succumbed to the pressure and agreed to drop its market access and foreign ownership restrictions from November 1998.

The 1996–97 IGC Representatives Group and negotiations on the extension of Article 113 [11]

Before the 1996–97 IGC, the scope of Article 113 (now 133), which is the centrepiece of the Community's Common Commercial Policy (CCP), had been disputed for some time. Most prominently, during the Uruguay Round the Commission and some member states disagreed on who was competent on the 'new' trade issues, such as services and intellectual property rights. The Commission requested a ruling by the Court. In its Opinion 1/94, the ECJ ruled that both the Community and member states were jointly competent to conclude international agreements in services and intellectual property rights (Bourgeois 1995). The Court left a number of other questions unresolved. For example, it demanded a duty of cooperation and unity of representation in matters where the Community and member states are jointly competent, without specifying how such unity was to be achieved. Against this background, the Commission decided to submit a proposal for an extension of Article 113 within the framework of the Amsterdam IGC, hoping to reach a more favourable outcome on the political level.

My analysis here concentrates on the exchanges and negotiations in the IGC Representatives Group, which prepared and discussed IGC issues before they went to foreign ministers and/or heads of state and government. It took up its work in January 1996 and worked together for a year and a half. The group comprised six ambassadors, four other senior officials, and five junior politicians.

Pre-negotiations (sub-case 4)

In late July 1996 the Commission put forward a proposal concerning the extension of Article 113 to include trade in services, intellectual property rights and investment (Commission 1996). There was no real or formal pre-negotiation period concerning the reform of Article 113 during the IGC. Yet, the first two and a half months of the talks on the CCP question resembled those of pre-negotiations. The conditions for deliberation were partly in place. There was some uncertainty on the very question of extending Article 113 (condition 1). Many representatives had not dealt with the topic before. Thus, at the beginning many of them were eager to find out what the Commission had to say on the issue and also were not prejudiced on this question.

As for condition 4, the level of politicization and countervailing pressures was relatively limited during this period. The issue received hardly any attention from the media, which largely overlooked the Commission proposal for extending Article 113. Also, organized interests had not yet reacted on the issue, something that only marginally changed during formal negotiations (interview EC-8). There was scepticism in some capitals concerning an extension of Community competencies, but national officials

and politicians in capitals had as yet had relatively little chance to influence the IGC representatives on this question.[12]

When the topic was first introduced, a fair amount of time was allowed for discussion (condition 3). For instance, Commission Director-General for external trade, Horst Günter Krenzler, was given the opportunity to explain the Commission's case. This meeting lasted about an hour and 'left sufficient time for everyone to ask questions and challenge the Commission proposal, and for Mr Krenzler to respond and explain the rationales behind it, followed by a lively discussion' (interview EC-24, Brussels 1999). During two other representatives meetings only 20–30 minutes were allocated to the CCP, and informal discussion of the issue between the permanent representatives was limited (interview NAT-23, Brussels 1999).

Even though the subject matter was not as cognitively complex as that of basic telecoms services, it was nevertheless one of the more technical ones on the IGC agenda, thus requiring discursive inquiry (condition 2). While negotiators were at ease with institutional and CFSP questions, they usually found the issue of Article 113 'tricky' and to require 'some pertinent trade-political background', which most did not have.[13] Hence, on the whole, negotiators repeatedly lacked the requisite expertise to evaluate each others' validity claims, which made genuine truth-seeking somewhat difficult.

During the pre-negotiations a mix of deliberation, rhetorical action and bargaining could be witnessed. The Commission, and especially Krenzler during his appearance in the Representatives Group, (largely) engaged in communicative action. This was the case, for example, regarding the main argument put forward in substantiating the proposed extension of Article 113. The Commission mainly argued that the scope of Article 113 should be interpreted in a dynamic way and that globalization and changes in the world trade agenda – with increasing prominence of trade in services, intellectual property rights and investment – should be reflected in the EC's external trade competence. That this argument, which was also made by the Belgian, Finnish and Swedish delegations, was used in a genuinely deliberative way by the Commission has been asserted by negotiators themselves and been further corroborated by cross-interviews, in which colleagues maintained, for example, that Krenzler 'really means what he says' and that 'he very much stands behind this argumentation because he is convinced of it on the merits of effective Community trade policy' (interview EC-12). In addition, at this stage the Commission also refrained from painting an overly gloomy picture of the situation under mixed competence, thus abstaining from adding extra legitimacy to its arguments (compare Krenzler 1996).

The pre-negotiations were also characterized by a considerable amount of bargaining. The ambitious initial Commission proposal, which could be interpreted as implying the request for an external economic policy competence,[14] was meant as a bargaining strategy, from which it could later retreat to merely suggesting an extension of Article 113 to services

and intellectual property (interview EC-23, Brussels 1999). In addition, some of the Commission's arguing was rhetorical. For example, the Commission added some cheap legitimacy to its argumentation by pointing to enlargement and the increased difficulty of reaching unanimous decisions under mixed competence. This argument is certainly a logical one, but as several Commission officials admitted, it was not of real concern to the Commission as it did not take more member states to make mixed competence a problem in external trade negotiations. Instead, it came in rather handy that the IGC was about making the EU fit for enlargement (interview EC-13). In addition, the Commission said prior to the IGC that it did not seek new competencies at the IGC. Once it decided to bring external trade on to the agenda, it sold the Article 113 issue as a 'modernization' or an 'updating' of the CCP. This had an element of rhetoric to it, which appeared to a number of national IGC representatives as inconsistent and 'asking for new competencies in thin disguise' (interview NAT-16; compare Meunier and Nicolaïdis 1999, p. 494).

Formal negotiations (sub-case 5)

From about mid-October 1996 the main problems and broad parameters concerning CCP reform were identified. As more formal negotiations began, the policy style changed towards one characterized by bargaining. This change went together with modified conditions in terms of the negotiating infrastructure. The cognitive complexity of issues remained similar, but the reduced chance for experts such as Commission Director-General Krenzler to come into the discussion further adversely affected condition 2.

Other conditions deteriorated even more. After a few months the Article 113 issue no longer posed a new problem on the agenda (condition 1). Preferences had been identified and positions formulated. IGC representatives were thus less eager to listen to and learn from each others' arguments. Even more significantly, less time was now devoted to the issue (condition 3). As one official noted, 'when we discussed external policy for an hour, we spent 55 minutes on CFSP and five minutes on Article 113' (interview NAT-23, Brussels 1999). Under such circumstances there was hardly enough time for one *tour de table*, and certainly not enough to actually engage in truth-seeking and a deliberative debate about the pros and cons of reforming Article 113.

In addition, the issue became substantially politicized and was met by considerable countervailing pressures (condition 4), which took some time to 'register' in the group, as representatives increasingly got input from national capitals. As the new trade issues – unlike issues of tariffs and quotas – do not stop at borders, but extend into the state and thus concern national laws and domestic regulation, they are thus also more politicized (compare Smith and Woolcock 1999, pp. 440–1). Countervailing forces also began to form in national capitals because of the 'basic distrust by some member states of the role of the Commission in representing the Community in international negotiations and keeping the member states abreast of what

is going on' (Patijn 1997, p. 39). The reason for this basic distrust of the Commission can be found in a number of events in the past when the Commission negotiated without the necessary transparency vis-à-vis member states (see Niemann 2006a, Chapter 3). In addition, considerable adverse bureaucratic politics/pressure were exerted from (senior) officials in several capitals who did not want to 'hand over these dossiers to the Commission' (interview NAT-15). All this made a genuine deliberation on the merits of reform extremely difficult due to very tight instructions given to the majority of IGC representatives.

The IGC negotiations on the extension of Article 113 were predominately characterized by rhetorical action combined with integrative and hard bargaining. As its quest was met by substantial scepticism from a considerable number of delegations, the Commission's argumentation became increasingly rhetorical and strategic. It gradually added extra/false legitimacy to its argument concerning the changing world trade agenda by stating that mixed competence and unanimity limit the Community's negotiating capacity in *all* situations (interview EC-9). Moreover, the Commission misrepresented negotiating realities by claiming that under unanimity and restricted delegation the Community would unavoidably be at a disadvantage because 'no negotiator can do worthwhile deals with his hands tied behind his back' (Brittan 1996).[15]

The reluctant member state delegations, such as France, the UK, Spain, Portugal and Denmark also engaged in rhetorical/strategic action. For instance, they claimed that the Commission did not (always) represent the interests of the Community convincingly and that it often gave in too easily to the US, thus requiring member states to 'keep the Commission on a short leash' (interview NAT-14). Even though some, like the French, seem actually to have meant this, others admitted during interviews that it was used as a pretext, for example, in order to avoid shedding sovereignty in (services) areas in which international competition was feared or for ideological reasons (interview NAT-25, Brussels 1999). Quite a number of the reluctant member states also resorted to hard bargaining. Some simply stated that they wanted to exempt a certain area from Community competence due to domestic sensitivities. Others, such as France and the UK on a number of occasions, confined themselves to simply saying 'no' to an extension of Article 113 or making an extension conditional on the exemption of certain key areas *without giving any substantial reasons* (interview NAT-25, Brussels 1999). This clearly suggests that (good) arguments did not count for much at this stage and that it was more down to member states' self-interests and bargaining power.

The process towards the final outcome on this issue at the IGC can also be explained by (integrative and hard) bargaining. A sizeable group (which included powerful member states like France, the UK and Spain) refused an outright transfer of competence. The most they wanted to go along with was a limited transfer of QMV and sole Commission representation in trade

in services and intellectual property rights, albeit with a significant number of areas exempted. This was followed by logrolling (integrative bargaining) among delegations, in which each delegation conceded on issues that were of low priority to itself and of high priority to other parties. In this way the list of exceptions to an extension of Article 113 grew very long indeed. Eventually, the value-added of the text was doubted by the Commission (and a number of parties) who encouraged the Presidency to dismiss it. Instead of a laborious and complex agreement lacking ambition, it was decided to codify the (more straightforward) lowest common denominator in the Treaty of Amsterdam. The new paragraph (5) in Article 133 enabled the Council to extend the application of Article 133 to services and intellectual property rights by unanimity without having to go through another IGC.[16]

Conclusions

The above analysis indicates that a narrow definition/conceptualization of deliberation seems to be justified. Genuine (that is, non-strategic) deliberation does exist and its analysis would be impeded using broader and less clear-cut conceptual lenses. In addition, a wider and more ambiguous conceptualization of deliberation would make it hard to distinguish deliberation/communicative action in the Habermasian sense from concepts such as rhetorical action.

There does not appear to be any methodological 'nostrum' for studying deliberation processes. Instead scholars seeking to identify and investigate deliberation in the Council (or other forums) have to be prepared to invest considerable resources, especially when it comes to substantiating such processes. It seems that a mixture of different research strategies and techniques is required. The mix employed here of process tracing (put into practice by drawing on different techniques/sources and used along several specified indicators), the comparative method and exploring alternative explanations could be further complemented, for example, by making use of counterfactual analysis or by analysing speech acts (in more fine-grained manner), although the latter in particular would put still greater strains on scholars' resources.

My empirical analysis suggests that most negotiations within the Council framework (broadly interpreted) are probably not *dominated* by deliberation. Strategic action – that is, integrative and hard bargaining and variations of rhetorical action – seem to take the lion's share under most circumstances. Yet, sub-case 1 has shown that, if the conditions are right, genuine deliberation may take over as the chief interaction mode and impact on outcomes. Sub-cases 2 and 4 also show that deliberation still captures part of the action when the (hypothesized) conditions for communicative action are partly present.

This brings us to the conditions under which deliberation may prevail. First, my analysis supports the 'multiple causality' assumption, that is, that

a specific action mode can be induced by combinations of values on the different conditions. For example, sub-cases 3 and 5 show that negotiations dominated by strategic action may be accompanied by quite different distributions across conditions. Also, sub-cases 2 and 4 indicate that a mix of deliberation and strategic action can be induced by varying distributions across conditions. As regards my provisional classification of conditions (in terms of 'conducive', 'necessary', and 'sufficient') the above analysis confirms that my conditions are (at least) conducive to deliberation, since they generally varied as hypothesized, that is, we witnessed more deliberation when the conditions were present (see Table 7.1 above). Sub-case 1 also tentatively indicates that taken together the hypothesized conditions are sufficient for deliberation. Sub-case 3 substantiates that condition 3 is not sufficient because the opportunity for lengthy discussions alone could not bring about deliberation. The assumption that the other three conditions individually are also not sufficient could not be analysed as none of them appeared in isolation. The presupposition that condition 3, condition 4 and one out of the first two conditions are necessary for deliberation could (also) not be probed sufficiently given the (ambiguous/narrow) distribution of conditions (compare sub-cases 3 and 4). Additional case studies would be needed to allow for a more conclusive probing of the conditions' salience.

Finally, in the Council framework (as in other forums and contexts), we can, first, expect greater degrees of deliberation during pre-negotiations that are often characterized by negotiators facing uncertainty and new problems (condition 1), the opportunity for lengthy discussions due to lesser time pressures (condition 3) and comparatively weak counter-pressures and lower levels of politicization (condition 4). Second, we can also expect more deliberation at the official (that is, working group) level, rather than the political (that is, Council or European Council) level, as a result, generally, of cognitively more complex issues along with the requite expertise of negotiators (conditions 2), often greater potential for longer discussions, as a result of lesser time pressures (condition 3), and lower levels of politicization (condition 4). Somewhat overlapping with, but not wholly contained by, the last two parameters, deliberation is more likely when negotiators engage in day-to-day decision-making than in history-making decisions, given the greater potential for the occurrence of the hypothesized conditions in everyday policymaking.

Notes

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1. See for instance Eriksen and Fossum (2000) and Risse-Kappen (1996) for two prominent examples.

2. On dense socialization and deep-seated norms in the Council framework see for instance Lewis (1998), Niemann (2006a, Chapter 2).
3. For example, while Deitelhoff and Müller (2005) regard publicity as conducive to arguing, Checkel (2001b) and myself (Niemann 2004, 2006b) have suggested that insulation and in-camera settings contribute to persuasion/communicative behaviour.
4. In some of my previous work I also specified two additional conditions: 'the existence of a strongly shared lifeworld' and 'persuasive individuals'. These two conditions have been dropped here. The latter because 'persuasive individuals' are not so easily squared with a thick Habermasian notion of deliberation, in which the force of the better argument is decisive. The former because the variation in shared lifeworlds is not that substantial in the Council framework and can thus not convincingly explain different outcomes.
5. In other words, that different combinations of values on the conditions can lead to the same/similar outcomes (compare King et al. 1994, pp. 87–9).
6. The non-attributable interviews have been coded as follows: 'EC' refers to interviews conducted in the Community institutions (including the Council Secretariat) and 'NAT' refers to interviews with representatives of national governments/administrations. Most interviews were carried out in Brussels in 1997, where dates are other than that they are included in the text cite.
7. This section draws on the empirical part of Niemann (2004, 2006b).
8. The former Article 113 Committee is now called the Article 133 Committee, since the renumbering of articles following the Amsterdam Treaty. As negotiations on the BTA took place before this change, the committee in question will be referred to as the Article 113 Committee here.
9. Interconnection refers to the establishment of electronic linkages between service providers so that they can conduct business transactions electronically. On internet telephony and 'call-back', see the following note.
10. Some countries allowed telecommunications firms to resell capacity to other firms, thereby making these countries cheap hubs for international traffic. 'Call-back' services let consumers in countries with high telecommunications rates telephone abroad to inexpensive local/national rates. Moreover, digital technology, such as the internet, allows users to bypass traditional voice-telephone networks (*The Economist* 1997).
11. This section draws on Niemann (2006a, Chapter 3).
12. However, attempts were made at relatively early stages by the Dutch, German and Portuguese full members of the Article 113 Committee to exert their (rather sceptical) views on the issue of extending the scope of the CCP (interview NAT-15; EC-20, Brussels 1999).
13. With the exception of the Swedish (Gunnar Lund), Finnish (Antti Satuli) and Belgian (de Schoutheete) representatives (interviews, Brussels EC-14; NAT-26, Brussels 1999).
14. This was the interpretation, for example, by the Bundesministerium für Wirtschaft (1996).
15. That the Community may actually have considerable leverage/bargaining power under mixed competence, especially when its collective position is closer to the status quo than its opponent, has been privately admitted by Commission officials. Compare also Meunier (2000).
16. The issue of extending the scope of the CCP later came up again during the Nice IGC and the Convention/IGC 2003–04 (compare Niemann 2006a, Chapter 3).

8
Risk Regulation, GMOs and the Limits of Deliberation

Mark A. Pollack and Gregory C. Shaffer

Over the past two decades, the Council of Ministers has been drawn into a political maelstrom – the regulation of genetically modified (GM) foods and crops. Beginning with the 1990 Directive on the Deliberate Release into the Environment of Genetically Modified Organisms (GMOs), and proceeding through the growing controversy over GMOs in the 1990s, the unofficial moratorium on the approval of new GM varieties between 1999 and 2004, the ongoing transatlantic dispute over GMOs with the United States, and finally the tentative resumption of approvals initiated in 2004, the Council of Ministers has played a central role in the adoption and implementation of one of the most controversial areas of EU regulation. Throughout this period, the Council has been riven by persistent divisions both among its member governments and between the Council as a body and other institutional actors such as the Commission and the European Parliament (EP), and at the same time by pressures from societal actors in Europe, foreign governments such as that of the United States, and international organizations such as the World Trade Organization (WTO).

In this chapter, we analyse the Council's involvement in the making and implementation of EU law on agricultural biotechnology, and offer three arguments about the nature of Council decision-making in this area. First, as a prelude, we note that it is impossible to tell the story of Council decision-making without reference to other institutional actors, including most notably the EP (which has consistently pressed, within the limits of its powers, for stricter standards) and the European Commission (which has sought to reconcile domestic EU demands for strict regulation with international demands for the rigorous implementation of the EU's own standards).

Second, while it is well known that the Council plays a dual role in the EU, combining legislative and executive functions, this dual role has been particularly striking in the GMO case, where the Council has been repeatedly drawn into the regulatory approval of virtually every GM variety submitted for approval in the EU over the past decade. This is largely because the EU's comitology committees – created to provide oversight of the Commission

in routine regulatory decisions – have been repeatedly deadlocked, requiring recourse to the Council of Ministers, which has itself been deadlocked in most instances, failing to reach a decision and leaving matters in the hand of an increasingly isolated European Commission.

Third and finally, while many accounts of both Council and comitology decision-making emphasize the prospect of deliberative decision-making in technical areas such as the approval of individual GM varieties following technical risk assessments, we find little evidence of meaningful deliberation in either comitology committees or in the Council, reflecting the intense politicization of the issue in the national politics of the EU member states. More precisely, we argue that the record of legislative and, in particular, executive decision-making in the Council is one of bitter disputes, bargaining from fixed positions, formal voting, and ultimate deadlock in decision after decision. This finding, we contend, should not come as a surprise to sophisticated theorists of deliberation who have always conceded that successful deliberation should take place only under certain scope conditions. Indeed, we argue, deliberation is something of a hothouse flower, which has not found a receptive home in the politically charged area of GMO regulation.

The remainder of the chapter is organized in five parts. First, we examine the theoretical literature on deliberation in international politics, noting the nature of deliberation and 'arguing' in relation to other theoretical approaches, spelling out the scope conditions for successful deliberation posited by theorists, and mapping the empirical debates about deliberation in EU politics. Second, we introduce the issue of genetic modification in the EU and briefly recount the adoption of the first EU Directives on the subject. During this first period, we argue, the GM issue had not yet become politicized, and Council bargaining consisted largely of asserting member state prerogatives vis-à-vis the supranational Commission. Third, we examine the politicization of the issue after the mid-1990s, and the subsequent difficulties of implementation, as controversy led to deadlock and ultimately to a de facto moratorium. In the fourth section, we summarize the Council's bargaining over the strengthening of the EU's increasingly complex legislative framework, while the fifth section chronicles the continuing bitter divisions in the Council, even after the completion of the legal framework (in 2003), the resumption of approvals (in 2004), and the WTO decision in the GMO case (in 2006). Evidence of deliberation in these settings, we contend, is hard to find. The conclusion summarizes our findings, with an emphasis on the impact of politicization and uncertainty on deliberation, and the distinctive patterns of Council decision-making across its legislative and executive functions.

Deliberation and arguing in international and EU politics

Over the past decade, a growing number of scholars have identified the Council of Ministers, as well as its Committee of Permanent Representatives

(COREPER) and working groups, as a potential site of 'deliberative supranationalism', an efficient and normatively desirable system in which national government officials meet and *deliberate* in search of the best solution to common policy problems (Joerges 2001). This emphasis on deliberation – reiterated in an ever-expanding body of literature – derives largely from the work of Jürgen Habermas, whose theory of communicative action has been adapted to the study of international relations and to the study of EU governance.[1] Under this Habermasian conception, actors are able to agree on a common policy because they are willing to yield to the force of the better argument and find reasoned consensus on basic validity claims and their implications.

The starting point for such deliberative approaches is the claim, made most clearly by Thomas Risse in the field of international politics, that there are not one but three 'logics of social action', namely (1) the logic of consequentiality (or utility maximization) emphasized by rational choice theorists; (2) the logic of appropriateness (or norm-guided behaviour) associated with sociological institutionalist and constructivist theory; and (3) a logic of arguing (or deliberation) derived largely from Habermas's theory of communicative action. The first of these approaches, the 'logic of consequentiality', derives from the expected-utility assumptions of most rational choice theories, according to which actors (be they individuals, firms, or states) possess specific preferences over states of the world, and act systematically to maximize their respective utility under physical and social constraints.

These core assumptions of rational choice, and the theories on which they are based, have recently been challenged by the growing number of constructivist and sociological institutionalist theorists in international law and international relations. For constructivists, institutions are understood broadly to include not only formal rules but also informal norms, and these rules and norms are expected to constitute actors, in other words to shape their identities and their preferences. Actor preferences are not exogenously given and fixed, as in rationalist models, but *endogenous* to institutions, and individuals' identities shaped and re-shaped by their social environment (Risse 2004b).

Taking this argument to its logical conclusion, many constructivist and sociological institutionalist scholars embraced March and Olsen's (1989, pp. 160–2) conception of a logic of appropriateness guiding human action. According to March and Olsen, institutions do not simply provide a set of strategic constraints within which actors seek to maximize their individual utility. Rather, institutional rules, routines and roles are internalized and followed 'even when it is not obviously in the narrow self-interest of the person responsible to do so' (ibid., p. 22). Faced with a given choice or social situation, March and Olsen argue, actors do not necessarily calculate the expected utility of alternative courses of action according to their specific preferences and choose the optimal one, but rather seek to undertake the action most appropriate to their social role and the nature of the

situation. This conception of social action has proven influential in constructivist international relations theory as well as normative legal theory, in which international institutions are posited to 'teach' norms to states and their representatives, who behave in a manner 'appropriate' to their socially learned rules and roles.[2]

Drawing on Habermas's theory of communicative action, however, Risse argues for a third logic of social behaviour, which he calls the 'logic of arguing', derived largely from Habermas's theory of communicative action and emphasizing the interrelated concepts of argumentation, deliberation and persuasion (Risse 2000, pp. 1–2). In Habermasian communicative action, or what Risse calls the logic of arguing, political actors do not simply bargain on the basis of fixed preferences and relative power; they may also 'argue', questioning their own beliefs and preferences, and open to persuasion and the power of the better argument:

> Arguing implies that actors try to challenge the validity claims inherent in any causal or normative statement and to seek a communicative consensus about their understanding of a situation as well as justifications for the principles and norms guiding their action. Argumentative rationality also implies that the participants in a discourse are open to being persuaded by the better argument and that relationships of power and hierarchy recede into the background. Argumentative and deliberative behavior is as goal oriented as strategic interaction, but the goal is not to attain one's fixed preferences, but to seek a reasoned consensus. Actors' interests, preferences and perceptions of the situation are no longer fixed, but subject to discursive challenges. Where argumentative rationality prevails, actors do not seek to maximize or to satisfy their interests and preferences, but to challenge and justify the validity claims inherent in them – and they are prepared to change their views of the world or even their interests in light of the better argument. (Risse 2000, p. 7)

At the extreme, Risse argues, we can distinguish two different types of social interaction: *bargaining*, in which actors with fixed preferences negotiate and exchange threats and promises in an effort to maximize their respective preferences, and *arguing*, in which open-minded participants seek to discover the truth, and indeed their own preferences, through a collective process of deliberation, argumentation and persuasion.

Habermas and his followers in the study of international relations concede that genuine communicative action, or argumentative rationality, is likely to occur under a fairly restrictive set of three preconditions, which include:

(1) The existence of a 'common lifeworld' among the participants.
(2) 'Uncertainty of interests and/or a lack of knowledge about the situation' among the actors, which both encourages the search for truth and makes

actors uncertain about the distributive implications (that is, winners and losers) of any agreement.

(3) 'International institutions based on nonhierarchical relations enabling dense interactions in informal, network-like settings' (Risse 2000, pp. 19–20).

Increasingly, analysts of deliberative decision-making have attempted to articulate and operationalize clear scope conditions for deliberation, and most of these analysts include these three conditions of a common lifeworld, complexity and uncertainty, and ongoing discussions in an informal institutional setting.[3] By contrast, we find some disagreement in the literature about the significance of other factors, including openness, transparency and politicization: while some scholars argue that it is the public nature of deliberative democracy that requires actors to limit their appeals to naked self-interest,[4] others posit that individual participants are more likely to leave aside preconceptions and fixed interests, and join in the collective search for truth, in closed, in-camera settings where compromise will not be second-guessed by governmental leaders or public opinion 'back home'.[5]

Empirical studies of deliberation face significant methodological hurdles in distinguishing between arguing and bargaining, or between genuine communicative action and 'cheap talk'.[6] Despite these obstacles, the promise of deliberation has received extraordinary attention within the study of the European Union, whose dense institutional environment and networked forms of governance are seen as a particularly promising place to look for evidence of international deliberation. In addition to the Council of Ministers, EU scholars have identified the promise of deliberation in three EU-related forums: comitology committees,[7] the Constitutional Convention of 2003–2004,[8] and the 'new governance' mechanisms of the Open Method of Coordination.[9] These studies, moreover, have grown in methodological as well as theoretical sophistication over time, with scholars undertaking close ethnographic observation of negotiations and extensive structured interviews to get at the character of individual speech acts, change or continuity in individual preferences, and the conditions most conducive to successful deliberation.[10]

Against this background, it is not surprising that both scholars and practitioners began, from the late 1990s onwards, to hold out the promise of international deliberation on agricultural biotechnology, both within EU institutions and in other international forums such as the Codex Alimentarius Commission, insofar as the scientific and technical questions raised by GMOs might encourage a collective search for truth and for the best policy.[11] And indeed, some scholars have advocated ambitious proposals to establish a global 'epistemic community of knowledgeable state and non-state actors representing a wide range of affected interests, common perspectives and bargaining positions' which could 'develop convergent policies and

expectations', and which ultimately could lead to a stronger 'transnational legal regime' with 'more complete and precise rules' that would be 'more likely to promote state compliance' (Murphy 2001, p. 339).

It is the central claim of this chapter, however, that the issue of agricultural biotechnology turned out to be far less conducive to deliberation than was predicted by some deliberative theorists, not only in traditional international regimes (the subject of our larger book) but also within EU institutions themselves. Deliberation within such bodies, we find, has fallen victim to the widespread politicization of the GM issue, such that there has been severe tension between the mass politics of GM issues, often characterized by a 'logic of polarization and escalation' (Seifert 2006), and deliberation within the comitology and Council processes. Member state officials in such committees have faced intense public pressures and extraordinary public scrutiny, which have combined to create a climate inhospitable to compromise or to careful deliberation within the Council or comitology committees. Our point is not to argue that EU policy is dysfunctional or irrational – although many critics have argued precisely that – but simply that both legislative and regulatory decisions on GMOs have been taken in a politicized environment in which bargaining from fixed positions and formal voting have been common, and deliberation and consensus virtually absent.

Empirically, our focus here is on the long-term development of EU regulation of GM foods and crops, and so we do not undertake the close textual analysis of individual arguments and speech acts in individual decisions that scholars like Checkel (2005) and Lewis and Niemann in this volume have undertaken in their studies of Council decision-making. Instead, we rely on broader, publicly available sources and indicators of arguing and bargaining behaviour, supplemented by interviews with EU and member-state officials. Following both the literature on deliberation and the canonical Council literature, we expect that deliberative member governments would – at a minimum – strive for consensus, offer reasoned explanations for their positions, and avoid pressing for a vote in the Council. In the following analysis of Council and committee negotiations over the EU's regulatory framework as well as the approval of individual GMOs, however, we find a strikingly different pattern – one in which EU governments rarely reach consensus, regularly press for a vote even when hopelessly deadlocked, and offer no or only perfunctory arguments for their national positions.

The beginnings of EU biotechnology policy: protecting the Council's institutional interests

The 1957 Treaty of Rome establishing the European Community made no explicit mention of an EU policy for biotechnology, the latter remaining primarily a national responsibility within each of the Community's member

states. Nevertheless, the EU has developed a de facto policy on biotechnology over the past four decades, as the EU's policies on agriculture and the establishment of an internal market for biotech products have 'spilled over' into the regulation of the content and labelling of European food products.[12] While EU decision-making has become gradually more centralized over time, such that key decisions are taken by EU political bodies such as the Commission, Council of Ministers and European Parliament, these bodies work in an uneasy relationship with competent authorities in the member states, thereby requiring member state cooperation for effective implementation of EU policy.

We start our story in the late 1980s, when the Commission put forward a proposal for a 'deliberate release' Directive to regulate the planting and marketing of GM varieties. Noting the extraordinary diversity of existing national regulations across the various member states, ranging from a ban on deliberate releases in Denmark and Germany to an absence of any regulation in some member states, the Commission proposed an EU regulatory scheme that would provide for case-by-case assessment and authorization of the release of all GM varieties into the environment. More specifically, the Commission's proposal would require any individual wishing to release GMOs into the environment (for instance, for farming or marketing) to notify and provide a detailed risk assessment to the competent regulatory authority of the EU member state in which the release was proposed. The respective member state would then be charged with evaluating the application in line with the provisions of the Directive. If the member state rejected the proposal, the procedure would end, but if the member state accepted the proposal, the dossier would then be forwarded to the Commission and to the other member governments, which would have a limited period in which to object to the authorization. If no objections were put forward, the product would be authorized for release and/or placement on the market throughout the EU. By contrast, if one or more member governments or the Commission objected, the Commission would then undertake its own assessment and formulate a decision to approve or deny the application. The Commission's draft decision would be circulated to an advisory committee of member state representatives, of whose opinion the Commission would have to take 'utmost account'; the final decision, however, would remain with the Commission. In a final acknowledgement of member state prerogatives, nonetheless, the Commission proposed a 'safeguard procedure' whereby a member state could, if it had evidence of a serious risk to people or the environment from a previously approved GMO, 'provisionally restrict or prohibit the use or sale of that product on its territory'. Once again, however, the member state in question would have to inform the Commission of its actions and give reasons for its decision, and the Commission would retain the power to approve or reject the measures in question (Commission 1988).

The European Parliament – which has emerged as a consistent champion of strict regulation of biotechnology over the past two decades – criticized the Commission proposal as being too lax on a number of points, and suggested a number of amendments that would have substantially tightened regulatory restrictions on the approval of GMOs.

The Council of Ministers, operating as the Environmental Council,[13] followed the broad lines of the original Commission proposal, rejecting the Parliament's most far-reaching amendments. The Council did, however, protect its own prerogatives vis-à-vis the Commission, by modifying the procedure whereby the Commission could issue approvals for new GM varieties: whereas the original text provided for the Commission decision to be subject only to an advisory committee of member state representatives, the final text featured a more constraining 'regulatory committee', which could approve a draft Commission decision by a qualified majority vote. If the regulatory committee did not approve the decision, however, it was to be sent to the Council of Ministers, which could approve the Commission decision by qualified majority or reject it by a unanimous vote. If the Council failed to act within three months, the Directive provided that 'the proposed measures shall be adopted by the Commission' (Article 21). Finally – and significantly, in the light of later developments – the Council retained a slightly modified version of the Commission's safeguard clause, whereby a member state could, on the basis of new evidence about risks to human health or the environment, 'provisionally restrict or prohibit the use and/or sale of that product on its territory' (Article 16). The member state in question would be required to inform the Commission, which would approve or reject the measures in cooperation with the regulatory committee mentioned above.

The result in 1990 was Directive 90/220 on the Deliberate Release into the Environment of Genetically Modified Organisms, which governed for over a decade the approval, planting and marketing of GM foods and crops within the European Union.[14] Overall, during this early period, negotiations between the Commission, Council and EP about the basic regulatory structure attracted little public attention – largely because no GM food or crop had yet been proposed, approved or marketed in Europe – and the negotiations both within the Council and between the Council and other bodies were largely concerned with the respective roles and prerogatives of the member governments and the Commission in the EU's decentralized regulatory system. This pattern, however, was about to change.

Implementing EU policies: not deliberation, but politicization, deadlock and moratorium

The politics of GMO regulation in the European Union changed over the course of the mid-1990s, as GM foods moved from the laboratory to the

marketplace and as the Union experienced a series of food safety scandals, most notably the bovine spongiform encephalopathy (BSE) scandal that struck in 1996. In March of that year, the British government of Prime Minister John Major revealed a possible connection between Creutzfeldt-Jacob disease, a fatal disease for humans, and BSE, a disease spread among cattle through their consumption of contaminated feed, popularly known as 'mad cow disease'. Perhaps most importantly for our purposes, the BSE scandal raised the question of risk regulation 'to the level of high politics, and indeed of constitutional significance' (Chalmers 2003, pp. 534–8), generating extraordinary public awareness of food safety issues and widespread public distrust of regulators and scientific assessments.

It was in this socio-political context that genetically modified crops were first commercially introduced in the United States and Europe. In April 1996, within a month of the ban on British beef, the Commission approved the sale of a genetically modified soy product over the objections of some member states. In November 1996, the GM soy was imported from the United States to the EU, spurring widespread protest by Greenpeace and other groups. Public distrust of US intentions was magnified further when, the following month, the United States and Canada lodged complaints before the World Trade Organization challenging the EU's ban on hormone-treated beef.

The close succession of these events illustrates how the popular understanding of GM products in Europe became associated with consumer anxieties related to food safety crises, distrust of regulators and scientific assessments, disquiet over corporate control of agricultural production, ethical unease over genetic modification techniques, environmental concerns, and anger over the use by the United States of international trade rules to attempt to force 'unnatural' foods on Europeans. A widespread cross-sectoral movement organized to oppose GMOs in Europe, bringing together environmentalists, consumers and small farmers (Ansell et al. 2006) and raising the political profile of GM policy throughout the EU, although the movement had different characteristics in discrete national arenas (Seifert 2006).

In the midst of the fray, the Commission approved, in January 1997, the sale of another GM food crop (a Bt corn variety owned by Novartis) over the objection or abstention of all but one of the 15 member governments. The Commission was able to do this on account of the approval procedure set forth in Directive 90/220. Under the Directive, a member state (in this case France) could approve a GM variety and forward its decision to the Commission and the other member states so that the variety could be marketed throughout the EU. Since some member states objected to this approval, the Commission reviewed the dossier, and issued a favourable opinion. The Commission then submitted a draft authorization to the regulatory committee consisting of a representative from each member state. Eight member state representatives on the committee abstained or voted against the approval, so that the Commission forwarded its proposal to the Council (operating

as the Environment Council). However, the Council could only amend the Commission's proposal by a unanimous vote, and France announced that it supported the Commission's authorization (Bradley 1998, p. 212). As a result, even though 14 member states either opposed or abstained from supporting the Commission at this point, the approval went forward. Soon even France opposed commercialization of this GM variety, following shifts in French domestic politics.[15]

The member states did not simply accept the Commission's decision as the last word. They actively undermined its implementation, invoking the safeguard clause of Directive 90/220 and calling for a moratorium on approvals, including those solely for consumption as food or animal feed, regardless of scientific studies of the characteristics of a specific variety. Austria was the first to act under the safeguard clause, promptly prohibiting the cultivation and marketing of the GM maize variety on 14 February 1997. Luxembourg followed suit on 17 March. Over time, an increased number of member states deployed safeguard bans, undermining the central purpose of Directive 90/220 to create a single market for GM crops under a harmonized regulatory system. By January 2004, nine member state safeguards, applied by Austria, France, Greece, Germany, Luxembourg and the United Kingdom, were in effect for various GM varieties (Commission 2004a).

In response to the popular backlash against GMOs successfully stirred by non-governmental groups and captured in national media, a group of member states (Denmark, France, Greece, Italy and Luxembourg) pronounced, in June 1999, the need to impose a moratorium on all approvals of GM products, pending the adoption of a new and stricter regulatory system. In an annex to the press release of the Environment Council meeting in Luxembourg on 24–25 June 1999, the Danish, French, Greek, Italian and Luxembourg delegations declared:

> The Governments of the following Member States, in exercising the powers vested in them regarding the growing and placing on the market of genetically modified organisms (GMOs) . . . point to the importance of the Commission submitting without delay full draft rules ensuring labelling and traceability of GMOs and GMO-derived products and state that, pending the adoption of such rules, in accordance with preventive and precautionary principles, they will take steps to have any new authorizations for growing and placing on the market suspended.
>
> (Council of the European Union 1999)

Subsequently, in December 2000, the Council adopted a resolution on the 'precautionary principle', maintaining that risk assessment may not always be possible on account of insufficient data, and that risk management decisions should consider not only scientific data but also the 'public acceptability' of the proposed products (Council of the European Union 2000b).

For the next six years, armed with a doctrinal justification for precaution and a substantial minority within the Council, this group of member governments would block the authorization of any new GM variety in the Council. In short, there would be no new approvals regardless of scientific evaluations of any specific variety, whatever its use.

Reforming the legislative framework

By the late 1990s, the EU's regulatory system – strict in terms of law and paralysed in practice by a moratorium within the Council – came under significant external pressure, for two reasons. First, the EU's trading partners, led by the United States, began to press the Union to accept a growing number of GM foods and crops. Second, the EU standards were, at least in theory, subject to the discipline of WTO law under the Sanitary and Phytosanitary (SPS) Agreement. The threat of WTO legal action put the Commission in even more of a defensive mode. Caught between a growing number of member state governments intent on ever-stricter regulations and US challenges to the moratorium, the Commission pursued a dual-track strategy, proposing a series of new EU regulations to satisfy member state demands while calling repeatedly for a resumption of GM approvals by the EU.

To this end, in January 2000 the Commission issued a White Paper on Food Safety in which it proposed that the EU overhaul its food safety system and establish a new European Food Safety Authority (EFSA), to assist with risk regulation. The White Paper set forth the EU's general approach to risk regulation in the food sector, dividing 'risk assessment' from 'risk management'. Specialized scientific committees within the new food authority would conduct scientific risk assessments of new GM varieties. Risk management, by contrast, would remain under the control of the EU's political bodies (Commission 2006a).

Over the next several years, the Commission put forward proposals for a series of new directives and regulations that would supplement and eventually replace Directive 90/220. These new rules would impose stricter criteria for the deliberate release and marketing of GM foods and crops, extend the coverage of EU regulation to animal feed as well as food for human consumption, establish a labelling and traceability system for GM foods and crops, and set up thresholds for the 'adventitious presence' of GMOs in conventional foods. In each case, the European Parliament, which enjoyed the power of co-decision for the proposed legislation, pressed for the establishment of ever-stricter standards. Within the Council, EU member states were mixed in their views, with some appearing to do whatever possible to ensure that no GM crops would be grown in their territories (such as Austria and Luxembourg), and others being torn between the demands of GM opponents and those of the biotech sector (such as Germany and the United Kingdom).

The first piece of amending legislation, Directive 2001/18, was finally adopted in March 2001 by co-decision between the Council and the European Parliament.[16] Once more, the need to assuage those member states that desired stringent regulation of GMOs had led to a ratcheting up of EU regulatory requirements for GMOs so as to facilitate the free circulation of agricultural and food products in a single EU market (Young 2003). More specifically, under the Directive's environmental release requirements, member state and applicant obligations had been enhanced to include a more extensive environmental risk assessment, further information concerning the conditions of the release, and monitoring and remedial plans.

Although touted by the EP's rapporteur David Bowe as 'the toughest laws on GMOs in the whole world',[17] the adoption of Directive 2001/18 did not satisfy a core of member states (in particular Austria, Denmark, France, Greece, Italy and Luxembourg), which 'reaffirm[ed] their intention ... of ensuring that the new authorizations for cultivating and marketing GMOs are suspended pending the adoption' of new provisions on traceability and labelling, and adding a new condition, provisions on environmental liability. [18] Seeking to assuage these states' concerns, the Commission worked toward the passage of two additional EU regulations regarding the labelling and traceability of GM foods and their use in food and feed, respectively. Proposed by the Commission in 2001, these new regulations were finally adopted in September 2003 and went into effect in April 2004, once again after protracted bargaining among the Commission, the Council and the European Parliament. Regulation 1829/2003, regarding the authorization of GMOs in food and feed, replaced the provisions of Directive 2001/18 governing the authorization for marketing of GMOs as or in products. Regulation 1830/2003, in turn, created new rules on the traceability of GM products throughout the production and distribution process.

Regulation 1829/2003 created a more centralized authorization procedure to regulate the placing of GM food and feed on the EU market. Accordingly, the member state authority that receives an application file must now immediately provide the file to the European Food Safety Authority, which conducts a scientific risk assessment for submission to the Commission, the member states, the applicant and the general public. The Commission is then to issue a draft decision, which may vary from EFSA's opinion. The Commission's draft decision is again submitted to the regulatory committee consisting of member state representatives. However, now the member states can overturn a Commission decision by a qualified majority vote, as opposed to a unanimous one under the earlier Directive. In addition to this revised approval process, the new regulation retains the earlier Directive's provisions for unilateral member state safeguard bans: the Commission had initially proposed eliminating these provisions, but the Parliament and Council succeeded in including this clause, once again reaching consensus to defend member state prerogatives vis-à-vis the Commission.

The end of the moratorium – but not of controversy

With the 'completion' of the EU's legislative framework for agricultural biotechnology, the Commission at long last sought to enforce existing legislation, resume approvals of new GM varieties after the six-year moratorium, and bring an end to the national bans on varieties that had been accepted by the EFSA as safe. Yet despite Commission efforts, the pattern of formal voting and deadlock within both the regulatory committee and the full Council has continued, reflecting ongoing politicization. The 'completion' of the EU's regulatory structure, whatever its other merits, has not changed the contentious nature of Council bargaining on this issue.

In the middle of the WTO legal case brought by the US, the Commission resumed approvals of new GM varieties in May 2004 after a six-year lapse. By that time, the Commission had received 22 notifications for approvals of genetically modified varieties – 11 involving import processing only, and 11 for cultivation, none of which had been submitted for approval by the member states (Commission 2004a). In November 2003, the Commission proposed to approve the importation of a variety of GM maize (Bt-11 sweet corn), for which EFSA had delivered a favourable opinion. It was the first time that the Commission had initiated a GM approval since 1998. The regulatory committee, however, once again refused to approve the Commission's proposal so that the matter was referred to the Council, which was given until the end of April to act.[19] On 26 April 2004, a divided Agriculture Council failed to reach agreement on the Commission's proposal.[20] In the absence of a decision by the Council, the Commission was free to adopt the proposal – the first new approval of a GM variety in nearly six years.

Subsequent approval procedures showed repeated deadlock, resulting in Commission approvals without a qualified majority of member states in support or in opposition. One month following the approval of the Bt-11 sweet corn, a similar pattern emerged when the Environment Council of a newly enlarged EU met to consider the Commission's recommendation to approve another Monsanto variety, the NK603 genetically modified corn. The Council was again divided, with nine member states (including four of the new members) reportedly voting against, nine in favour, and seven abstaining (Spiteri 2004). Although the Commission approved NK603 in July 2004 in the absence of Council agreement, this case once more demonstrated the persistent divisions among the member governments on new approvals (Bridges BioRes 2004). This pattern would be repeated again and again. The Commission, after consulting the European Food Safety Authority, proposed a series of draft decisions authorizing the placing on the market of various new GM crops. In each case, from May 2004 through May 2007, the relevant comitology committees deadlocked (that is, failed to reach a qualified majority for or against approval), resulting in the submission of the draft decision to the Council of Ministers.

This series of deadlocks, and the resulting submissions to the Council, are far from being typical of comitology committees. In its report on the workings of comitology committees for 2005, for example, the Commission noted that, out of 2637 draft decisions submitted to committees that year, only 11 (less than .5 per cent) were referred to the Council for a decision – and six of these 11 were draft decisions authorizing the placing on the market of GM foods and crops.[21] The pattern of deadlock, moreover, persisted in the Council of Ministers (meeting on several occasions in different environmental and agriculture formations), which failed repeatedly to reach qualified majorities for or against the approval of one new GM variety after another, leaving the Commission in each case to authorize the new variety unilaterally and face choruses of condemnation from member governments, members of the European Parliament, and environmental and consumer groups.[22]

In May 2005, the new Barroso Commission held an 'orientation debate' on GMOs, examining past Commission policy and laying down guidelines for future Commission action aimed at the implementation of the EU's legal framework for GM foods and crops. In preparation for this meeting, an interservice group of Commissioners prepared an internal communication to the College of Commissioners, which is remarkable for the candour with which it describes the state of affairs, and is worth citing at length. The communication (Commission 2005a) begins by noting that the completion of the EU's strict regulatory framework had not succeeded in overcoming resistance to GMOs among the public or among the representatives of the member states. With regard to the latter, the Commissioners noted the difficulty of resuming approvals and of overturning the member state bans in the face of member state opposition:

> At the current time, only a few Member States tend to vote consistently in favour while several Member States tend to vote consistently against and many abstain. Other Member States' position varies; some of them consistently follow the advice of their own scientific bodies which sometimes diverge from the European Food Safety Authority (EFSA) assessments.
>
> Against this background, it will be difficult if not impossible to obtain a qualified majority either in favour or against the approval of the pending decisions in either the Regulatory Committee or the Council.
>
> (Commission 2005a, p. 3)

In light of this situation, the communication laid out a plan of specific actions, including the final approval of two pending GM varieties of canola and corn, and the continued submission to the Regulatory Committee and the Council of draft approvals for all new GM varieties 'if there are no risks to human health and to the environment based on scientific information' (Commission 2005a, p. 7).

Perhaps most strikingly, the Commission commented on the role of the member governments in the Regulatory Committee and the Council and their failure to provide clear rationales for their positions. It set down an explicit challenge to the member governments:

> Both the Commission and the Member States have a role to play in implementing this legislation. *However, so far, some Member States have tended to avoid taking a position in the Regulatory Committee and in the Council. Member States should be called upon to participate effectively in the process with a view to reaching clear positions.*
>
> In the current legal context, when submitting proposals following an inconclusive opinion of the Regulatory Committee, ***the concerned Councils should be requested to hold a thorough debate*** *in order to avoid adoption by abstention and to openly discuss the reasons for their reluctance to support the authorization of specific products* which the Commission considers to be in compliance with the EU regulatory framework.
>
> (Commission 2005a, p. 7, bold in original, italics added for emphasis)

In this remarkable passage, the Commissioners, in effect, call upon the Council to engage in the type of deliberation that had been called for by scholars such as Habermas and Joerges, but had been strikingly absent within the Council or its committees in this issue area. The Commission meeting itself revealed some differences among the various Commissioners in their attitudes toward GM foods and crops, and the full Commission reportedly decided to delete in full the previously cited paragraph calling on the Council to have a thorough debate (European Report 2005b). This action itself suggests a lack of faith in such a deliberative process in the politically polarized EU and international context.

Interviewees confirm the Commission's frustration with the lack of reasoned deliberation in the regulatory committee and Council over GMO approvals. As one member state representative described to us the comitology process for GMO approvals,

> [t]he Commission presents a text for a variety's approval and sends it to the member states within the time limit provided for [in] the Regulation (generally from 15–30 days in advance). The member state representatives come to the meeting and there is a first *tour de table* in which remarks are usually very general because if you clearly say you are for or against authorization, then the Commission won't listen to your proposals for changes in the text, such as the addition of further conditions for an approved variety. Then a representative will push further and countries start declaring their positions. The coffee break becomes an important time when countries discuss their positions, including regarding textual revisions. Generally some countries have engaged positions. Other countries are less clear. Those countries that are less clear can have an advantage

> because the Commission is more likely to take account of their textual amendments in order to obtain their vote. Germany is an example of a country that is excellent in creating suspense. For Austria, however, the Commission knows it will always vote no so the Commission has no reason to accept Austria's amendments to its draft decision. Having a clear position weakens your position vis-à-vis the Commission.[23]

Once again, we see very little evidence here, or in other sources, of deliberative decision-making when it comes to approval of new GM varieties. While some member state votes have differed according to the GM variety under consideration (so that, for example, a country may vote 'yes' to approve the sale of a GM cut flower but 'no' for the approval of a corn variety), most member governments appear to vote consistently for or against approval of any GMOs (or, in some cases, consistently abstain), while national representatives display little flexibility to change their national position on the basis of information presented in comitology meetings or in the Council.

The only issue over which member states continue to reach consensus in this area is that of protecting member state sovereignty. In its 2005 release, the Commission indicated that it would pursue a legal challenge to the eight national bans that had persisted under the safeguard clause. The European Food Safety Authority had concluded that none of these bans was justified in scientific terms, and in November 2004 the Commission proposed to the Regulatory Committee that these bans be overturned. The committee again deadlocked in March 2005, returning the question to the Commission. The Commission resolved to forward the eight draft decisions to the Council of Ministers, but suffered a major setback at the Environment Council of 22 June 2005. On this issue, the Council was able to summon lopsided majorities of 22 member states voting to *reject* the Commission proposals – the first qualified majority that the Council had summoned for or against *any* Commission proposal on GMOs – and thus to uphold the continuation of the member state bans.[24] Luxembourg Environment Minister Lucien Lux, who chaired the meeting during the Luxembourg Presidency of the Council, expressed his 'great satisfaction' at the outcome, noting pointedly that 'We were able to give a clear message to the European Commission'.[25] In sum, member states agreed to protect their unilateral powers so that they would not be pressed to give reasons for the safeguards in a legal proceeding before the European Court of Justice, as provided for in the regulation.

In November 2006, the WTO Dispute Settlement Body adopted the panel ruling in the case brought against the EU by the US, Canada and Argentina. The panel found in favour of the complainants, holding that the EU engaged in 'undue delay' in its approval process on account of the de facto moratorium. Moreover, the panel ruled that all nine of the member state safeguard bans violated the EU's substantive obligations under the SPS Agreement because they were 'not based on a risk assessment'.[26] The WTO

panel, in focusing on the EU's delay in applying its procedures, implicitly criticized the Council for failing to deliberate and take a reasoned decision on a case-by-case basis. The panel can also be viewed as implicitly criticizing the Commission for failing to challenge the member state safeguards before the Court of Justice under EU law, as it repeatedly referred to EFSA's opinions according to which the safeguards were not scientifically justified.

The impact of the WTO panel decision on the comitology committees and the Council so far appears limited. Throughout 2006, and into 2007, the Commission continued to put forward draft decisions approving new GM varieties, including three GM canola varieties, a carnation featuring genetically enhanced colours, and a potato modified to produce a high starch content for use in papermaking. In each case, the relevant comitology committees deadlocked, unable to reach qualified majorities for or against the proposal, and meetings of the Environment Council in October 2006 and February 2007 similarly failed to reach a decision on any of these varieties (Council of the European Union 2006a, 2007).

Strikingly, the *only* successful qualified majority votes in the Council in recent years have concerned the Commission's challenge to national bans on GM varieties, where large majorities continued to back the right of member states to retain national bans in defiance of EFSA's scientific opinion. Following its failed attack on the member state safeguard bans in June of 2005, the Commission put forward a more narrowly targeted set of two proposals to the December 2006 Environment Council, seeking to overturn Austria's ban on two varieties of GM corn (Commission 2006c, p. 2). Once again, a lopsided majority of 21 member states aligned with Austria and voted against the Commission's proposal (Council of the European Union 2006b, p. 20). In early 2007, the Commission brought yet another challenge, this time to Hungary's ban on a genetically modified corn which EFSA once again ruled to be as safe as conventional maize. The Hungarian government, for its part, actively lobbied its fellow governments, including the more GM-friendly new members Bulgaria and Romania, for support in retaining the ban.[27] Here again, a large majority rallied around the right of member governments to retain national bans on specific GM varieties and not be challenged before the Court of Justice, with only Finland, the UK, the Netherlands and Sweden supporting the Commission's proposal, and Romania abstaining (Council of the European Union 2007, pp. 23–6). Again we see no evidence of consensual decision-making other than a logrolling defence of national sovereignty vis-à-vis the Commission.

Conclusions

In some respects, the story of EU agricultural biotechnology law and politics presented in this chapter corresponds to standard accounts of Council

decision-making, including the impossibility of isolating intra-Council bargaining from inter-institutional bargaining with the Commission and the Parliament, as well as the tendency of the Council to protect its own (and the member states' individual) prerogatives in such inter-institutional bargains. However, despite these similarities, we highlight three striking features of the agricultural biotechnology case as it relates to Council decision-making and to the role of the Council in the EU's institutional balance.

First, the issue of agricultural biotechnology has not been conducive to the sort of deliberative decision-making in the comitology process predicted and advocated by Joerges and others. Both in regulatory committees, and in the Council itself, we find neither the deliberative search for better policy emphasized by deliberative theorists, nor even the consensual culture of compromise described in the canonical Council literature (for instance Hayes-Renshaw and Wallace 2006). Instead, across both comitology committees and the Council, we find a record of persistent conflict, bargaining from fixed positions, formal votes on nearly every proposed decision, substantial numbers of abstentions (representing a refusal to take a position), and ultimate deadlock. We have suggested in this chapter that these features are largely a result of the intense politicization of the GM issue in public opinion, which has severely limited the ability of member state representatives to engage in the sort of deliberative search for better policy depicted in the Habermasian literature. In this sense, our analysis lends further support to the view that transparency and politicization *decrease* the prospect for deliberation in transnational bodies, which appears to function most effectively in closed, in-camera settings. If confirmed by other studies, this finding suggests a stark normative trade-off between transparency and openness, on the one hand, and deliberative decision-making on the other.

A second, related, point concerns the causal role of complexity and uncertainty in fostering deliberative decision-making. Habermasian theorists of deliberation, we have seen, often posit complexity and uncertainty as providing favourable conditions for deliberation, on the plausible reasoning that uncertainty places a premium on truth-seeking while obscuring distributional conflicts associated with hard bargaining. Our findings, however, suggest that the positive role of uncertainty can be limited, and may in some instances cut against deliberation. The role of uncertainty can be limited, we argue, because despite the scientific complexity of agricultural biotechnology as an issue, the various actors in the debate – including biotech companies, farmers, and the member governments that represent them – appear quite able to articulate their own interests vis-à-vis GM foods and crops, and to fight for their preferred positions in distributive bargaining. Just as importantly, we find that uncertainty can cut both ways in areas of risk regulation such as agricultural biotechnology. Faced with environmental and food safety risks that cannot be measured with absolute certainty, many European consumers, member governments and EU institutions themselves have opted in favour

of a rather extreme interpretation of the precautionary principle, in which uncertainty yields not a collective search for truth but a rigid and uncompromising rejection of GMOs, with little or no regard for the causal arguments (such as scientific risk assessments) in their favour.

Third and finally, the issue area of agricultural biotechnology appears to blur the lines between the Council and comitology committees on the one hand, and between legislation and implementation on the other. In the textbook account, the Council acts first and foremost as a legislator, with much of the decision-making taking place in COREPER and (to a lesser extent) in the Council; secondarily, the Council also plays an executive role, but in most instances this role is in practice delegated to comitology committees, which supervise the Commission in the implementation of legislation and play a primarily technocratic role, with voting a rarity. In the area of agricultural biotechnology, by contrast, comitology committees have engaged in frequent voting, and just as importantly have repeatedly implicated the Council by failing to muster a qualified majority either for or against the Commission's proposed decisions. Within the Council, moreover, the EU's framework GMO regulation requires that any Council vote be held within a narrow time frame following the Commission's draft proposal: in its executive mode, in other words, the Council is not afforded the luxury of waiting for an eventual consensus to emerge, but is forced to engage in voting with, or in most cases without, a minimum winning coalition if it wishes to have any say in the final decision. We know of no other area in which the full Council is so regularly drawn into decisions about the regulation of individual products, which suggests that the patterns of behaviour we see here are at least atypical of Council decision-making overall. Nevertheless, our findings indicate that the image of the Council as a consensual and deliberative body advanced by some scholars should be confined to its legislative role, while its executive role (especially where issues are referred to it because of a breakdown of the comitology process) appears to demand a more rapid bargaining style in which minimum winning coalitions, or indeed deadlocks among the member states, are more common.

Notes

This chapter draws on research we have done for a book-length project on the transatlantic and global disputes over the regulation of GMOs (Pollack and Shaffer 2009, forthcoming). We are grateful to the editors, to two anonymous reviewers, and to Christian Joerges and Emilie Hafner-Burton for their comments on earlier versions of the manuscript. We also thank Timo Weishaupt and Erin Chalmers for their excellent research assistance.

1. See Habermas (1985, 1998). For applications of Habermasian thinking to EU politics, see for instance Risse (2000), Checkel (2001b), Joerges (2001a), Jacobsson and

Vifell (2003), Magnette (2004), Zeitlin and Pochet (2005), Naurin (2007b) and the chapters by Lewis (Chapter 9) and Niemann (Chapter 7) in this volume.

2. For good discussions of the logic of appropriateness in EU politics, see for instance (Risse 2000, pp. 5–7) and Checkel (2005, pp. 810–12).
3. See for instance the excellent discussion of the debate about the effects of transparency and deliberation in Naurin (2007b), as well as the sophisticated discussions on scope conditions for deliberation in the Council in the Lewis and Niemann chapters in this volume.
4. See for instance Risse (2000, pp. 21–3), Johnstone (2003).
5. See for instance Zürn (2000), Checkel (2001b), Stasavage (2004), Steiner et al. (2004), Naurin (2007b), and the chapters by Lewis and Niemann, this volume.
6. See for instance Checkel (2001b), Magnette (2004, p. 208), Niemann and Lewis, this volume.
7. Joerges and Neyer (1997a). For a sceptical analysis, see Pollack (2003, pp. 114–45).
8. For a sophisticated analysis, see Magnette (2004).
9. See for instance the essays in Zeitlin and Pochet (2005). For sceptical views emphasizing the bargaining aspects of the OMC, see Jacobsson and Vifell (2003), Borrás and Jacobsson (2004), and Rhodes and Citi (2007).
10. See for instance the chapters by Aus (Chapter 6), Lewis and Niemann in this volume.
11. For the purposes of this chapter, we limit our attention to bargaining and deliberation within the EU; for an empirical analysis of deliberation in wider international forums, see Pollack and Shaffer (2009 forthcoming, chapters 3 and 4).
12. On the early history of GMO regulation in the EU, see for instance, Cantley (1995), Patterson (2000), Bernauer (2003) and Pollack and Shaffer (2005, 2009 forthcoming).
13. It has become commonplace to speculate that the EU's strict rules on GMOs, and the Council's unwillingness to approve new varieties by a qualified majority, can be attributed at least in part to the leading role of environment ministers rather than, say, ministers for trade or for the internal market. We are agnostic on this point, however, noting below that ministers in *any* Council configuration would be under intense pressure from national capitals and would likely have little room for independent decision-making.
14. Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms, *Official Journal of the European Communities* L117 of 08/05/1990, pp. 15–27. In 1997, the Deliberate Release Directive was supplemented by Regulation 258/97, the so-called Novel Foods Regulation, which governed foods derived from, but no longer containing, GMOs. The decision-making rules of the Novel Foods Regulation were similar to those of the Deliberate Release Directive, although the former included a simplified approval procedure (no longer in use) for GM foods that were 'substantially equivalent' to their conventional counterparts. Regulation (EC) No. 258/97 of the European Parliament and of the Council of 27 January 1997 Concerning Novel Foods and Novel Food Ingredients, *Official Journal*, L 043, 14/02/1997, pp. 1–6.
15. For an excellent discussion of the U-turn in the French position on GMOs in the late 1990s, see Sato (2006).
16. Directive 2001/18/EC of the European Parliament and of the Council, *Official Journal of the European Communities*, L 106 17 April 2001, pp. 1–38.
17. Quoted in Evans-Pritchard (2001).
18. Quoted in Mann (2001, p. 8).

19. Within the regulatory committee, Austria, Denmark, France, Greece and Luxembourg voted against the proposal, while Germany, Belgium, and Italy abstained (see Bridges BioRes 2003).
20. In the Council, six states (Ireland, Italy, the Netherlands, Finland, Sweden and the UK) voted in favour of the Commission proposal, six others (Austria, Denmark, France, Greece, Luxembourg and Portugal) voted against, and three states (Belgium, Germany and Spain) abstained (Commission 2004b, p. 4).
21. See Commission (2006a, p. 6), which states that '[t]his high concentration of referrals in the policy field of genetically modified organisms (GMOs) can be explained by the divided views of the Member States on the standards to apply to the scientific evaluation of new products'. For details on the relevant votes, see Commission (2006b).
22. For up-to-date lists of new GM products authorized under various EU legislative instruments, see the following: European Commission, 'GMO Products Approved under Directive 90/220/EEC as of March 2001', http://ec.europa.eu/environment/biotechnology/authorised_prod_1. htm; European Commission, 'GMO Products Authorised under Directive 2001/18/EC as of 31 January 2006', http://ec.europa.eu/environment/biotechnology/authorised_prod_2.htm; European Commission, 'GMO Authorized for Feed Use in the European Union in Accordance with Directives 90/220/EEC and 2001/18/EC', http://ec.europa.eu/food/food/biotechnology/authorisation/2001-18-ec_authorised_en.pdf; European Commission, 'Genetically Modified (GM) Foods Authorised in the European Union under the Novel Food Regulation (EC) 258/97', http://ec.europa.eu/food/food/biotechnology/authorisation/258-97-ec_authorised_en.pdf; European Commission, 'EUROPA > European Commission > DG Health and Consumer Protection > Overview > Food and Feed Safety', listing newly authorized products under Regulation 1829/2003, http://ec.europa.eu/food/dyna/gm_register/index, all accessed on 4 February 2007.
23. Notes from Shaffer interview with a member-state representative, 18 June 2007.
24. According to official press releases and newspaper accounts, the British delegation voted in favour of the Commission's eight proposals to overturn the member state bans, with Sweden and Finland abstaining and with the Czech Republic and Portugal each voting to overturn a single ban. (See Council of the European Union 2005; Commission 2005b; and European Report 2005b.)
25. Quoted in Mahoney (2005).
26. For an extensive discussion of the WTO panel report and its implications for the EU, see Pollack and Shaffer (2009 forthcoming, Chapter 6).
27. See for instance Eastbusiness.org (2007). EU officials widely expected that the Council would support Hungary, as it had supported national bans twice before in the previous two votes. 'It could be that [ministers] show solidarity [on the Hungarian GMO ban], the same way that they did with Austria', one Commission official was quoted as saying. 'It's a very sensitive issue' (quoted in Smith 2007).

9
Strategic Bargaining, Norms and Deliberation

Jeffrey Lewis

Introduction: What kind of institution?

After 50 years of study, we still lack agreed terminology to talk about the Council. It is easier to describe what it is not: it is not a typical intergovernmental bargaining table, it is not a *Gemeinschaft* based on a European identity. It is neither the EU's 'executive branch' nor the 'legislative branch' though over time it has become something of a federal-like hybrid of the two (Lewis 2005b). Ernst Haas's pithy description of the Council as 'a novel community-type organ' (utterly unlike what he was observing in other international institutional settings such as the Council of Europe) was insightful and prescient (Haas 1958, p. 491; compare Haas 1960). New research on Council voting patterns confirms what was long suspected: 'the patterns that we observe do not correspond to typical roll call behaviour either in legislative bodies (national parliaments, regional or local councils and so forth) or in international organizations such as the United Nations' (Hayes-Renshaw et al. 2006, p. 183). This chapter examines the implications of the Council's hybrid institutional design and operation, with a focus on how normative expectations of the range of acceptable behaviour and discursive power are used in Council negotiations alongside the 'normal' currencies of formal, material power.

The chapter begins with a basic observation: power in the Council transacts in several currencies. Some are familiar to students of 'power politics' and can be seen in a range of material and formal dimensions: voting weights, decision rules, safeguards based on preference intensity (that is, where 'very important interests' are at stake, or near-blocking minorities might exist) and so on. Others are familiar to sociological and constructivist approaches that stress informal rules and discursive resources in a given institutional context with its own organizational culture, norms and cognitive maps. The currencies of power are here less tangible but no less real, and include a common discourse, thick trust, persuasion, appeals to fairness or empathy, and the normative strength of an emerging consensus to delegitimize outlier positions. One of the central themes of this volume is to develop more systematic

evidence of which is more influential in the Council: 'power politics' or 'good arguments'. But an either/or answer is easily disconfirmed when one looks at the picture of actual negotiating behaviour and the reasons national officials give for particular decision-making outcomes. Both power politics and good arguments are in tow when the Council transacts, and this contributes to the Council's hybrid institutional footprint.

The aim of this chapter, utilizing an original dataset of 118 semi-structured interviews with Brussels-based Council actors over an eight year time period (1996–2003), is to offer a more balanced picture of Council negotiations which can account for a fuller range of instrumental *and* non-instrumental behaviour. Can a qualitative dataset of semi-structured interviews with participants generate a more finely-grained portrait of actor motivations and behaviour in the EU decision-making process? Simply put, this chapter is intended as a 'plausibility probe' to test whether there is value-added from expanding the range of purported behaviour and linking it to the motivations and meaning which Council participants ascribe to their actions. Drawing on Thomas Risse's helpful typology of the three logics of action (Risse 2000), this chapter's main focus is on establishing a more clear-cut set of operational indicators that can aid empirical testing to determine the relative salience of strategic, norm-governed, and deliberative-based behaviour by EU Council actors. The argument proceeds as follows. The next section makes a conceptual case on the need for Council research to account for the institution's many 'faces'. This is followed by a section to develop empirical tests for recognizing different logics of action when we see them. The tests aspire to make non-overlapping predictions, but are more modestly presented in the spirit of a plausibility probe rather than authoritative 'smoking gun' tests for each mode of action. Building on this, we turn to the puzzle of why sovereign, rational egoists would create such an institutional setting, relying on recent insights from rational choice institutionalism and deliberation theorists. A final concluding section summarizes the main findings and examines broader implications for research on the Council.

Conceptualizing the Council's 'faces' and accounting for different logics of action

The Council is a composite institution with multiple faces. The national actors who operate in this institutional environment are sometimes compared to the mythological character Janus, forced to face in two directions simultaneously – in this context balancing the interests and obligations of the national with that of the community.[1] Empirically, researchers have found multiple images of Council power and interest articulation. Helen Wallace (2002), for example, sketches five distinct 'images' – from 'club' to 'venue for competition' – to capture the Council's 'chameleon-like' properties. The implications are far-reaching; in her words, as an institution, the

Council has 'differentiated roles and properties, which also give rise to different behaviours' (Wallace 2002, p. 327). Supporting this, recent research has emphasized how Council actors practice a 'double hatting' role and identity configuration (Laffan 2004; Lewis 2005a). 'Double hatting', as Brigid Laffan (2004, p. 85) explains, involves 'acting as representatives of a member government or constituency while at the same time having a responsibility to the Union as a whole'. At the micro-foundational level, 'double hatting' softens the cognitive boundaries of the 'national' and 'supranational'. What is considered the self includes a certain conception of being a part of a collective decision-making process. As Laffan (2004) nicely captures in her study of EU identity-building, many of the roles and positions in the Council, by definition, require a 'double hatting' to work.[2]

'Double hatting' creates institutional roles within the Council where national actors develop into stakeholders with shared responsibility over the Council's collective output. National negotiators, particularly those in issue-intensive, iterative settings such as COREPER (with its deep institutional memory and long shadow of the future) develop 'process' and 'relationship' interests which are intrinsic to making decisions collectively and maintaining the friendly ear of colleagues.[3] Some permanent representatives claim to have a double set of instructions – the specific instruction for the issue at hand and a permanent, global instruction to keep the work of the Council moving forward.[4] One EU ambassador even claimed, 'If you have to take it to the Council [that is, the ministers] there is a sense that we have failed.'[5] In this context, national identity becomes reconfigured in a 'double hatting' way based on internalized group-community standards. Minimally, 'double hatting' means the Council's institutional environment contains norms and rules geared towards consensus-based collective decision-making, with limits on instrumentalism. 'Double hatting' further implies that to succeed in the Council's institutional environment – to get what you want and to exercise influence – you must follow the club's rules of the game (neo-functionalists long ago noticed this as a distinctive Council 'procedural code') that contain a range of expectations about what is considered appropriate (explaining arguments, pleas for special consideration) and inappropriate (pushing for a vote).

However, 'double hatting' does not imply that national interest calculation fades away. 'Double hatting' can provide cover for calculative, egoistic reasoning. Some member state delegations, such as Spain, have earned a reputation for making such rhetorical appeals. Participants note when Spain wishes to discuss future levels of structural funds, they often frame interventions with statements about 'solidarity'.[6] But participants claim to be able to detect when colleagues are using discourse and appeals to the group strategically. As one deputy permanent representative noted:

> There was one colleague who, when there was an issue where someone was in a difficult position, he would always offer help. He would use words

> like 'solidarity' and 'my colleague who has a problem and we should help him...' This was only done to help himself later, it was used only for tactical purposes. This was an extreme, but one which we could all detect as slightly disingenuous.[7]

When the language of 'Europe' is pushed too far in the name of national interests, this can result in a range of group opprobrium from laughter to anger and bargaining breakdowns. The key point to take from this brief discussion is that it is exceedingly difficult *cleanly* to separate instrumental motivations from non-instrumental ones when studying the Council. But from a baseline argument that 'power politics' and instrumentalism do not tell the full story, careful empirical process tracing can allow us to fill in the where, why, and to what degree a non-instrumental logic adheres in different Council settings.[8]

Going one step further, this chapter follows Thomas Risse's (2000) helpful distinction between three modes/logics of social action (see also Chapter 8 above by Pollack and Schaffer):

(1) Strategic behaviour (logic of consequences)
(2) Norm-guided behaviour (logic of appropriateness)
(3) Argumentative or discursive behaviour (logic of arguing)

In this chapter, I focus on Risse's threefold distinction with three goals in mind. First, Risse's distinction can help us gain traction on how, when and why Council actors depart from a classic intergovernmental script (think of this as a 'diplomacy 101' null hypothesis). To do this, we need to establish a baseline of how actors would behave if acting in a strategic mode, a subject addressed in the following section. Second, I focus on Risse's insight that many international relations scholars conflate the differences between the 'logic of arguing' and the 'logic of appropriateness', and follow his conceptualization that arguing helps determine which norms and appropriateness standards apply in different situations (ibid., pp. 6–7).[9] The Council as a complex, hybrid institutional case can help us tease out more clearly ways in which the arguing and appropriateness logics relate. It is on this part of Risse's argument that I focus in this chapter. As Risse puts it, when actors deliberate, 'they try to figure out in a collective communicative process' whether and how norms of appropriateness can be justified (ibid., p. 7). He goes on to describe the logic of arguing as the search for 'communicative consensus', a phrase which nicely fits the Council's culture and is supported by the empirical record of consensus-based outcomes.[10] Third, following this scheme, we can specify with greater precision the institutional conditions under which a deliberative mode of exchange can prevail. Here, I emphasize the importance of issue-intensity and insulation from domestic politics in various Council settings. Again, the overall objective is to build complexity into our

decision-making models of the Council, to avoid the pitfalls of either/or reasoning and to specify with more finely grained generalizations how and why different logics of action adhere. In Risse's words, 'the empirical question to be asked is not whether actors behave strategically or in an argumentative mode, but which mode captures more of the action in a given situation' (ibid., p. 18). The next section will focus on operationalizing a set of tests better to determine the three logics of action and how to recognize when one or more of them might prevail in a given institutional context.

Distinguishing strategic, pro-norm, and deliberative behaviour in the Council: how do we know it when we see it?

If strategic bargaining were the name of the game, we would not necessarily find delegations slugging it out for every last ounce of relative gain along the Pareto frontier. As Andrew Moravcsik rightly points out, only 'vulgar rationalism' would hold such crude expectations.[11] 'Soft' versions of strategic bargaining would take into account the iterative nature of Council negotiations over an extended time horizon and expect to find diffuse reciprocity, mutual responsiveness and a willingness to make concessions especially under conditions where qualified majority voting is possible. But in this mode of social action, behaviour is attributable to instrumental reasoning and cost-benefit calculations (which may include concerns such as status, reputation or helping someone today because you may find yourself in a similar situation tomorrow). In this mode, institutional environments are seen to have 'price' effects which constrain and enable certain behaviour but do not affect more basic actor properties (attitudes, allegiances, identities) (Jepperson et al. 1996, p. 41). Norms are not 'self binding' (Wendt 1999, p. 362). Diffuse acts of reciprocity in this mode would still be favours to return in kind someday (so we would expect to find evidence of long institutional memories and reminders of 'the time I helped you two years ago on x, y, or z'). In general, informal norms and rules are thin and relatively unimportant in reaching efficient outcomes, although the threat of isolation, exclusion, or the ultimate (if unwieldy) option to invoke the Luxembourg compromise can play a role. Thus, if strategic bargaining prevailed we would expect to find a trail of explicit cost-benefit calculations, a reliance on formal votes following assessments of emerging majorities and/or blocking minorities, and, under unanimity, implicit or explicit veto threats. Concessions, sympathy, empathy and self-restraint would all be tied in more-or-less observable ways (through arguments being made, positions taken and recorded in the publicly available documents, and corroborating evidence from interviews with participants) to instrumentalism and calculations of costs (material or reputational), benefits (side payments, package deals) or favours in kind (future credit, or social capital).

But if strategic bargaining were not the full picture, one would be able to witness institutional effects that go beyond just the 'price' of cooperation. Here we would expect to find Council negotiating behaviour *not* tied to instrumental reasoning. Two main 'non-strategic' patterns stand out for closer examination. First, there is a wide range of norm-governed behavioural traits which the strategic bargaining mode is unable to account for. Spending extra time searching for a consensus-based outcome under QMV once a majority has formed, the inappropriateness of a majority to push an isolated delegation(s) to vote/veto, dropping or limiting demands without calculative reasoning, and norms that are 'self-binding' are all examples of everyday bargaining behaviour that would stand out as anomalous in the 'it's all strategic' mode. If a norm-governed mode mattered, we would expect to see a durable set of group-community standards and norms prescribing and proscribing certain behaviour. These include not pushing for a vote, and especially, seeking consensus. The consensus-seeking assumption is a very basic rule of the game in Council negotiations, and a point frequently referred to by Council participants during interviews. Nowhere is this as deeply engrained as in the Economic and Finance Committee (EFC) which operates only by consensus in preparing Eurogroup meetings (voting is taboo), but in general the entire Council goes to great lengths to 'bring everyone on board' and create collective outcomes that everyone can live with. The permanent representatives have earned some notoriety for being able to find consensus on *anything* given enough room to 'cut slack' and sell results back home, and over time the ability to deliver earned them 'iron clad' treaty status as the senior preparatory body for the ministers. A financial services counsellor seconded to the Brussels permanent representative described the following idiosyncratic negotiation:

> Once [in COREPER II] there was a qualified majority in favour. The presidency wanted to give a few weeks for reflection for those delegations with problems. Why? I wondered. There's a qualified majority! I'm from the private sector, so I've never understood this really.[12]

The Council's preference for consensus-based outcomes is consistently confirmed by hard evidence from published data on voting going back to the mid-1990s (Hayes-Renshaw et al. 2006). As another illustration, and perhaps surprising to students of 'power politics' given the sensitive legal-juridical, sovereignty implications, the JHA ministers did not register a single 'no' vote between 1998 and 2004 (Hayes-Renshaw and Wallace 2006, Table 10.4, p. 284; see also Aus in this volume).

Consensus-based decision-making is possibly the oldest normative understanding in the Council's collective culture. Haas found it already at work in the ECSC; in his words, 'the essence of the Council's conception of its own role is . . . the attainment and maintenance of consensus among its members'

(1958, p. 490). In the Council's normative environment, the consensus-seeking reflex comes close to attaining a 'taken-for-granted' quality. Doing something else – pushing for a vote, mobilizing a blocking minority, threatening veto or invoking the Luxembourg compromise – is considered under most circumstances to be inappropriate. Council consensus norms even hold a custom for the 'noes' to give their consent to be outvoted in instances of explicit voting. As Ian Johnston (2005, p. 1019) summarizes, consensus norms 'help ensure that national agendas cannot be pushed so far that the institution logjams. In a sense, these norms presuppose that the legitimacy of the institution is so strong that state agents are unwilling to undermine it even on issues where they have strong and divergent state preferences.' In the pro-norm mode, rule-following is self-enforcing because it is considered 'the right thing to do'.

A second non-instrumental logic is that of deliberation. We are only just beginning to gain a clear understanding of where and under what circumstances insulated deliberation is found in EU negotiations, but there is a growing body of work that shows it may be more widespread than commonly believed. For example, there is evidence that deliberative styles of negotiation are prevalent at the level of 'informal' meetings of the Council (Puetter 2003). And finely-grained case studies of negotiation at the level of EU preparatory bodies show that deliberation is a basic feature (Lewis 2003a, 2005a; Niemann 2004 and Chapter 7 above). Even in the new legislative habits developed between the Council and the EP over co-decision, a procedure introduced to redress the democratic deficit, we see healthy levels of insulated deliberation to promote interinstitutional compromise during the first and second readings (Lewis 2005b, pp. 160–2; Shackleton 2000; Shackleton and Raunio 2003).

In a deliberative mode, we would expect to see the use of principled debate and the collective legitimation of arguments. There are a number of unwritten conventions in the Council (a type of customary 'soft' law) which support this. A key one is the shared understanding that as long as a delegation is showing openness to a compromise, they will not be outvoted (under issues subject to QMV), but in turn they must explain and defend their positions openly (see below). This exposes individual positions to the scrutiny of the group. Neyer (2004, p. 28) clarifies a central point here where he notes,

> deliberation does not imply that speakers must indeed change their mind and adopt altruistic positions. It only presupposes that they adopt a particular reasoning style, in which actors abstain from using threats and promises, and try to make their proposals plausible by referring to general principles and norms that are shared by those to whom they speak.

In the Council's institutional environment, many individual preferences, reserves and so on are collectively rejected (delegitimated) on various grounds

that have nothing to do with relative power, votes or veto threats (and instead are based on precedent, legal reasoning, non-discrimination, fairness, and even violating the others' goodwill by being a *demandeur* too frequently). As Heisenberg argues (Chapter 14, this volume) there is a 'peer review' quality to assessing arguments where the Presidency as well as the other member states size up those objections and pass judgement as to whether or not they are deemed worthy of appeasement. A standard deliberation method for COREPER is to use group ire to force changes in national positions (described as 'faked outrage' by a Swedish permanent representative, see below). That this happens in areas of QMV when a single delegation becomes completely isolated would not surprise a student of 'power politics'. But the manufacturing of isolation by the group (sometimes the group helps a colleague with arguments to use in the report back home) and the use of this tactic in areas subject to unanimity are hallmarks of a deliberative environment.[13] What is critical is that this deliberative process is different to bargaining. As Neyer (2003, p. 691) explains, 'while bargaining relies on the use of promises and threats . . . arguing rests on claims of factual truth and/or normative validity'. The effectiveness of deliberation (or 'arguing') as a resource for consensus-based decision-making is clear. Neyer (ibid., p. 698) continues:

> Under conditions of deliberation, any individual preference can be assessed in terms of its coherence with the permissible basic norms (such as reciprocity, the principle of non-discrimination, or the precautionary principle), and all preferences which fail to withstand the test are eliminated from the sample of possible solutions.

It is possible to further distinguish the three logics of action by examining more closely the different rationales attributed to actor behaviour in Council negotiations.

(1) *Why would a member state drop a reservation or favoured position rather than exercise a veto (under unanimity) or cast a 'no' vote (under QMV)?*[14]
In a mode of *strategic bargaining*, this would be expected to occur if a negotiator realized that there was a lack of support for their position and that exercising a veto or casting a 'no' vote would have material and/or reputational costs on future issues. Observable cost-benefit calculations here might include veto threats (unanimity) or attempts to mobilize a blocking minority through selective incentives or issue linkage (QMV). Another reason might be calculations to save demands or reserves for the future on more important issues, or simply to avoid becoming *demandeur* too often.
In a *pro-norm* mode, this would be expected where a negotiator realized that dropping a reserve or limiting demands was 'the right thing to do' in the circumstances. Doing otherwise – issuing a veto, mobilizing

a blocking minority, or pushing the others for a formal vote – would be considered inappropriate and simply not done by a member of the 'club'. The key test is whether or not one can trace a non-calculative, non-instrumental rationale for the observed behaviour. Does a delegation go through a process of first determining 'do I have the votes?' Or do they (often without any explanation whatsoever) quietly drop a reserve or fail to push a demand? Some participants talk about the valuable, if infrequently used, 'silent procedure', whereby a decision is adopted unless a delegation specifically/vocally objects (usually within a tightly fixed time period). As Aus (Chapter 6) demonstrates, the 'silent procedure' can be effective at forcing delegations with reserves to think through what the right thing to do might be in a given situation. If a norm-governed mode mattered, we would also expect to see newcomers acclimatizing and sometimes struggling as they come to terms with the group-community standards and learn either to internalize them or face the consequences (see the case of Sweden below).

In a *deliberative/arguing* mode, this would be expected when a delegation failed to persuade the group with convincing arguments. Here we would look for evidence of collective legitimation or rejection of an individual argument, usually with some reference to precedent or principled rationale such as fairness or non-discrimination. For Risse, the best measure to distinguish arguing from 'rhetorical' or strategic action is the group's ability to challenge individual validity claims (Risse 2000, p. 12). But in the Council, deliberation seems to be less about a 'truth-seeking discourse' than what he describes as figuring out the 'right thing to do in a commonly defined situation' (ibid., p. 7). The key difference here from norm-governed behaviour (which relies on self-enforcement and self-restraint) is that negotiators subject claims to group scrutiny for collective legitimation or rejection, with the corollary that individuals remain open to be convinced by good arguments (they 'change their minds' in other words). Jeffrey Checkel (2005, p. 812) calls this pattern 'normative suasion' which is where 'agents present arguments and try to persuade and convince each other; their interests and preferences are open for redefinition'. And like the norm-governed mode, a key test is whether arguments which fail to persuade and convince are dropped without recourse to cost-benefit calculations. Where we see patterns of deliberation based on non-instrumental reasoning and the strategic mode's 'dogs do not bark' (that is, threats of votes/vetoes, mobilizing blocking/majority coalitions) then we can be reasonably confident that an arguing logic is at work. Here, empirical triangulation strategies are especially important, particularly interviewing participants to assess *how* discursive resources were used in particular cases. Of great significance are those issue-areas where unanimity voting applies and veto options exist for delegations who do not exercise these options even though the group

remains unconvinced of an argument. The most convincing smoking gun for sceptics of an arguing logic is to find instances where delegations go out on a limb to convince authorities back home to accept a convincing argument by another delegation while dropping their own reserve or demand because it was not accepted (see Lewis 2005a for a detailed example). Another observable pattern of deliberation, used regularly by COREPER to find solutions, is the collective plotting by the group to overcome domestic reserves ('cut slack') or force a national capital to rethink instructions. 'To get [new instructions] we have to show [the national capital] we have a black eye', one EU ambassador stated, 'We can ask COREPER for help; this is one of our standard practices.'[15] This can of course take strategic, calculative forms of 'shaming' where relative power and/or social influence are to the fore rather than arguing/deliberation, but in cases where collective, group-community principles (fairness, non-discrimination) or roles (the power of the chair to delegitimate/legitimate positions) are at play, this involves an irreducible discursive logic. Again the difference from a straightforward strategic-calculative logic is not the presence or absence of a genuine 'truth-seeking' discourse but whether strategic/formal/material power resources are legitimated within a collective setting and perceived as such by the negotiation parties themselves. A persuasive individual, powerful state, or a privileged actor (chair, legal adviser) may use discursive power resources to 'shame' or cast opprobrium, even in a strategic, calculative way. But the discursive meaning of such action, and the context of the legitimate use of 'shaming' power, has an inseparable arguing logic.[16] Here we come full circle back to the 'it's not either/or' but the 'both when/why?' position sketched in the preceding section.

(2) *Why do member states provide justification for their positions?*
In a *strategic bargaining* mode, there is no obligation to give reasons for positions. The rationale for providing justification is linked instead to efforts at coalition-building and providing full information that can help mobilize a majority or blocking minority or make implicit/explicit veto threats more credible. Case study evidence should expect to find less justification by delegations in cases of unanimity. We might also expect to find differences in the rate and sincerity of justification between large and small member states, since bigger states have more votes and relative power.

In a *pro-norm* mode, negotiators do perceive an obligation to justify positions. Partly tied to maintaining close interpersonal relationships, giving reasons for positions promotes mutual understanding and the thick trust needed for a norm-governed setting without external sanctions for violators. But more importantly giving reasons and offering justifications is considered the 'right thing to do' in the Council's various 'club-like' settings. One deputy's reply to a question about what they

do with bad instructions is worth quoting here: 'When I'm in a difficult position, with a difficult reserve, I could say, "okay this is a fundamental [member state] reserve, that's it, leave it for the Council". I never do this. Instead, I look for the friendly ear of my colleagues.'[17]

Another interesting pattern is where instructions on a position lack a clear justification, and Council negotiators do not push for them to succeed and/or use embarrassment to 'cut slack'. One Antici counsellor said that sometimes instructions will read, 'oppose as long as not isolated'. One deputy claimed that under these circumstances he will sometimes take the floor by saying, 'Mr. Chairman, my instructions say to drop this if pressed, are you pressing me?' Others simply read instructions and report embarrassment back home. In discussing a specific case of agricultural import restrictions, an EU ambassador with rigid instructions stated, 'I wrote home: I looked ridiculous, I felt ashamed. I made a big thing of this. I got some concessions, but not many. They [the agricultural ministry] are proud of this, they are [national capital] protectionists.'[18] This anecdotal example is a great example of the question posed by Aus in Chapter 6: 'How do we control for the embarrassment caused by being the single "hold-out" to an otherwise collectively endorsed solution?' A norm-governed mode of action can account for such behaviour in ways the 'all strategic' mode cannot. If a pro-norm mode prevailed we would not expect to find differential justification rates depending on either the decision rule (less justification where there is recourse to a veto) or relative power (larger states justifying less often). We would expect to see evidence of newcomer socialization and differential patterns of justifying arguments based on learning the 'right thing to do' in different Council settings. Newcomer socialization applies (albeit in different ways) to newly tenured individual representatives, new member states, and new role-playing settings (does an inaugural Presidency 'call for a vote' more frequently for instance?)

In a *deliberative/arguing* mode, justification is crucial to argumentative rationality and the process of collective legitimation. The obligatory pull of justification should take on a more 'taken for granted' quality here (compared to a pro-norm mode where some delegations who voice principled objections to various EU issue-areas – take the case of the UK with social policy – can get away with systematic norm violations without affecting their overall levels of trust). Justifying and explaining positions openly and in detail is a key part of the group's ability to challenge validity claims, so delegations who do less justifying would be subject to more frequent challenges. A classic generic example cited by participants is how stating 'we don't want to change national laws/regulations/policies' is an unacceptable argument, routinely rejected. We should not see justification rates vary by relative power since actors, in this mode, 'are open to being persuaded by the better argument', and 'relationships of power

and social hierarchies recede in the background' (Risse 2000, p. 7). It follows that particularly convincing examples of deliberation are those cases where small states with good arguments carry the day (see Lewis 2005a for a case involving Belgium and Luxembourg). This mode can also help us gain a handle on the EU's tendency to have issue-specific 'natural' leaders – the UK on financial services, the Dutch on transport, Germany on monetary policy, the Baltics on Russian relations and so on – who are expected by the group to be active in policymaking discussions. Again, while ultimately unsatisfying to the 'it's all strategic' view, the difference is not that power is absent but that power varies by the legitimacy of discursive resources in this prevailing mode, which is an intangible form of power that does not track with material size or votes. Before examining the institutional conditions that enable and reproduce 'non-strategic' modes in the Council, a brief case study of Sweden as a Council novice can illustrate nicely the advantages of a 'multi-mode' approach.

Showing that norms and deliberation matter: the case of Sweden as an unsocialized newcomer

What constitutes a 'good argument' in the Council and how does this deliberative environment differ from other international institutional settings? An illustrative case study is Sweden as a newcomer to the Council's culture and how the Swedes became socialized to the rules of the game.[19] As part of the Nordic round of EU enlargement, Sweden began attending Council negotiations in May 1994 and found a wide discrepancy between expectations and reality. Sweden's exposure to the Council culture was a baptism of fire. Sweden entered the institution as if it were no different than the UN General Assembly: 'our position on issue x, y, z is the following ...' As one Swedish permanent representative official put it, 'When we first became members, we viewed this as the UN. We went to meetings, read our instructions, and that was it.' He continued, 'We learned that we cannot do this and have a reasonable amount of influence.'[20] The others proceeded to treat Sweden's positions (especially in agricultural policy) as isolated or irrelevant with a resulting flurry of 'no' votes by the Swedish delegation (see Table 9.1).

Available voting data confirm this pattern of isolation. Sweden cast 34 'no' votes in 1995 out of a total of 78 'noes' across the EU-15 for that year

Table 9.1 Sweden's contested voting record in the Council

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
No	34	4	7	3	0	2	4	6	5	3
Abstain	1	0	0	0	0	0	0	4	3	2

Source: Hayes-Renshaw and Wallace (2006, Table 10.3, p. 283).

(Hayes-Renshaw and Wallace 2006: Table 10.3, p. 283). Sweden alone thus accounted for nearly half of all 'no' votes in the Council during their first year of membership. During this period, Swedish negotiators in the Council learned that formal power – votes and decision rules – were not the only, or in many cases, the primary determinate of outcomes. Acting within the Council as if it were another international organization put limits on Sweden's influence and sidelined Swedish negotiators from the deliberative process. They were unprepared for and (initially) unwilling to participate in a deliberative decision-making environment. Sweden's representatives learned that in this institutional context, arguments matter as well as votes: explaining positions and, especially, problems is a requisite to receiving understanding (or sympathy!) from the others, and a willingness to compromise can yield influence disproportionate to the number of votes involved. During this first year, in other words, Sweden became socialized to the Council's decision-making culture. It would of course be fascinating to read Swedish negotiators' reports back home from Council meetings during this period, to track reports where Sweden was left out of actual deliberations and see how national instructions evolved, but to my knowledge 'outside' academic researchers have yet to gain such informational access. It is feasible that Sweden may have been influenced in part by the perception that Finland, as a fellow newcomer, was rapidly stockpiling social influence and gaining a reputation as a compromise-friendly, consensus-oriented member (that is, Sweden embarked on socialization via mimicry).[21]

So how do we know Sweden became socialized? Not only did their behaviour change (the drop off in 'no' votes post-1995 is striking) but there is evidence that Swedish attitudes changed as well. The quantitative voting record can be triangulated with qualitative interview data from members of Sweden's permanent representative. In 1996, a counsellor in the Swedish permanent representative claimed, 'There is the "UN syndrome" as a frame of reference for Sweden. Where we read out the statement of the national position from A–Z.'[22] One of Sweden's permanent representatives confirmed this: 'Early in our membership, we acted tough and we had these positions, [if] others don't like it, too bad ... But the politicians back home learned fast to be prepared to compromise.'[23] Especially in the more insulated Council settings such as COREPER, the group used opprobrium at times to 'teach' Sweden to be more open to compromise. Sweden's permanent representatives found the pattern described as 'faked outrage' by the group (such as the case of the EU data protection directive) a helpful way to 'cut slack' with the instructions being generated in Stockholm. As one explained, 'They [the group] can put very strong pressure to change a position to a reasonable one.'[24] The same permanent representative went on to claim that this process had diffuse benefits for Sweden's influence in the Council. As he put it, 'Now we are known as a country others can turn to for a compromise.'[25] This tracks with available voting records, where Sweden's 'noes' over the next

five years drop off by more than 90 per cent (see Table 9.1). The interview data also confirm Sweden's rising deliberation skills over time; one financial services counsellor from a large member state cited Sweden as a small state which has much influence in Council debates. In his words, 'Sweden ... is always taking part in the debate. Sweden has influence here far beyond their votes.'[26] Survey research by Daniel Naurin on Council working groups finds 'it was three times more likely that a randomly chosen working group representative cooperated with Sweden rather than with Austria both in 2003 and 2006', despite both having the same formal votes and length of tenure as EU members (2007a, p. 11; see also Naurin and Lindahl, Chapter 4 in this volume).

Both the quantitative and qualitative evidence thus shows Sweden acclimatizing to the Council's culture through a trial-and-error process of learning how to acquire social influence and utilize discursive power, with the clear lesson being that discursive resources make a big difference. Sweden learned one of the basic truisms in Council folklore, cited in interview after interview with participants: arguments matter! Sweden's socialization to the Council is consistent with what Checkel (2005, p. 804) calls 'Type I internalization', where 'agents may behave appropriately by learning a role – acquiring the knowledge that enables them to act in accordance with expectations – irrespective of whether they like the role or agree with it'. The case is also instructive because it provides insight into *why* socialization to collective decision-making standards is so engrained in the Council's operation. Members internalize the group-community standards because it is a source of social influence in a process of deliberation – to get what you want you have to play by the rules of the club. Social influence in this context is tied to the legitimacy that derives from following informal rules and practising 'pro-norm' behaviour (Johnston 2001). To take another example, in the newest EU member delegations from Central and Eastern Europe, many learned after attending only a few meetings in 2003 that no one – big or small, new or old – can be a *demandeur* too often and expect anyone to listen.[27] Influence is partly a function of learning and adhering to the Council's informal culture of deliberation. The case of Sweden reveals a newcomer that cut against the grain of this deliberative culture and found itself sidelined in negotiations.[28] We turn now to look more closely at the background (scope) conditions which enable 'non-strategic' modes of pro-norm and deliberative action in the Council.

Why do states allow it? Why institutionalize deliberative and norm-governed decision-making?

Why is a deliberative style of making decisions according to informal group-community norms allowed by sovereign, rational member states in an interstate bargaining context covering such a wide scope of issues with substantial distributive consequences? Why do we find these 'non-strategic'

modes of action in the institutional branch of the EU engineered to safeguard national interests? Simply stated, member states allow and even encourage deliberation and informal norms of appropriateness because they lead to desirable institutional arrangements and, ultimately, collective policy outcomes that everyone can live with. 'Double hatting' among Council actors is desirable in order to promote an institutional environment where insulation from domestic constituencies and a deliberative style of norm-governed negotiation can facilitate a high legislative output under the demanding time/energy requirements of consensus-based decision-making.

This argument relies on two counterfactual claims. First, without insulation, Council negotiations would be subject to more bargaining breakdowns (Stasavage 2004; Heisenberg 2005, p. 65; compare Naurin 2007b). The reason, as David Stasavage explains, is that 'uncertainty about disagreement payoffs can create an incentive for representatives to "posture" by adopting uncompromising bargaining positions. These uncompromising positions may be adopted to convince the public that representatives are not caving in to opposition demands because they are biased' (2004, p. 670). Second, without deliberation, the Council's operation would rely more on formal rules – voting and relative power resources would factor more decisively in determining outcomes and selecting winners and losers (Lewis 2005b, pp. 154–9). In both instances, we would expect to find a different institutional environment and different style of negotiation, namely one prone to more competitive, lowest common denominator outcomes and grandstanding for domestic audiences. With fewer informal norms guiding behaviour and/or less deliberation we would also expect to see cost-benefit calculations become more visible and the legitimacy or moral force of group-community standards of appropriateness would decay and become more contested. Faked outrage, appeals to fairness or principled standards, goodwill to 'spend extra time bringing everyone on board' rather than voting and moving onto the next item, and so on, would lose the 'this is the right thing to do in this set of circumstances' logic and become less meaningful to participants. Really interesting of course is whether such a decision-making culture based on appropriateness standards in a deliberative environment emerged as an unintended consequence over iterative bargaining sequences or whether it represents a more intentional design. In general, Jürgen Neyer argues that the EU, as a political system, has intentional design features to thwart strategic instrumental bargaining and promote deliberative methods of consensus-based arguing. In his words the EU is a 'structurally deliberative undertaking' (Neyer 2004, p. 26) which, as a 'non-coercive political order' relies heavily on 'the integrative potential of communicative processes' to maintain a high level of legal output (ibid., p. 25). As a governance mechanism, the Council's design has certain advantages in a 'large-N', heterogeneous (big/small, new/old, rich/poor) membership of sovereign states who are locked into an issue-intensive brand of regionalism where outcomes carry major distributional implications.

A deliberative environment endowed with appropriateness norms also has flexible advantages for member states relying on informal methods. The Council's 'procedural code' shows a stubborn aversion to formalization. But it would be a mistake to equate informality with a weak compliance pull. Deliberation works in the Council because there has been a consistent trend over the years to avoid trying to formalize its operation (Lewis 2003b). Much of the Council's internal development is based on informal institutionalization and a purposely ambiguous legal formulation (a kind of intentional 'incomplete contracting'). The informality of Council rules (and reliance on 'self-enforcement') is striking in this regard. And major pieces of Council machinery originate with an informal or ambiguous legal basis: from the political empowerment of preparatory groups to the role of the CGS as 'honest broker' and as an ultimate example, the European Council's ability to handle 'whatever problem it wants to deal with, in the manner it judges most appropriate' (de Schoutheete 2002, p. 31). As a source for deliberative, pro-norm negotiation, the acceptance of informal rules, roles, and authority is something integral to what has long been cited as *l'engrenage* ('getting caught up in the gears').

Thus, supporting recent research findings, in particular by Neyer and Stasavage (as noted above), member states appear to promote 'slippery' forms of delegation in the Council to create issue-intensive, insulated deliberation anchored in group-community standards in order to promote the long-term, rational, self-interest of keeping the legislative output moving and imparting a legislative process based on consensus-seeking. A still highly opaque puzzle, and one of the real black boxes in the EU institutionalist literature, is *when* this delegation was introduced and how it became institutionalized. This is nontrivial because it touches on a key question: was a deliberative, norm-governed negotiation context created by design or default? A senior, long-serving member of the Council legal service (who came to Brussels straight from the École Nationale d'Administration (ENA) in 1970) reflected on COREPER's insulated decision style: 'I was a trainee here in the [national] delegation in 1970 and I made a report; I was very impressed by the weight of COREPER even then. I was impressed by the margin that [French Permanent Representative] Boegner had. So you cannot say that it is a brand new role or something.'[29] Lending support to this, academic observers Busch and Puchala noticed in the mid-1970s that 'COREPER can be considered a Council of Ministers in permanent session' (Busch and Puchala 1976, p. 240; see also Bieber and Palmer 1975, p. 313). Neyer, for one, offers an argument that the EU's institutional trajectory has followed a 'logic of institutional experimentalism, driven by an effort to produce governance mechanisms that are both effective and efficient' (Neyer 2004, p. 32).[30] But further careful research is still needed to process trace the origins and path-dependencies of this legislative culture. One intriguing parallel worth considering is how quickly the 'new legislative culture' (Shackleton's term) between the EP and the Council

came to rely on an insulated, deliberative methodology for finding compromise agreements at the first and second reading (such as, for example, the invention of the 'trialogue' method).

Conclusion: the Council's logics of action revisited

Distributional politics and the strategic logic of instrumental rationality of course matter in the Council's work, but is that the full story? This chapter has argued that the durable set of informally institutionalized norms and standards of what is and is not acceptable, adjudicated within a discursive environment where the pursuit of 'communicative consensus' leads to collectively legitimated outcomes, also matter. Social influence counts as well as formal voting power in the Council, and here we need to take into account intangible elements of the Council's culture. Argumentation-based resources and the deeply engrained (global, unwritten) preference for consensually made decisions is an important part of this institutional environment. In a system designed to 'bring everyone on board', argumentative rationality plays an important part in managing the legislative output of the EU. Norm adherence in this context is difficult to explain without a more sociological conception of socialization since 'pro-norm' behaviour is neither attributable to the threat of external sanctions ('cost' calculations) nor is there convincing evidence that rules are followed simply because of calculated benefits.

Much of the heavy lifting in Council lawmaking comes from processes of 'communicative consensus' rather than formal voting, although deliberation as a 'truth-seeking' process is heavily conditioned by the ever-present shadow of the vote. Explicit voting records confirm what was long suspected: most Council acts are passed by consensus and actual voting is rare. In the Council's deliberative, pro-norm environment, voting is generally a last resort. This decision-making culture is so successful that there were only 500 'no' votes in ten years (1994–2004), an average of 50 per year in a system that produces about 200 annual legislative acts (Hayes-Renshaw and Wallace 2006, Table 10.3, p. 283). The Council's culture includes accepted standards for expressing dissent, and newcomers can find themselves at odds with this discursive environment until they become socialized. Some learn the hard way, as illustrated above in the case of Sweden, which tended to treat the Council as indistinguishable from other forums, such as the UN, and was sidelined from the deliberative process. Both Swedish negotiators' reflections on the Council and available voting records support this claim, with Sweden passing nearly half of the Council's entire 'no' votes in 1995.

For the actors operating in the environment of the Council, being successful – getting what you want – involves a mix of egoism and adherence to group-community standards in a process of deliberation where individual preferences are subject, at least in principle, to challenges by the group as

valid claims. The ethos of this environment is well captured in former British Permanent Representative (1990–95) John Kerr's description of his job:

> You are Whitehall's barrister, making Whitehall's case in Brussels, and the *sine qua non* is to know, really know, Whitehall's brief. Not just what they want, but why they want it. No matter how technical the subject, no matter how brilliant your backroom team, you need to know the files yourself if you are to have the confidence to make the case in your own words, as for effectiveness you must.
>
> (Kerr 2004, p. 23)

Indeed, the Council's atmosphere of 'communicative consensus' is not the standard fare of international institutions. EU scholars who study the Council should probably trumpet more loudly to international relations theorists that here is perhaps the premier international institutional laboratory where the logics of action have become complexly entwined, with important implications for what the 'Westphalian' conception of sovereignty now means (at least in Europe).[31] But the Council's decision-making culture does not *impose* normative standards, nor are enforcement mechanisms for violations very visible or threatening for members who would decide to do otherwise. Few formal sanctions exist for those who would choose to wear methods of 'power politics' on their shirtsleeves.[32] One clear illustration of this is Britain's 1996 'non-cooperation' policy. But even in this case of explicit instrumentalism, we can see the 'non-strategic' culture at work as well. Some Council insiders claim that British 'non-cooperation' may have caused more long-term reputational harm than was gained with the lifting of the beef export ban following the Florence summit. And subsequent efforts by the new Blair government quickly to repair 'process' and 'relationship' interests in Brussels post-non-cooperation support the internalized norms argument that certain expressions of instrumentalism simply are not appropriate or legitimate.

In summary, this chapter has argued that participation in the Council's institutional environment guides behaviour and informs interests differently than if they were based on instrumental, calculative reasoning alone. The 'non-strategic' aspects of the Council's culture, rich in norms and reliant on deliberation to reach 'communicative consensus', suggests the need for more nuanced 'multi-mode' models that can incorporate the intangible components of this institutional environment and enable closer observation of the effects of such institutional conditioning on the regular participants. Of course, the big question is whether such a conceptualization can be accomplished within the rationalist paradigm, and/or whether a 'competing' sociological, constructivist theory is needed. In other work on the Council, I have argued a case for competitive testing and a domain of application approach to really tease out the distinctive value-added of rationalism and constructivism (Lewis 2003a). While this approach has its advantages, it is not the only way one can proceed (see Jupille et al. 2003, pp. 19–28 for a good

discussion of alternative 'models of theoretical dialogue'). One alternative that has not been explored nearly as much as it should is the possibility of adopting a rationalist approach but expanding it beyond the instrumental understanding anchored in most versions of rational choice. It is puzzling why IR theorists pose the 'logic of consequences' and 'logic of appropriateness' as competing, mutually exclusive domains of agency. There is far less attention to the potential synergies between these logics of action. There is also, however, a growing body of argument to which this chapter hopes modestly to contribute, which holds that not only do the logics of action intertwine, but much of political life is premised on a subtle interaction (for instance Finnemore and Sikkink 1998, p. 914; March and Olsen 1998, p. 952). Doing so has promise for integration researchers who strive to explain the 'betweeness' (Laffan 1998, p. 236) of the EU and the (intentional?) hybridity of the Council's institutional design.

Notes

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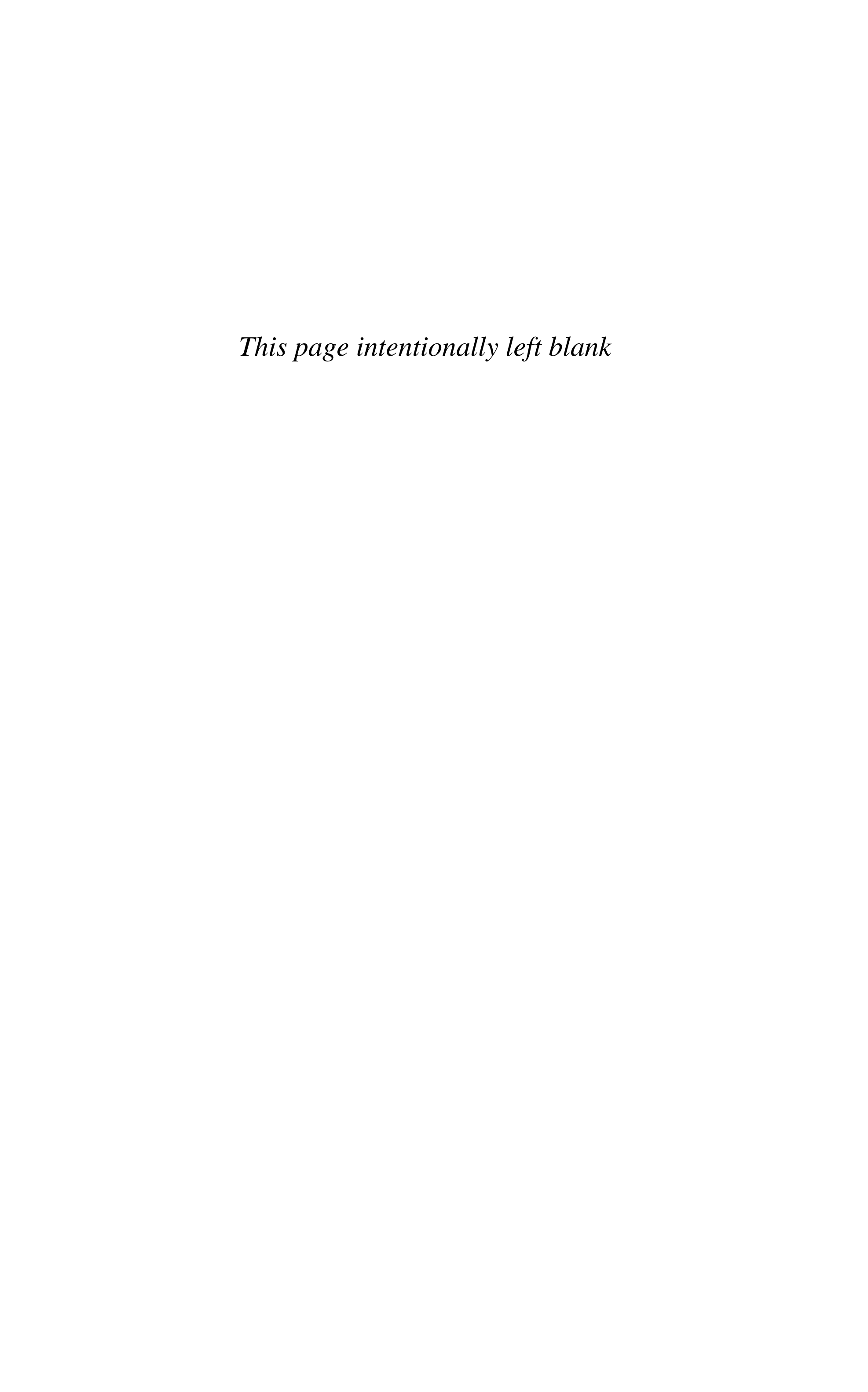
1. See for example Bostock (2002, p. 217), Hayes-Renshaw and Wallace (1995, p. 563), and Lewis (2005a). For a more general and conceptual discussion of this claim, see Weiler (1991, p. 2480; 1994).
2. See also Bostock (2002), Lewis (2005a, 2003b), Risse (2004), Hayes-Renshaw and Wallace (1997: 278–89) and de Bassompierre (1988).
3. Lax and Sebenius (1986, p. 72) define 'process' interests as 'intrinsic interests in the character of the negotiation process itself'; 'relationship' interests value the relationship with others and can include empathetic considerations of others' well-being. As Helen Wallace pointed out at the Florence workshop (see first unnumbered note above), this can be considered a 'third hat' of Council actors, which is a sense of responsibility over a substantive EU policy based on the assumption of functional solidarity. For a convincing case study of this 'third hat' in the field of JHA, especially among the JHA counsellors, see Aus, Chapter 6 in this volume.
4. Interviews, 12 July 1996, 18 March 1997, 10 April 2002 (Oklahoma City). All interviews were conducted by the author in Brussels (unless noted otherwise).
5. Interview, 26 May 2000.
6. Interviews, 17 May 2000.
7. Interview, 15 May 2000.
8. See Lewis (2005a) for an analysis of COREPER. See Puetter (2006) for a detailed study of deliberation in the Eurogroup Council and Aus (Chapter 6) on the JHA Council. See Egeberg et al. (2003), Beyers (2005), Trondal (2001), Fouilleux et al. (2005), Naurin (2007a) and Naurin and Lindahl (Chapter 4), on the working group level.

9. I thank Helen Wallace and Daniel Naurin for suggesting Risse's threefold differentiation here.
10. Between 1999 and 2004, the average annual rate of all legislative acts adopted by consensus was 83.5 per cent (Hayes-Renshaw and Wallace 2006: Table 1.1, p. 24; author's calculations).
11. Comment by Andrew Moravcsik at the May 2006 Florence workshop.
12. Interview, 17 May 2000.
13. For examples, see Lewis (2002, p. 292) and Lewis (2005a, p. 961).
14. In Lewis (2005a) this is referred to as a pattern of 'self-restraint' by negotiators.
15. Interview, 15 May 2000.
16. It is worth noting that interviews confirm that 'manufactured' outrage and opprobrium is used on large, materially strong states (particularly those with a tendency for unclear or multiple sets of instructions) no less than on small states.
17. Interview, 14 March 1996.
18. Interview by telephone, 22 April 2003.
19. Socialization, as defined by Checkel (2005, p. 804) is 'a process of inducting actors into the norms and rules of a given community'.
20. Interview, 29 May 2000.
21. Although it should be noted that a senior member of the Finnish permanent representative also perceived sharp learning curves in the early days. In his words, 'we had some harsh moments where we learned this was a serious game' (interview, 15 May 2000).
22. Interview, 5 May 1996. It is important to mention here that at the time the author was unaware of Sweden's 'no' voting pattern. The interview quotes with Swedish representatives in this section regarding early Council socialization were unprompted and emerged through semi-structured questions regarding Council negotiation and how the national coordination system worked.
23. Interview, 14 March 1996.
24. Interview, 14 March 1996.
25. Interview, 14 March 1996. This view is complemented by a similar finding reported in Hayes-Renshaw et al. (2006, p. 183, fn. 5) where they cite an 'insider' who claims, 'they soon learned the difference' from the UN.
26. Interview, 17 May 2000.
27. Interviews, 23 and 26 May 2003.
28. Tentative evidence from early in the 10 CEEC newcomers' experiences since May 2003 tracks a similar story of steep learning curves.
29. Interview, 21 April 1996.
30. The long-term experimental nature of the Council's institutional evolution is a theme emphasized by other Council experts and practitioners. See for example, Wallace (2002), de Schoutheete (2002) and de Schoutheete and Wallace (2002).
31. As March and Olsen have stressed there is no reason to assume that logics of action are necessarily competing. In a recent work, they emphasize, 'a beginning is to explore behavioral logics as complementary, rather than assume a single dominant behavioral logic' (March and Olsen 2004, p. 19). On 'Westphalian' sovereignty and how EU membership fundamentally alters the legal and political meaning of this, see the conceptual insights offered by Keohane (2002).
32. Several participants mentioned Spain as better than average at making explicit 'tit-for-tat' linkages and veto threats. One Antici councillor stated, 'Spain engages in traditional hostage taking. They do it all the time. I'm actually surprised how well they get what they want. Spain is very consistent in making blockage linkages' (interview, 29 May 2000).

Section Four
Leadership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10
The Power of the Chair: Formal Leadership by the Council Presidency

Jonas Tallberg

Since the late 1950s, the Presidency of the EC has rotated between the member states on a six-monthly basis. The government that holds the Presidency is responsible for the chairmanship of the working groups, committees and ministerial meetings in the Council of Ministers, as well as the summits of the European Council. In this chapter, which summarizes a book-length study (Tallberg 2006), I claim that the Presidency office over the years has developed into a power platform in EU politics, permitting governments at the helm to engage in formal leadership. Presidencies fulfil agenda-management, brokerage and representation functions that make it more likely for EU negotiations to succeed, and possess privileged informational and procedural resources that make it possible to steer negotiations toward the agreements they most prefer.

This argument challenges the dominant understanding of the Presidency in existing literature, which tends to be highly sceptical of the capacity of Presidencies to influence outcomes in their own favour (for instance, de Bassompierre 1988; Corbett 1998; Hayes-Renshaw and Wallace 2006, Chapter 5). This perspective is summarized in a frequently-quoted statement by Jean-Louis Dewost (1984, p. 31), who describes the Presidency as a *responsabilité sans pouvoir* – a responsibility without power. If we disaggregate this influential position into substantive claims about influence, three positions are particularly prominent: (1) the chairmanship has not been conferred any formal powers of initiative and Presidencies therefore cannot set the EU's policy agenda; (2) Presidencies are constrained by existing policy agendas and by external or unexpected events that require their attention; and (3) the influential norm of the neutral Presidency forces governments at the helm to eschew the pursuit of national interests. In this volume, the sceptical perspective of the Presidency is partly represented through the chapter by Andreas Warntjen (Chapter 11), who adopts the first of these three positions, questioning the legislative influence of Presidencies on the basis of their limited formal agenda-setting and veto powers. This chapter, however,

suggests that such pessimistic claims are the product of an unnecessarily narrow understanding of influence and are at odds with important empirical evidence.

The argument is presented in three steps. First, I summarize the core tenets of a rationalist theory of formal leadership, specifically developed to account for the delegation of process powers to the chairmanship, and the influence of negotiation chairs over the outcomes of multilateral bargaining. In line with the general negotiation literature, this theory conceives of influence as any measurable effect on the efficiency and distributional dimensions of bargaining. Furthermore, it points to the incentives and opportunities for chairmen to favour national interests in the fulfilment of agenda management, brokerage and representation functions.

Second, I present my conclusions on the historical development of the Presidency office, tracing the way in which member governments over time have conferred process powers on the Presidency office of the EC from the late 1950s onwards, as well as the Presidency offices of the European Council and European Political Cooperation/Common Foreign and Security Policy (EPC/CFSP) from the early 1970s onwards. I claim that the powers of the Presidency historically have evolved in direct response to specific collective-action problems in EU cooperation and a continuous search by European governments for efficient forms of intergovernmental decision-making.

Third, I present synopses of six case studies of Presidency influence in EU negotiations. The cases are drawn from the German, Finnish, French, Swedish and Danish Presidencies in the time period 1999–2002, and cover the issue areas of enlargement, institutional reform, environmental policy, budgetary policy and foreign policy. The case studies suggest that the Presidency indeed constitutes a power platform in EU bargaining, permitting governments at the helm both to improve the chances of agreement and to steer outcomes in their own favour. This finding supports a perspective on the Presidency office as a negotiation institution that allows EU governments to overcome bargaining impediments, and whose distributional implications are made acceptable to the member states through the system of rotation.

I conclude the chapter by summarizing its implications for existing conceptions of efficiency and distribution in EU negotiations, simultaneously addressing the claims of other chapters in this volume's section on power and leadership. Specifically, I suggest that the Council Secretariat constitutes a central resource at the disposal of the Presidency, rather than an independent source of leadership in the EU, as suggested by Derek Beach in Chapter 12. Moreover, I note that recent quantitative studies, based on data from the Decision-Making in the European Union (DEU) project, lend support to my argument about the distributional implications of the Presidency, while challenging accounts sceptical of Presidency influence in EU legislative politics.

Formal leadership: a rational institutionalist theory

The theory I advance generates hypotheses about the conditions under which states are likely to delegate process powers to formal leaders, and the conditions under which formal leaders are likely to influence outcomes in multilateral bargaining (for an extended presentation of the theory, see Tallberg 2006, Chapter 2). In a nutshell, it suggests that multilateral bargaining is subject to collective action problems that lead states to delegate functions of agenda management, brokerage and representation to the chairmanship of international organizations and multilateral conferences. With these functions follow a set of power resources: asymmetrical access to information and asymmetrical control over procedure. By exerting the functions they have been delegated, and by wielding these resources to achieve collective benefit, formal leaders help states negotiate more efficiently. Yet the very same informational and procedural advantages may be exploited for private gain as well. While constrained by formal institutional rules, opportunistic chairs seek to promote the negotiation outcomes most conformant with their own interests, with implications for the distribution of gains in international cooperation.

This logic can be conveniently summarized as two arguments about the demand for and supply of formal leadership. The core of the first argument is a functionalist claim about the origin of the chairmanship as an institutional form. At the most general level, it purports to explain why the chairmanship today is a standard feature in political decision-making bodies, whether local, national or international. In the international context, it seeks to explain why national governments, sensitive to challenges to their sovereign authority, agree to create and empower formal institutions of process control in multilateral decision bodies. The theory provides a functionalist answer to this puzzle, suggesting that the rationale of the chairmanship as an institutional form is its capacity to mitigate collective-action problems in decentralized bargaining.

More specifically, this argument points to three forms of collective-action problems that risk obstructing efficient exchange. Agenda failure refers to the absence of progress in negotiations because of shifting, overcrowded or underdeveloped agendas. Negotiation failure refers to deadlocks and breakdowns in bargaining that are caused by the parties' inability to identify the underlying zone of agreement, because of stratagems that conceal or distort their true preferences. Representation failure, finally, refers to restrictions in cooperation that arise from the absence of a formula for how the group of negotiating states should be represented vis-à-vis third parties.

The theory further posits that states, in order to escape or reduce these collective-action problems, delegate powers of process control to the chairmanship of international organizations and multilateral conferences. These process powers comprise functions of agenda management, brokerage and

representation, which answer directly to the functional demands in decentralized bargaining. As an agenda manager, the chair is expected to delimit and structure the agenda, thus making it negotiable. As a broker, the chair is expected to facilitate agreement by engineering compromise proposals around which bargaining can converge. As a representative, the chair is expected to act as the external agent of the collective negotiation group, ensuring convergence on common positions vis-à-vis third parties.

The second argument speaks to the effects of empowering chairmanship offices in international cooperation. It seeks to explain why the chairmanship, once vested with powers of process control, becomes a political platform with implications for the efficiency and distribution of gains in multilateral bargaining. The theory specifies the informational and procedural resources of negotiation chairs, as well as the formal constraints under which they operate. Furthermore, it explains why and how the particular design of the chairmanship affects possibilities, constraints and dynamics in the supply of formal leadership.

The theory suggests that the influence of negotiation chairs is derived from informational and procedural power resources integral to the office and the functions they have been delegated. By virtue of their position, formal leaders obtain private information about the parties' resistance points, acquire an unusual expertise in the dossiers under negotiation, and develop a superior command of the formal negotiation procedure. Furthermore, negotiation chairs enjoy asymmetrical control over the procedural parameters of multilateral negotiations, ranging from general decisions on the sequence, frequency and method of negotiation to specific decisions on the agenda, conduct and results of individual negotiation sessions.

By drawing on these power resources, negotiation chairs can help states overcome bargaining impediments that prevent the realization of collective gains. Privileged access to information enables formal leaders to construct viable compromises. Privileged control over procedure permits formal leaders to structure the negotiation process and individual sessions in ways favourable to agreement. But the very same power resources may be exploited to pursue private gains as well. The theory posits that opportunistic chairs will seek to exploit this exclusive preference information and procedural control to promote agreements whose distributional implications they privately favour. The influence of negotiation chairs over bargaining outcomes therefore comprises both efficiency and distribution.

However, formal leaders are not free to impose their will on other parties in multilateral negotiations. The theory conceives of the formal institutional environment as an intervening factor that conditions when, where and how negotiation chairs exert influence over outcomes. Agenda-setting rules influence the capacity of negotiation chairs to promote or block proposals. Decision rules shape the ease with which formal leaders can favour proposals that satisfy the requirements of an efficient agreement and meet the partisan

interests of the chair. The institutional design of the chairmanship – rotation between states, election of one state's representative, or appointment of a supranational official – shapes the control mechanisms that states put in place and the resultant room for manoeuvre of negotiation chairs.

The institutional development of the EU Presidency

The historical evidence strongly supports a functionalist interpretation of the evolution of the EU Presidency from the 1950s until the early 2000s. When first established in 1957, the office of the Presidency was only equipped with basic administrative powers. Today, Presidencies perform essential functions of agenda management, brokerage and representation that make them a central and contested part of the political life of the EU. This transformation of the EU chairmanship reflects a process of rational institutional adaptation to actual or anticipated collective-action problems in European decision-making. Member governments have continuously adjusted and extended the functions of the Presidency, in search of more efficient methods of intergovernmental cooperation. Even though other institutions and actors at times have been chosen to perform similar process functions, each decision to confer powers of agenda management, brokerage and representation on the Presidency can be linked to considerations of efficiency in EU bargaining.

Agenda management

In the original design of the EC, the Presidency was entrusted only with limited procedural tasks, whereas the European Commission enjoyed exclusive authority to set the Community's substantive agenda. Two parallel developments propelled the Presidency into a more pronounced agenda-management role. First, the Commission's capacity to dictate the agenda suffered from the so-called 'empty chair crisis' in 1965–66, when France challenged the development toward further supranationalism (Lindberg and Scheingold 1970, pp. 96–7; Kirchner 1992, p. 72). While retaining its formal monopoly on policy initiation, the Commission's informal political authority was severely weakened. Second, the scope and intensity of EC policymaking increased in the late 1960s, following the completion of the customs union, thus giving rise to new working groups, committees and ministerial configurations in the Council. Decision-making became progressively more fragmented, and the Council experienced problems coordinating policy developments across the whole spectrum of EC activity. Next to the creation of the European Council in 1974, the conferral of new powers to the Presidency constituted member governments' primary response to the problem of overcrowded and badly organized Council agendas (Bulmer and Wessels 1987, p. 19; Westlake 1999, p. 40).

Consecutive rounds of adaptation in institutional practices reinforced the Presidency's function as agenda manager, often at the expense of the

Commission. The effect was to 'ascribe to the Presidency burdens, functions and opportunities for leverage which were not explicitly part of the initial institutional design' (Wallace 1985, p. 3; see also de Schoutheete 1988, pp. 74–5). The need to strengthen the Presidency, with the aim of improving the coherence of Council activities, constituted a central part of a 1974 reform package, of the 1976 Tindemans report, and of the 1979 report of the so-called Three Wise Men (Barend Biesheuvel, Edmund Dell and Robert Marjolin). The conclusions of the latter report well illustrate the functional demands driving this process:

> In improving the Council's performance, the first priority is to strengthen the Presidency in its dual role of organizational control and political impetus. It is no accident that the functions of the Presidency have been both expanded and more widely recognised in recent years. The strong central management which it can provide offers the most natural means of compensating for the centrifugal tendencies within the Council. It bears the prime responsibility for tackling the spread of specialized business, the ramifying inter-institutional relations, the differing interests and behaviour of the Member States . . . [I]f the Presidency does not do this job, there is no longer anyone else who can fill the breach.
>
> (Biesheuvel et al. 1979, p. 35)

When EC governments in the mid-1970s created new negotiation forums outside the traditional Council machinery, through the establishment of European Political Cooperation (EPC) and the European Council, they eschewed the services of the supranational Commission and placed the rotating Presidency in the driving seat. In the EPC, the Presidency quickly emerged as the primary source of political proposals, even if all governments formally held the same right of initiative (Wallace 1985; de Schoutheete 1988, p. 82). In the European Council, the administrative and political preparation and execution of summits devolved upon the Presidency, which gained a discretionary role in defining and delimiting the agenda (Bulmer and Wessels 1987, p. 52; Werts 1992, p. 78).

The 1980s and early 1990s witnessed a further expansion in EC activity, and the annual number of ministerial meetings increased by over 50 per cent from 1980 to 1993 (Westlake 1999, p. 60). One effect of this development was the delegation in 1989 of an explicit authority for the Presidency to prioritize between competing policy concerns in a comprehensive work programme. The Presidency's agenda-management function was further strengthened by the right to propose issues for general policy debates, and the steadily growing use of informal meetings in the Presidency country with agendas dictated by the host government. In recognition of the political dimension of these agenda-management powers, each Presidency nowadays appears before the European Parliament to present its work programme in

the beginning of the term and to outline its achievements at the end of the period.

Brokerage

In the early years of EC cooperation, the member governments mainly relied on the Commission as broker of compromise in the Council (Lindberg and Scheingold 1970, pp. 93–5). Not being one of the bargaining parties, the Commission was expected to be detached from national interests and able to function as an impartial mediator. Yet, increasingly aware and sceptical of the Commission's supranational agenda, member governments began to rely more heavily on the rotating Presidency as their preferred broker from the mid-1960s onwards (Wallace 1985, p. 7; Kirchner 1992, p. 72; Sherrington 1998, p. 4). In the EPC and the European Council, the member states' decision not to confer formal agenda-setting powers on the Commission helped to empower the Presidency as broker (de Bassompierre 1988, pp. 62–3; de Schoutheete 1988, p. 75; Werts 1992, p. 95). Nowadays, the 'Presidency compromise' is an established term among EU policymakers and observers.

The demand for the brokerage services of the Presidency has been driven by two developments. First, the growing complexity of EU decision-making has made it relatively more difficult for the parties to identify potential agreements. Successive waves of enlargement have expanded the number of bargaining parties and the spectrum of preferences (Golub 1999, p. 752). In addition, the expansion of the EU's policy range, and the associated growth in negotiation arenas, has created a pressure for cross-cutting package deals. As a linking pin between the various bargaining arenas in the Council, the Presidency has been well placed to meet these needs.

Second, a string of institutional reforms of the last two decades have created a demand for active brokerage. The growing use of majority voting has given the Presidency an important role in identifying and building viable coalitions. To facilitate this task, the member states provided the Presidency in 1987 with the authority to call votes. Since then, it has become standard practice for the Presidency to work toward a minimum agreement supported by the requisite number of member states, and then invite outliers to join the majority under the threat of voting. Furthermore, the extension of significant legislative powers to the European Parliament has increased the dependence on the Presidency as broker. The obligation of the Commission to take the Parliament's views into full consideration when revising its legislative proposals places the responsibility to broker compromises in the Council firmly with the Presidency (Nicoll 1998, p. 5).

To facilitate brokerage, EU governments have equipped the office with specific mediation instruments that enable the Presidency to unveil resistance points and identify underlying zones of agreement. The General Secretariat of the Council, at the Presidency's special disposal, tracks state preferences and positions, provides tactical advice on the negotiation procedure, and

offers expertise on the dossiers under negotiation (Beach, Chapter 12 this volume and 2005; Hayes-Renshaw and Wallace 2006, Chapter 4). To sound out concerns, extract concessions, and test compromise proposals, Presidency representatives at various levels engage in shuttle diplomacy – *tours des capitales* – meeting bilaterally with their counterparts in the European capitals. The format of the bilateral encounter enables governments to share information on their bottom lines with the Presidency, thus improving the chances of agreement without exposing themselves to exploitation by other parties. The practice of the 'confessional' was developed to serve the same purpose during the course of negotiation sessions. When confronted with a deadlock, the Presidency may adjourn the proceedings for bilateral and confidential discussions with individual delegations. 'The objectives are threefold: first, to encourage individual delegations to be more open and more direct about the "bottom lines" of their negotiating positions; second, to put pressure more fiercely on individual delegations to make concessions; and, third, sometimes, to offer "unofficial" inducements to cooperation' (Hayes-Renshaw and Wallace 2006, p. 150).

Representation

Since the early 1970s, the Presidency, step by step, has acquired more encompassing responsibilities as member governments' external representative vis-à-vis third parties in world politics and internal representative in relation to other EU institutions. The decision to engage the Presidency was motivated by a concrete risk of representation failure: 'An obvious reason for the emergence of the Presidency was the fact that the Council, as a composite body, had no other evident means of representing itself *vis-à-vis* the other institutions, the press and media, or the wider world' (Westlake 1999, p. 37). The subsequent evolution of these representation powers closely reflects increasing EU involvement in world politics and intensified legislative bargaining with the European Parliament.

The first decade and a half of European foreign policy cooperation was characterized by consecutive rounds of delegation to the Presidency (Wallace 1985; de Schoutheete 1988). When EC governments launched the EPC in 1970, they charged the Presidency with the task of functioning as liaison with the applicant countries at the time. In the 1973 Copenhagen Report, the member states expanded this authority by conferring the right to speak on their behalf in EPC dialogue with other states. In 1975, the Presidency became the member states' collective spokesperson in the UN General Assembly. In the 1981 London Report, the member states endowed the Presidency with the authority to meet with third parties on their behalf, explicitly citing external demands for contact channels and expectations on concerted European action. In 1983, the member states underlined the central importance of the Presidency's powers of representation for EC relations with third countries in the Stuttgart Solemn Declaration. By the mid-1980s,

the Presidency's function as external representative was well-established: 'As the external relations of the Community have expanded, so different formulae have been agreed for representing common positions, which have come to impose more and more of this responsibility on the Presidency. Since the establishment of political co-operation, the representational role of the Presidency has taken a quantum leap forward' (Wallace 1985, p. 19).

In the 1990s, the Presidency was delegated explicit negotiation powers and greater executive authority, following the failure of EU governments to respond rapidly and concertedly to the velvet revolutions of Eastern Europe 1989–91, the war in the Gulf in 1990, and the outbreak of fighting in Yugoslavia in 1991 (Nuttall 2000). When revising the institutional structure of EU foreign policy in the 1997 Amsterdam Treaty, the member states equipped the Presidency with the power to negotiate international agreements on their behalf. At the same time, the late 1990s witnessed a broadening of the formula for external representation through the appointment of the Secretary-General of the Council Secretariat as High Representative for the CFSP.

The evolution of the Presidency's function as Council representative in relations with other EU institutions closely reflects the European Parliament's development into an important interlocutor in the EU's budgetary and legislative procedures. In the 1950s and 1960s, when the Council enjoyed exclusive decision-making power, there was limited demand for mechanisms of interaction with the Parliament. It was only in the first half of the 1970s, when the Parliament was granted important powers in the adoption of the EC budget, that the Council was confronted with a representation dilemma: 'The Council consists of a representative from each Member State. Each has equal and distinct status. – Who, then, should represent the Council before the Parliament?' (Westlake 1999, p. 332). The member governments chose to appoint the Presidency as their intermediary in the budget negotiations. These arrangements were further developed in 1982, when a specific procedure for budget negotiations between the presidents of the Council, the Parliament, and the Commission was introduced (Nicoll 1998, p. 4; 1999, pp. 183–4).

A second phase began with the conferral of new legislative powers on the Parliament through the 1986 SEA. The treaty granted the Parliament the authority to make legislation it disliked difficult for the Council to adopt, and thereby forced the Council to engage in legislative bargaining. EU governments appointed the Presidency as their representative in these inter-institutional negotiations. The 1991 Maastricht Treaty and the 1997 Amsterdam Treaty further strengthened the legislative powers of the Parliament by introducing and extending the co-decision procedure, which grants equal decision power to the Council and the Parliament. The co-decision procedure fundamentally transformed the relationship between the two institutions and led to a dramatic increase in the level of interaction.

Formally, legislative disagreements are settled in the so-called conciliation committee, where the Presidency leads the Council delegation. In practice, however, mutually acceptable texts are often chiselled out in informal negotiations between the Presidency and representatives of the Parliament (Farrell and Héritier 2003; Shackleton and Raunio 2003).

The influence of Presidencies

In order to assess the influence of Presidencies in EU negotiations, I have conducted a set of six case studies, selected on the basis of three criteria. First, I have systematically selected cases where the Presidency government holds preferences at one end of the spectrum, which makes it relatively easier empirically to trace and demonstrate influence over distributional outcomes, compared to cases where Presidencies hold central preferences. Second, I have chosen cases to ensure variation in formal institutional rules, identified as a central intervening variable in the theory of formal leadership. Third, I have selected cases to ensure variation across Presidency governments in structural power capabilities, and across dossiers in political salience.

The case studies provide comprehensive empirical evidence in favour of the Presidency office as a platform for political influence in EU bargaining. As I explain in the conclusion, these are findings that receive support in recent quantitative analyses of legislative politics in the EU, based on the dataset for the Decision-Making in the European Union project. While performing functions that enhance the efficiency of EU negotiations, Presidency governments may simultaneously exploit the chairmanship for national political purposes, wielding its privileged power resources for private gain. Making effective use of their asymmetrical control over information and procedure, the Danish, Finnish, French, German and Swedish Presidencies in the late 1990s and early 2000s succeeded in shifting outcomes in their own favour in the areas of enlargement, institutional reform, environmental policy, budgetary policy and foreign policy. At the same time, these case studies point to the conditionality of Presidency influence. Agenda-setting rules shaped the extent to which Presidencies could independently launch new policy initiatives or had to rely on close cooperation with the Commission. Decision rules affected the capacity of Presidencies to shape distributional outcomes by limiting or expanding the zone of agreement.

Agenda management

The structuring of the agenda permits Presidency governments to assign priority to competing political concerns. The cases selected from the Finnish and German Presidencies in 1999 demonstrate that the influence of Presidencies over the agenda both takes the shape of traditional agenda-setting and includes forms of non-decision-making (Kingdon 1984; Bachrach and Baratz 1963; Tallberg 2003). Presidencies engage in agenda-setting when they raise

the awareness of hitherto neglected concerns and devise new policy initiatives. They call attention to prioritized concerns by including them in the official Presidency programme and scheduling informal meetings devoted to these issues. They place new issues on the formal agenda either directly, where the member states share the power of initiative, or indirectly, where the Commission holds this right and can be convinced to present Presidency initiatives as its own. But, in addition, Presidencies engage in non-decision-making when they exploit the exclusive control over the agenda to downplay or even exclude controversial issues. They assign limited negotiation time to low-priority issues, refuse to pick up nationally sensitive dossiers during their period at the helm, or block progress on unwelcome proposals through deliberately unviable 'compromise' proposals.

The Finnish campaign to establish a Northern Dimension in the EU's foreign policy demonstrates how access to the power resources of the chairmanship may be used to launch new policy initiatives. The aim of the Finnish initiative was to produce a coherent EU foreign policy toward Russia and the Baltic Sea region, matching the EU's policy for the Mediterranean region. The initiative constituted Finland's first attempt to shape the orientation of EU foreign policy after joining the organization in 1995. Finland launched the campaign for the Northern Dimension in 1997, with the intention of consolidating and institutionalizing this policy initiative during the Presidency in 1999. Once in control of the chairmanship, the Finnish government made extensive use of the procedural instruments at its disposal. The initiative was anchored in the Presidency programme and placed on the agenda of formal and informal meetings, seminars and conferences with EU and external partners. Finland courted the Commission to secure the supranational executive's support in the implementation of the initiative, and arranged a ministerial conference specifically devoted to the Northern Dimension. Finally, and most importantly, it engineered support for a European Council decision on a policy action plan. The Finnish campaign was central to the institutionalization of the Northern Dimension as a component of EU foreign and security policy, even if the requirement of unanimous approval forced the Finnish government to dilute the contents of the initiative.

The German government's removal of a nationally sensitive Directive on car recycling from the Council's agenda illustrates the Presidency's ability to engage in non-decision-making. The proposed Directive would have obliged manufacturers to recycle 80–85 per cent of scrap vehicles, at great cost for Europe's car producers. The German auto industry would have been hardest hit, and successfully lobbied the German government to backtrack on a previous commitment to a compromise proposal developed by the preceding Austrian Presidency. At its first meeting in charge of the Environmental Council, the German Presidency exploited the prerogatives of the chair by unilaterally deciding to drop the issue from the agenda and force a postponement of the decision, to the great dismay of other governments. During the

spring of 1999, Germany used the time it had gained to lobby the United Kingdom and Spain in order to build a blocking minority in the Council. The two governments eventually yielded, following diplomatic pressure and side-payments. At the final meeting of the Environmental Council, the German Presidency could conclude that the proposed Directive no longer enjoyed the support required for adoption. The Directive was eventually adopted more than a year later, on terms more favourable to German interests, following a compromise in the Council and negotiations with the Parliament.

Brokerage

The engineering of intergovernmental bargains permits EU Presidencies to select between multiple equilibria and steer negotiations toward outcomes they privately prefer (Tallberg 2004). The cases drawn from the German and French Presidencies in 1999 and 2000 demonstrate how institutional practices specifically developed to aid the Presidency in its function as broker can be used for both collective and private gain. Presidencies exploit the privileged information about state preferences obtained through bilateral confessionals and *tours des capitales* to extract concessions from adversaries. They use the brokerage mandate to devise single negotiating texts that keep desired components on the negotiation table and sensitive options away from it. They speed up negotiations and improve the chances of agreement on nationally prioritized issues through decisions on the frequency and format of bargaining sessions. In consequence, it is rare for the Council to arrive at decisions that go against the explicit desires of the Presidency.

The German Presidency faced the challenge of concluding the negotiations on the Agenda 2000 reform package, targeting the EU's agricultural policy, regional policy and long-term budget for 2000–06. The reform proposals were highly contentious and Germany itself held extreme preferences on many dossiers. Making full use of its brokerage resources, the German Presidency succeeded in forging a package agreement that was acceptable to all parties and safeguarded central German interests. To create favourable conditions for a deal, the Presidency intensified the formal meeting schedule, moved the dossier to the top of meeting agendas, and called informal negotiation sessions. In order to focus and steer the negotiations, the Presidency adopted a specific brokerage formula – the negotiating box – that effectively constituted a single negotiating text. Issues of contention were unlocked through a combination of bilateral confessionals that unveiled the parties' bottom lines, and follow-up papers that outlined new compromise alternatives. The final deal corresponded closely to the German positions on agricultural reform, reflected the German demands for budget discipline over the next financial period, and balanced competing demands on regional spending. By contrast, Germany only partially reached the goal of reducing its net contribution to the EU budget, which is best explained by the veto power conferred on the existing net beneficiaries by the requirement of unanimity.

The French Presidency was scheduled to conclude the intergovernmental conference (IGC) convened in 2000 for the purpose of revising the EU treaties. The IGC addressed controversial institutional issues, and it was no secret that France strongly preferred certain outcomes. To facilitate the reaching of an agreement by December 2000, France intensified the meeting schedule, moved the IGC to the top of Council agendas, and sequenced the negotiations so as to solve the easiest questions first and save the thorny matters for the European Council summit in Nice. Confessionals and *tours des capitales* served to elicit privileged information about national resistance points, which subsequently was used to draft revised versions of the Presidency's single negotiating text. On the eve of the Nice summit, the Presidency drew up and distributed institutional side-payments. Throughout the negotiations, the French government consistently exploited the chairmanship to favour national objectives. Proposals framed as compromises from the chair often constituted national position papers. The prerogative to sum up negotiation sessions was frequently used to steer the deliberations in the direction desired by the Presidency. The open use of the office's resources to this end resulted in much negative publicity. Yet, if we assess the substantive outcome of the negotiations, France was remarkably successful in protecting its vital interests. The French government achieved a reduction in the future number of Commissioners, obtained a rebalancing of voting weight in favour of large states, secured formal French vote parity with Germany, prevented majority voting in nationally sensitive areas, and facilitated deeper cooperation for groups of member states. The requirement of unanimity favoured the parties wishing the least change to existing rules on the issues with status-quo alternatives, notably, the extension of majority voting. This worked to the advantage of the Presidency on some dossiers (for instance, trade policy and immigration policy, blocked by France), but reduced its capacity to steer the negotiations toward its most preferred outcome on others (for instance, taxation and social policy, blocked by the UK).

Representation

The function as representative in internal and external bargaining grants Presidencies opportunities to influence the terms of agreements that EU governments negotiate with third parties. The Swedish and Danish Presidencies in 2001 and 2002 offer cases that well illustrate how the discretion as representative can simultaneously be used to favour collective and private interests. Privileged by informational and procedural asymmetries, and relieved of intrusive control mechanisms, Presidencies attempt to steer negotiations toward their ideal outcome. Typically, Presidencies exploit the unique position at the interface between internal and external negotiations to play off recalcitrant parties against each other, channel preference information in strategic ways, initiate informal negotiations beyond the control of competing parties, and negotiate fait accompli agreements.

The Swedish Presidency represented the Council in legislative negotiations with the European Parliament over new rules on public access to EU documents. The large majority of member states wished to uphold confidentiality, whereas the Parliament advocated far-reaching transparency reforms. Sweden belonged to the minority of states with preferences close to the Parliament's perspective, because of the threat posed by restrictive EU rules to the Swedish freedom of information act. Despite this troublesome position, the Swedish Presidency managed to engineer an agreement close to its preferred outcome. Exploiting its procedural prerogatives, the Presidency initiated informal trialogue negotiations with the Parliament's representatives even before the Council had come to an internal position. The absence of a Council mandate granted the Presidency significant discretion, as did the closed format of these talks. In order to achieve a solution that met the interests of the Council minority, Sweden played off the secrecy hawks in the Council against the transparency extremists in the Parliament, emphasizing the concessions made by both camps. The deal negotiated with the Parliament met with strong objections when presented to the Council, but the Presidency managed to prevent the secrecy-oriented states from mobilizing a coherent alternative before the scheduled deadline of the negotiations. The Swedish strategy was clearly dependent on the use of majority voting, and would not have succeeded if unanimity had been required. The new transparency rules were eventually hailed by the European media as bringing about a revolution in the access to EU documents.

The Danish Presidency functioned as the EU's representative in the accession negotiations with ten candidate countries mainly from Central and Eastern Europe. For economic and political reasons, a broad and swift enlargement of the EU had been Denmark's top priority in the EU ever since the fall of the Berlin wall in 1989. The EU's Mediterranean members, poised to lose from the scheduled redirection of funds toward Central and Eastern Europe, were more sceptical. The Presidency period presented Denmark with an opportunity to solve the outstanding, highly problematic, dossiers. Once in office, the Danish government used the procedural powers of the Presidency to put other urgent concerns on the backburner and focus the EU's negotiation resources on the enlargement dossier. For instance, Denmark reserved the summits of the European Council for enlargement negotiations, and transformed Council meetings into negotiation sessions with the candidate countries. The Presidency engaged in informal, bilateral consultations with member states and candidate countries, in order to gain the information necessary to construct an acceptable package agreement. The access to both arenas was utilized to play off the most recalcitrant parties against each other. At the Copenhagen summit, the Danish Presidency exploited its discretion by offering concessions that had not been condoned by the Council, but which the Presidency correctly judged would be accepted, when presented as a fait

accompli. The conclusion of the negotiations during Danish chairmanship paved the way for a broad enlargement of the EU in May 2004.

Conclusion

I will conclude by summarizing the implications of this chapter for the understanding of EU politics, simultaneously addressing claims and concerns raised in parallel chapters in this volume.

First, my argument speaks to the issue of efficiency in EU negotiations, that is, why negotiations in the EU seldom come to permanent deadlock and most often lead to agreements that exploit all possible joint gains. It suggests that the Presidency has evolved into the most important institutional mechanism through which EU governments reach efficient bargains. The historical record demonstrates that EU governments have developed the Presidency office to address actual or anticipated collective-action problems in EU cooperation, and that this empowerment of the Presidency has taken place at the expense of the Commission. Through the rotating Presidency, EU governments today take turns in providing the efficiency-enhancing functions of agenda-management, brokerage and representation. The Council Secretariat constitutes a valuable resource to the Presidency in this context, offering information on proposals, preferences and procedures, but its contribution to outcomes is generally conditional on cooperation with the Presidency. This interpretation of the role of the Council Secretariat is distinct from that of Beach (Chapter 12), who presents the Secretariat as an independent source of leadership in the EU.

This argument should not be misunderstood as an unconditional claim about the virtue of the Presidency on the efficiency of EU decision-making. Rather, it is subject to three caveats. (1) Alternative leaders may help ameliorate the same collective-action problems that have led the member states to empower the Presidency. The analysis of the Presidency's historical evolution reveals that the delegation of process powers to this office has been conditioned by the presence of alternative institutional solutions in some areas, notably, the Commission's formal agenda-setting powers in the first pillar and the High Representative's mandate in external representation. (2) In individual negotiations, the Presidency's efforts as broker may be superfluous, if the bargaining parties themselves can identify a viable compromise, or redundant, if the preferences are sufficiently divergent to prevent a zone of agreement from materializing. (3) The individuals who perform Presidency functions on behalf of their national governments may be more or less apt for these duties. Like other institutional platforms, the office of the Presidency can offer individuals opportunities for influence, but cannot guarantee that these individuals at all times act skilfully on these opportunities.

Second, my argument generates implications for the understanding of distributional outcomes in EU negotiations, that is, the division of gains

in EU agreements. It suggests that the dominant conceptions of bargaining power do not provide the full story about the division of gains, since they fail to account for advantages offered by the Presidency to large and small member states alike. Where the zone of agreement permits Presidencies to select between multiple equilibria – many alternative potential agreements – we would expect outcomes to be biased in favour of the Presidency's national political objectives. The case studies I have conducted testify to such identifiable effects on the distributive dimension of negotiation outcomes, and identify prominent mechanisms used by Presidencies for these purposes.

This is a claim that receives support in recent quantitative analyses of legislative politics in the EU, based on the Decision-Making in the European Union dataset (Thomson et al. 2006). Assessing the influence of thirteen Presidencies on 66 legislative proposals, Jelmer Schalk et al. (2007) find that the Presidency brings significant additional leverage to the member state at the helm, especially at the voting stage of the decision-making process. Similarly, Robert Thomson (2008b forthcoming) concludes, on the basis of an analysis of 70 legislative proposals, that decision outcomes are considerably more favourable to Presidency governments than other member states. Finally, Andreas Warntjen (2008), employing an alternative methodology to measure Presidency power in relation to 94 legislative proposals, lends additional support to the finding of Presidency influence at the final stages of legislative negotiations. Together with the qualitative evidence summarized in this chapter, these quantitative studies strongly suggest that the Presidency offers the government at the helm an extraordinary scope for influence in legislative politics, even in the absence of formal agenda-setting and veto powers (compare Warntjen in the following chapter).

11

Steering, but not Dominating: the Impact of the Council Presidency on EU Legislation

Andreas Warntjen

Introduction

The rotating Presidency of the European Union's (EU) Council of Ministers is a fascinating feature of the institutional setting of the decision-making process in the Council. Many accounts of the legislative process mention the role of the Presidency and its potential impact on legislative outcomes. Jonas Tallberg (2003, 2004, 2006, and Chapter 10 above) has provided us with the most comprehensive account of the Presidency so far. He argues that the Presidency has certain powers that allow it to influence the agenda and decision outcomes in the Council, subject to some constraints. First, the Presidency enjoys procedural powers which allow it to 'shape' the agenda. Second, the Presidency benefits from an informational asymmetry. According to Tallberg, Council members grant these powers to the Presidency because it is in their collective interest to do so as part of a grand bargain.

My intention in this chapter is twofold: first, I want to clarify some theoretical issues related to Tallberg's account of the Presidency's influence on EU legislative decision-making. Second, I want to ground the analysis firmly in rational choice theory and provide a detailed analysis of the impact of the Presidency's procedural powers on decision outcomes. Note that I restrict myself to the legislative domain, whereas Tallberg covers decision-making in the second and third pillars as well. As will become clear below, there are a number of conceptual issues involved in accurately predicting the power of the Presidency. Rational choice institutionalism has been very successful in providing crucial insights into the workings of politics, not least those of the European Union. It often relies on formal models which has the advantage of forcing scholars to be very explicit about how they believe a certain process works. By necessity, these models are an abstraction of reality. But it is this that allows us to focus on particular aspects and study them in detail. However, it is crucial that the reasoning employed captures the essence of the processes at work. Thus, I will argue that the Council Presidency's procedural prerogatives are best modelled as proposal power not agenda-setting power.

Agenda-setting assumes a monopoly of making proposals which the Council Presidency does not possess. Member states are not faced with the stark choice of either agreeing to the Presidency proposal or being left with the status quo, but can make their own proposals. This implies that the influence of the Presidency on decision outcomes in the Council (and subsequently in the legislative proceedings) has been overstated by Tallberg.

I depart from Tallberg's theoretical account in two ways. First, I argue that the Council Presidency does not have a monopoly on making proposals as implied by agenda-setting power. Second, I argue that the powers of the Presidency are not sustained by an implicit deal between successive Presidencies, granting extensive powers to each other while they are taking turns at the helm. Instead member states acquiesce in the leadership role of the Presidency to reap the benefits of more efficient decision-making, which implies limited procedural privileges.

The chapter is structured as follows. In the next section I will argue that member states collectively benefit by institutionalizing some form of leadership. This does not entail, however, giving leadership a free rein. Instead, member states seek to limit the influence of the leadership on legislative outcomes. The third section clarifies the concept of gate-keeping, veto and agenda-setting power in the context of the Council. I will show that these concepts do not accurately reflect the actual powers of the Presidency as set out in the Council's Rules of Procedure. In the fourth section I will explain the concept of proposal power and argue that it is better suited to explaining the potential influence of the Presidency on decision outcomes. Drawing upon a comparison with the Speaker of the US House of Representatives, I will demonstrate in the fifth section why the Presidency cannot prevent challenges to its procedural privileges by the use of additional powers.

Institutional design: the deliberate limits of the Presidency's powers

In general, political actors confer authority to an individual to secure the benefits they receive through better coordination, increased production, and the provision of public goods. Hierarchy can be an efficient means to utilize gains of cooperation (Miller 1992, p. 18). Members of a group grant powers to their leaders to realize the benefits of leadership (Calvert 1992; Miller 1992, p. 25). Thus,

> leadership is an institutional arrangement created by a P, or a collection of Ps . . . in order to obtain some objective more efficiently, more effectively, or with higher probability than he, or they, could without the coordination and enhanced productivity provided by the leadership institution.
>
> (Fiorina and Shepsle 1989, p. 20)

Leadership represents a solution to coordination problems and reduces the transaction costs of bargaining by providing a focal point and a conduit for group negotiations. Even if all members of a group aspire to the same goal (that is, have the same pay-off structure), the presence of several potential outcomes implies that to resolve an issue requires a certain effort of coordination (for problems of coordination, see Calvert 1992, pp. 9–10). A leader can offer a short-cut through the potentially protracted process of agreeing upon a specific outcome by providing a focal point on which expectations can converge (Schelling 1960). If the members of the group value outcomes differently, while still benefiting from cooperation (that is, reaching an agreement), the potential for costly delays increases. Thus, the value of an agreement diminishes because members, while negotiating the specific decision, forgo the opportunity of reaching jointly beneficial agreements in other areas. The time spent on haggling over any given dossier could also be used to discuss the next item on the agenda. In addition, the delay induced by the need to accommodate different positions implies that the bargaining partners might not enjoy the benefits of the agreement (Binmore, Rubinstein et al. 1986). For example, if the member states cannot agree on the exact level of subsidies in a given field, there will be none for the time being. If the positions of the member states are not commonly known, the risks of costly delays and bargaining failure increases even more (Sutton 1986, p. 720; Farrell 1987). To maximize their individual gains, member states will be tempted to misrepresent their preferences, while trying to gain insights into the preferences of others, and individual states will try to devise and implement commitment strategies to advance their bargaining positions (Luce and Raiffa 1957, pp. 91–2). In this situation,

> [t]he problem of distributing the gains from efficient cooperation will be so daunting that the bargainers might lose a large amount of the potential gains that ensues. The specter that is raised is one of bargaining failure – the loss of those very efficiency gains that motivate actors to go to the bargaining table in the first place.
>
> (Miller 1992, p. 49)

In sum, bargaining – even under the best of circumstances – is a costly endeavour. Indeed, the transaction costs incurred by the resources (for instance, time) spent and opportunities lost in bargaining are 'essentially limitless' (Miller 1992, p. 47). Thus, group members have strong incentives to reduce these transaction costs and limit the potential for bargaining failures by creating leadership. This invariably includes granting special powers to a member of the group, which can be misused. As Randall Calvert explains: 'Because the leader produces group benefits that are degraded when leaders are overthrown or weakened, and because the realization of those benefits requires responsiveness on the part of followers, the leader does indeed have power' (Calvert 1992, p. 19).

In other words, the power of a leader relies on the ability to create value for the group members. Powers are given to a leadership if and insofar as they help the group to achieve goals that they would have been unable to achieve without the coordination of leadership and the enhanced efficiency in decision-making that ensues (Fiorina and Shepsle 1989, p. 20).

While it is in the interest of group members to grant power to a leader, it is not in their interest to allow the leader to abuse those powers. Thus, group members will strive to limit the powers of the leader as far as possible while still creating efficiency gains. The procedural privileges of a leader can be limited by not vesting absolute powers into the leadership office and limiting its term.

This line of reasoning also applies to the Council of Ministers. Member states have an interest in enhancing the productivity of the Council without letting the leadership exploit its privileges in terms of decision outcomes.

The Council has to attend to a multitude of legislative proposals. Each proposal raises several issues. The technical and political complexity of the discussions means that the potential for common gains in a given dossier might go unnoticed. In this situation, a central coordination mechanism allows negotiations to focus on a set of particular proposals. Synchronizing the attention given to particular dossiers by the member states and imposing order on the negotiations allows for a more efficient way of conducting legislative decision-making. By creating the office of a Council Presidency and granting it the prerogatives of prioritizing items and making compromise proposals, the member states ensured that they would get the maximum benefit from negotiations.

By limiting the powers of the Presidency, member states are barred from becoming 'policy dictators' during their terms in office. The member states could have created a much more powerful Presidency office, for instance by granting it gate-keeping or agenda-setting power; instead, as I will show below, to prevent or limit abuse of presidential powers they chose a limited form of proposal power rather than any more far-reaching formal powers. Furthermore, they abstained from enshrining these powers in the treaties.

Governments do not have to 'accept the exploitation of the Presidency office in the present because they will get their opportunity in the future' (Tallberg 2003, p. 16). The reciprocal acquiescence in the unchecked powers of the Presidency is neither necessary nor sustainable. The institutional setting can empower the Presidency to search for viable compromise proposals and yet constrain its powers to manipulate outcomes. Also, an arrangement where member states hold far-reaching powers during their term in office could not be build on a system of reciprocity (or vote trading). Unless the exchange of votes (here: the acquiescence in the unchecked powers of the Presidency for a limited period) takes place simultaneously, member state governments will be tempted to renege on their promises (Brams 2003, pp. 199–206). Having exploited all other member states to the fullest degree

during their term in office, they will be reluctant to allow other member state to exploit them once they are no longer at the helm. Governments are unlikely still to be in power when their member state takes up the Presidency again. Hence, they cannot be punished by other member states for not following through on their promise to accept the unchecked rule of other member states during their term in office.

Tallberg (2003, pp. 16–17) quotes a Commission official who argues that the Presidency hands out 'bitter pills' every day. Ordinary Council members 'suffer for six years' because they will look forward to their own turn at the helm in the seventh year when they 'get to bash the others'. However, most governments cannot count on still being in office in the seventh year. In an enlarged Union, furthermore, the period of 'suffering' has nearly doubled. The price to pay for being more than primus inter pares for six months increases with the number of member states and the length of the interval between holding the Council Presidency. In the club of 27 member states, the policy gains made while being in power would have to be worth more than the policy losses sustained during the rule of 26 other member states for this grand vote-trading scheme to work.

To ensure efficient negotiations member states grant the Presidency some procedural prerogatives in legislative decision-making. However, to prevent the abuse of these powers by the Presidency member states can curtail them. The powers of the Presidency rely on the acquiescence of the member states and this is not without limits.

Institutional power and the Council Presidency

Veto and agenda-setting power have become prominent concepts in rational choice analysis of the powers an actor can derive from an institutional setting granting him certain privileges. They have been widely used to study legislative behaviour (see for instance Tsebelis 2002; Cox 2006). In the following, I will demonstrate the effect of granting these powers to an actor and discuss whether the Council Presidency does indeed hold veto or agenda-setting power. In particular, I will clarify the meaning of the term 'agenda-setting', which has been used with different meanings in the literature on the Council Presidency. I will argue that the member states did not grant as far-reaching and absolute powers as veto or agenda-setting to the Presidency.

An actor has veto power if his/her consent is necessary for a shift in policy. If an agreement requires unanimity all actors have veto power. Otherwise, the other bargaining parties can overrule an actor who does not have veto power. An important distinction concerns ex ante and ex post veto power. Ex ante veto power, or gate-keeping power, refers to the ability to prevent any new policy from being agreed upon. An agent with gate-keeping power can protect the status quo by not allowing any negotiations on policy alternatives. This is a purely negative power, the gate-keeper does not have any privileges once

the gates are opened. In deciding whether or not to open the gates, the gate-keeper will compare the expected outcome of negotiations to the status quo. Discussions will be allowed if the expected outcome is seen as more profitable to the gate-keeper than the status quo. In a uni-dimensional space and under majority rule, Black's (1998 [1958]) median voter theorem makes this comparison a straightforward exercise. The outcome will either be the status quo or the median's ideal point, depending on which is preferred by the gate-keeper (Denzau and Mackay 1983). In a multidimensional setting and under majority rule, however, it is only in very rare circumstances that a single outcome can be determined (Plott 1967; McKelvey 1976). A gate-keeper might be faced with the dilemma of having to decide on whether or not to open the gate without knowing if the outcome of open negotiations will be superior to the status quo (Denzau and Mackay 1983; Shepsle and Weingast 1987). Ex post veto power, in contrast, allows the actor to choose between the outcome of the negotiations and the status quo directly. This ensures that the outcome is either the status quo or a policy that the veto player prefers to the status quo (Shepsle and Weingast 1987, p. 93; Tsebelis 2002, pp. 19–24). Consider, for example, a legislative proposal on the European-wide adoption of a limit on working time. For ease of exposition, imagine that no national regulations on this matter exist at the moment and that the only issue at hand is the limit on working hours (where one extreme, infinity, implies no limit). Thus, the status quo, the policy that would prevail if no new decision is taken, would be no limit on working time. An actor with ex ante veto power (that is, gate-keeping power) could prevent any decision on the topic. In other words, a gate-keeper effectively chooses between the status quo and the (anticipated) outcome of the discussions. Ex post veto power would allow an actor to wait until there is a decision (for instance, a limit of 45 hours) and then decide whether or not this is preferable to the status quo (for instance, no limit). This will influence the behaviour of the other actors who will strive to adopt a decision that will not be vetoed. If a limit of 45 hours would be vetoed but a limit of 50 hours would not, they might adopt the latter rather than being stuck with the status quo (no limit) following a veto.

The term 'agenda-setting' is ambiguous in political science as it has been used in two fundamentally different ways. Following Romer and Rosenthal (1978) formal theorists have used agenda-setting power to describe situations in which an actor has monopoly proposal power (and gate-keeping power).[1] Effectively, such an actor can make a take-it-or-leave-it proposal because the other voters can only decide between adopting or defeating it. The set from which outcomes can be chosen is thus restricted to the status quo and the proposal of the agenda-setter. Whereas veto power delimits the set of possible outcomes to those which are preferred by all veto players to the status quo (or the status quo), agenda-setting power yields a unique outcome.

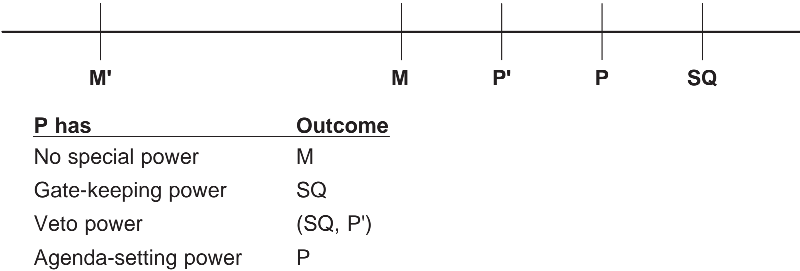
Kingdon (1995) uses the term agenda-setting in a fundamentally different way. Agendas are defined by him as 'the list of subjects or problems to which

[decision-makers] . . . are paying some serious attention at any given time.' (ibid., p. 3) An agenda-setter changes this agenda 'as it highlights its conception and its proposals, and makes attention to subjects that are not among its high priorities much less likely' (ibid., p. 199). Thus, an agenda-setter according to Kingdon changes the salience of an issue and not necessarily the actual outcome. Furthermore, an agenda-setter contributes to the specification of alternatives, narrowing the number of proposals that are seriously considered (Kingdon 1995, p. 1). Kingdon, therefore, primarily refers to the introduction or highlighting of issues and a specification of several policy alternatives, whereas formal theorists are concerned with a single proposal within a given policy space.

A one-dimensional spatial model will be helpful to convey the difference in the level of power held by an actor who has veto or agenda-setting power. In a spatial model, policies are represented by points in a policy space with distance denoting the difference between policies.[2] Political actors have an ideal position, representing the policy that they prefer most. In evaluating policies, actors compare their distance to their ideal position. They would prefer a policy close to their ideal position to one further away (regardless of the direction).

Figure 11.1 shows a one-dimensional policy space with the ideal points of the median voter (M) and the Presidency (P). SQ denotes the location of the status quo, the policy which prevails unless new legislation is enacted. The Presidency is indifferent between P′ and SQ as they are equally far away from P. Any policy inside the interval from P′ to SQ is closer to the Presidency's ideal position than the status quo. Hence, any point inside this interval would be preferred by the Presidency to the ideal position.

For the sake of simplicity, we will use a scenario in which a decision is made by simple majority in one dimension which allows us to invoke the median voter theorem. According to the median voter theorem, a decision of a majority in a one-dimensional space when no actor has special powers will reflect the preferences of the median voter. Let us contrast this outcome



P has	Outcome
No special power	M
Gate-keeping power	SQ
Veto power	(SQ, P')
Agenda-setting power	P

Figure 11.1 The effect of institutional power

to a situation where the Council Presidency has gate-keeping power. In this case it will compare the eventual decision, that is, the median voter's ideal position, to the status quo, in order to decide whether or not it should open the gates. In the scenario depicted in Figure 11.1, the status quo is closer to the Presidency's ideal position than the median voter's position. Hence, the Presidency will use its gate-keeping power and the outcome is the status quo. This demonstrates the essentially negative power of gate-keeping. The Presidency can only prevent the outcome from being worse than the status quo. Furthermore, the Presidency cannot collude with the median to choose a policy both would prefer to the status quo. Once the gates are open, gate-keeping power would not ensure that the median voter would keep his part of the deal. (Ex post) veto power, in contrast, would allow the veto player to choose between a new proposed policy and the status quo. Hence, the outcome would lie in the interval P′ to SQ, everything else would make P worse off than the status quo and hence the Presidency would exercise its veto power. Agenda-setting power, finally, would allow the Presidency to pick a new policy subject to the support of a majority. In the scenario depicted in Figure 11.1, any policy in the interval M′ to SQ would be preferred by the median voter (and hence a majority) to the status quo. Thus, there is a set of points (P′ to SQ) that both median voter and Presidency would prefer to the status quo. Indeed, the Presidency would propose its own ideal position, which would be accepted by the median. In general, as this example has shown, institutional powers allow an actor to influence policy outcomes in line with its preferences. If and to what degree it is possible to shift outcomes towards its own ideal position depends on the configuration of preferences, the voting threshold, and the location of the status quo. It has also been demonstrated that different institutional powers have a varying effect on the ability of an actor to bias outcomes in line with his preferences. Thus, to evaluate the degree to which an actor potentially benefits from being in office depends on the exact nature of the powers that an office provides. Furthermore, the effect of these powers varies from issue to issue as it depends on the preference configuration.

The Council Presidency holds neither veto nor agenda-setting power in the formal sense. The member state holding the Presidency enjoys veto power like that of any other member state if a decision is made by unanimity. But the office of the Presidency does not allow a member state to prevent a proposal from being considered nor does it grant a member state a monopoly on making proposals.

It has been argued that the member state holding the Council Presidency enjoys gate-keeping power during its six months in office. In his analysis of the co-decision procedure, Crombez (2000, p. 45 and pp. 52–3) assumes that the consent of the Council Presidency is necessary before a vote on a proposal can be taken in the Council. More generally, Tallberg argues that 'the Presidency may exploit its procedural control to *exclude items from the decision*

agenda of the Council, whether at working-group, Committee of Permanent Representatives (COREPER), or ministerial level' (Tallberg 2003, p. 12, emphasis in original). Tallberg frames this as one of three forms of agenda exclusion, which is defined as 'the active barring of an issue from the policy agenda' (ibid., p. 5). Besides excluding an item from the agenda, a Council Presidency can simply ignore a pressing issue or present only unfeasible proposals (ibid., pp. 12–13).

The concept of agenda-setting power has been widely used in studies of EU decision-making (Hörl et al. 2005), and different models of the legislative process have assigned agenda-setting power to various actors. In most cases, this means that legislative bodies are characterized as collective agenda-setters. Some models, however, credit individual actors with the de facto power of making 'take-it-or-leave-it' proposals. Steunenberg and Dimitrova (2003, p. 12) argue that within the Council 'the Presidency selects the final policy conditional on the agreement of the other members'. Consequently, their models predict that the Presidency has a significantly larger influence on policy outcomes than ordinary Council members (Steunenberg and Dimitrova 2003, Table 1). Tallberg claims that the Council Presidency has both agenda-setting power à la Kingdon and in the rational choice tradition. In the vein of Kingdon's use of the term agenda-setting, Tallberg (2003, pp. 6–8) explains that the Presidency can draw attention to a topic, put forward specific proposals, or adopt new institutional practices to highlight an issue. Furthermore, he argues that as part of its 'agenda-structuring' powers the Presidency can decide on what proposals are voted upon in which order (Tallberg 2003, p. 10). This implies agenda-setting power in the tradition of formal theorists.

The Council Presidency, however, does not have the formal authority to exclude an item from the agenda of a meeting, prevent a vote from being taken, or restrict the proposals on which a vote is being taken. An item is included on a provisional agenda, which also indicates on which items a vote may be taken, if a member state or the Commission requests it 16 days prior to a meeting (Art. 3 clause 3 Council's Rules of Procedure). The final agenda is decided upon by the Council. A vote is initiated by the Presidency or taken on the request of a member state or the Commission if it has the support of a majority of member states (Art. 11 clause 1 Council's Rules of Procedure). The Council Presidency can ask a member state to put an amendment of the text under discussion in writing before a given date. It can also ask member states with similar or identical positions to agree on a joint proposal (Art. 20 clause 1 Council's Rules of Procedure). Thus, the Council Presidency is not endowed with the formal power to exclude items from consideration. Any member state (and the Commission) can request that an item be included in the discussion and ask for a vote. In his study of environmental policy under four Council Presidencies, Wurzel (2004, p. 26) concludes that the Presidencies did not refuse to take up unwanted dossiers if they had already been

debated at the ministerial level. The sole exception is the discussion of the end-of-life directive under the German Presidency. If the Council Presidency did have gate-keeping power this would be the norm, not the exception. The Presidency would routinely keep the gates closed on dossiers it would prefer not to see adopted.

The Council Presidency has neither the formal authority to make 'take-it-or-leave-it' proposals nor veto power. All member states can put forward proposals for discussions and request a vote. Furthermore, proposals by Council members other than the Presidency do not have to pass a higher voting threshold, making it more difficult for them to set the agenda. Thus, other member states are neither barred from making a proposal nor impaired in their ability to do so by additional constraints such as a higher voting threshold. Hence, the Council Presidency does not enjoy agenda-setting power in the sense used in rational choice theory. It does, however, enjoy the prerogative of making proposals. While the Presidency cannot prevent other member states from making proposals, it can use its powers over the procedure to make the first proposal. The consequences of this are captured best by the concept of proposal power.

The effect of the Presidency's proposal power

The power to propose refers to the disproportionate pay-off the actor making the first proposal can achieve whether or not s/he enjoys gate-keeping power, that is, the power to keep a proposal off the agenda altogether. This captures the situation of the Council Presidency more accurately than veto or agenda-setting power. After the Presidency has made a first 'compromise' proposal other member states are free to present alternative texts. As explained above, the Council Presidency does not have a formal power of either barring items from the decision-making process or limiting votes to its own proposal. The Council Presidency, however, does have the prerogative to make the first proposal. It can also call immediately for a vote to be taken. If its proposal does not attract a sufficient majority, another member state can request a vote for a different proposal. Arguably, the Presidency may delay this by moving to the next item on the schedule. However, the Presidency cannot delay a vote indefinitely as implied by veto and agenda-setting power. Instead, other member states can force a vote on an alternative proposal during the term in office of the Presidency. If another proposal is not discussed in the same meeting, it can be scheduled in a few weeks time.

While proposal power still gives the Presidency a procedural advantage with positive distributional consequences, these are not as stark as they would be if the Presidency enjoyed agenda-setting power. The member states deliberately curtailed the powers of the Presidency by granting it proposal but not agenda-setting power.

Baron and Ferejohn (1989a, 1989b) capture the first-mover advantage by recognizing the importance of asymmetric probabilities of recognition. The strength of proposal power depends on the voting threshold as the first-mover in effect receives the benefits which otherwise would have gone to the outvoted members. If actors cannot be certain that they will be recognized to make a proposal, the first-mover can benefit even if amendments (that is, counter-proposals) are possible (Baron and Ferejohn 1989a, p. 363; 1989b, p. 1197), although the benefits are diminished.

The agenda-setting power discussed so far crucially depends on the inclusion of gate-keeping power: proposals are considered under a closed rule, that is they cannot be amended, and the agenda-setter has a monopoly on making proposals (Baron and Ferejohn 1989a, pp. 346–7, 353–4; Moser 2000, pp. 28–32). Baron and Ferejohn argue that in a distributive setting the actor who has the right to make the first proposal benefits disproportionately even under an open rule where amendments are possible. In their model no actor has a monopoly on making proposals, as an agenda-setter would have. Instead, a proposer is recognized randomly to make a proposal to the decision-making body. If this proposal fails to win a sufficient majority, another member (also selected randomly) will make a proposal. We can also think about intermediate scenarios where the first proposer gets to make proposals for a number (but not all) of the voting rounds. The crucial difference from agenda-setting models is the possibility of several competing proposals being made during the decision-making process. Agenda-setting power implies that all the other actors get to choose between is the proposal of the agenda-setter and the status quo, that is the result of no policy change. The agenda-setter only has to make a sufficient majority better off than the status quo to ensure passage of his proposal. Because there are no alternative proposals on the horizon the other actors would have to accept this. In contrast, with proposal power legislators compare the initial proposal to future proposals by other (randomly selected) members. The initial proposal has to promise more than the other actors might hope to gain by voting against it and continuing the decision-making process – in which they might even be selected to make their own proposal. However, future proposals might be even worse than the proposal by the first mover. An agenda-setter derives power from the certainty of the other members that the only possibility for policy change lies in the proposal of the agenda-setter. The first mover derives proposal power from the uncertainty of other members as to whether they will (or will not) benefit from future proposals. Consider, for example, a council of seven members who have to decide how to structure a spending programme on regional infrastructure. They can spend 70 million euros in regional infrastructure projects, each worth at least 1 million euros. If they cannot reach agreement, there will be no spending programme and hence nobody receives extra funding for infrastructure. For the ease of exposition, let us assume that they can only consider two proposals (as there is other

pressing business to attend to) and five votes are needed to reach agreement. An agenda-setter has a monopoly on making proposals, hence the situation is the same in both rounds with the agenda-setter making a proposal to the other Council members. To be adopted, this proposal needs to attract four votes (besides that of the agenda-setter). Hence, four Council members need to be ensured that this proposal will leave them better off than the status quo. To do this, the agenda-setter might propose the minimum amount of spending for four regions (that is, 1 million euros each), keeping the remaining 66 million for his/her region and leaving two Council members without any funding. Contrast this to a situation in which the proposer is selected at random. In the last round, the above scenario prevails. As there are no further proposals to be discussed, members have to compare the proposal to the status quo (that is, no extra funding). Whoever is selected to make the proposal reaps 66 million euros for his domestic constituency. The strategic considerations in the first round, however, change drastically if there is no monopoly on making proposals by an agenda-setter. All Council members (except the current proposer) can be randomly selected to make the second proposal. Instead of comparing the offer of the first mover to the status quo, Council members will consider the possibility of gaining more in the second round. Random selection gives them a probability of 1/6 of being recognized in the second round and receiving 66 million. The expected value of rejecting the initial proposal and going into the second round is the probability of recognition multiplied by the value of being recognized, that is 11 million euros in this example. The proposal in the first round has to offer four members at least 11 million euros if members are not to choose to gamble on being recognized in the second round. This results in close to 26 million euros for the first mover, a little over 44 million euros to 'buy out' enough members to form a sufficient majority and again no funding to two outvoted members. In the example, an agenda-setter would secure 66 million euros whereas an actor with proposal power could only get (close to) 26 million. This illustrates that agenda-setting power is stronger than proposal power. Nevertheless, proposal power gives a disproportionate share to the actor who makes the first proposal. The actor making the first proposal would reap 26 million rather than an equal share of the available 70 million (that is, 10 million). It also fares much better than the other Council members who either receive (a little over) 11 million or no funding at all.

In general, a first mover benefits from the number of rounds in which s/he can make proposals, the impatience of other Council members, a low voting threshold, and the general degree of discontent with the status quo.

The power of an actor diminishes the more his prerogatives depart from a monopoly of making proposals. The more Council members value an early decision, the more concessions they would make towards the first mover. Also, the more members can be outvoted, the better for the proposer. In the example above, five out of seven votes were necessary. The first mover had to

'buy out' four other Council members by including spending in their regions in his proposal. If the decision had been made by simple majority, this would have dropped to three other members. Conversely, unanimity rule would have guaranteed (*ceteris paribus*) an equal distribution of the spending. The more voters can be ignored, the better for a Council member putting together a winning proposal. The last point is more complex. The Baron/Ferejohn model was developed for distributive 'pork barrel' politics, such as spending programmes. Some of its assumptions do not hold for the case of regulatory politics. In a distributive setting, a proposer can freely hand out specific benefits to other actors. A proposal might give some benefits to one group of actors and withhold any benefit from others. In the example above, two Council members did not receive any spending and the smallest number of Council members was included in the spending proposal with the minimum amount to get their agreement. In a regulatory setting, a proposer is more constrained. Consequently, the effect of proposal power in a regulatory setting is limited compared to the distributive context. First, an increase in the value of the status quo decreases proposal power (Banks and Duggan 2006, p. 62). Council members might be quite content with the status quo and would need a stronger incentive to agree to a new policy proposal. Second, the choice of coalition partners is constrained by the distribution of preferences. In the extreme case there might not even be a sufficient majority in favour of a change of the status quo. Even if there is, the proposer still faces limited options compared to a distributive setting. He can only seek the support of other actors with similar preferences. In the case of (qualified) majority rule with weighted votes, this could mean that more member states need to be included to get a sufficient number of votes. Consider a scenario in which the member states are divided according to population size and Luxembourg holds the Presidency. If larger and smaller member states have diametrically opposed interests, Luxembourg will have to build a larger coalition to pass the voting threshold than would be the case if all member states had similar interests.

The power to propose under (qualified) majority voting grants the first-mover disproportionate benefits in legislative decision-making, but the degree to which this holds true in regulatory politics is limited by the necessity to include a sufficient majority and the inability to select members freely. Both agenda-setting power and proposal power require the proposer to take the preferences of at least a majority into account. However, an agenda-setter can put the stark choice to other members of accepting his proposal or being stuck with the status quo. Proposal power, on the other hand, offers the possibility of more attractive alternatives in the future which forces the initial proposer to make more concessions. The Council Presidency cannot preclude alternative proposals from the discussion, but it can make the first proposal. Hence it has proposal power, not the stronger agenda-setting power.

The importance of flanking powers for challengeable privileges

As we have seen, the Council Presidency does have a procedural advantage in legislative decision-making although the formal powers of the Presidency are restricted. However, even without an absolute power, such as agenda-setting, enshrined in the legal text governing the decision-making procedure, the Presidency can gain comparable influence if its proposals are not challenged. The member states do not have an interest in granting this de facto power informally. Nevertheless, the Presidency might assume a more powerful role if it had other ways of influencing the member states and preventing them from challenging its proposals. 'Flanking' powers would enhance the value of challengeable procedural privileges by ensuring that challenges do not occur. This argument has been made by Cox and McCubbins (1993) with respect to the Speaker of the US House of Representatives. It will be instructive to see how the institutional foundations of the powers of the Speaker compare to the Council Presidency. Neither leadership office can prevent a vote from taking place under all circumstances; their scheduling decision can be bypassed. The Speaker of the House, however, enjoys a number of powers that can be used to deter members of the House from acting against his wishes. In addition, members of the House might find it difficult to override the Speaker's decision because of the transaction costs and collective action dilemma involved. These points do not apply to the Council Presidency which has to rely on the procedural powers regarding the legislative schedule alone when trying to influence legislative outcomes.

Cox and McCubbins (1993, p. 235) argue that the scheduling power gives the Speaker of the House a de facto veto power over legislation. In order to be adopted into law, a proposal has to be voted upon. The Speaker of the House decides on the scheduling of votes. By not scheduling a vote for a particular bill, he can effectively veto legislation. This implies that only the legislation that the Speaker prefers to the status quo will pass. The decision of the Speaker not to schedule a bill for floor consideration – thus preventing it from becoming law – can, however, be circumvented via the Rules of Procedure of the House of Representatives, which do not grant the Speaker an absolute gate-keeping power, but allow for bills to be called up for floor consideration without his approval. Thus, the ex ante veto power of the Speaker is challengeable, in particular by members of the important Rules Committee. The Speaker, however, has an important say in the appointments to the Rules Committee. Through his control of the Rules Committee via the appointment process the Speaker has considerable influence on which bill is being advanced to the floor and can impede legislation which he opposes, particularly if this conforms to the majority party line. Cox and McCubbins (1993, pp. 238–9) argue that the degree to which this departure from an unchallengeable scheduling (and veto) power is relevant depends on the difficulties

of organizing an override and the potential for retaliation. The higher the transaction costs of organizing a sufficient majority are, the stronger is the scheduling power of the Speaker. The floor also needs to overcome a collective action problem as the organization of the override represents a public good. Both of these factors are related to the absolute size of the majority that is necessary to overturn the Speaker's decision. The Speaker's scheduling power might also be unchallenged because he holds additional powers (for instance, nomination to important committees) that he can use to retaliate against members of a majority overriding his schedule (Smith, Roberts et al. 2006, pp. 180–95). The more 'flanking' powers the Speaker enjoys, the more secure is his scheduling power.

While the Speaker of the House has considerable additional powers besides his influence on the legislative process, the Council Presidency cannot grant or withhold prestigious and influential positions. The Council members (that is, ministers of the member states) do not serve at the pleasure of the Presidency. Neither is the deck stacked in favour of the Presidency in structural terms. Sounding out a dozen or so colleagues on a proposal that has probably already been discussed repeatedly in working groups should not present an insurmountable obstacle. If there is a sufficient majority in the Council to pass a proposal, then it is very likely that one member state will find it in its best interest to take on the transaction costs of preparing a vote as a political entrepreneur. Hence, unlike the Speaker, the Presidency cannot back up its scheduling decisions with the threat of retaliation or rely on the inability of member states to override its decisions. This comparison carries an important lesson. The Presidency can only exercise its procedural power with regard to the legislative schedule to the extent it has been granted by the other member states. No additional powers reinforce the procedural privileges of the Presidency.

Conclusion

The Council Presidency has substantial leeway in setting the priorities of legislative work, but its limited formal powers act as a check on its bargaining power. The Presidency has a louder voice than other member states during its term in office, but it is unable to prevent other member states from making their positions known and pressing for alternative proposals. Team Presidencies are unlikely to change this.

It is in the interest of member states to grant the Presidency the ability of steering the legislative agenda to avoid problems of coordination and limit the opportunity costs of Council deliberations. However, the member states will seek to curtail the distributional consequences of the office of the Presidency. Indeed, the Presidency does not enjoy an absolute power such as an unchallengeable veto or a monopoly on the making of proposals. Instead it has a prerogative of presenting a proposal and other member states can make

alternative proposals. In addition, the time during which a member state enjoys the privileges of being at the helm is limited. Furthermore, the Presidency does not enjoy additional powers that would back up its procedural privileges.

This institutional design allows the Council members collectively to benefit from the leadership of the Council and the member states holding the Presidency to benefit from the opportunity to realize their legislative priorities without blatantly overriding the concerns of other member states. It is not the result of a grand bargain, in which member states in turn enjoy extraordinary powers, but represents the attempt of the Council to reap the benefits of leadership without allowing its abuses.

Despite the increased transparency of Council bargaining and recent advances in the scholarship on the Council, understanding the effect of the institutional setting and negotiation dynamics inside it is still a challenge. Future research will shed more light on how the office of the Presidency, the voting threshold, and the division of labour interact in shaping legislative decision-making in the Council.

Notes

1. To make things even more complicated there is a further distinction between agenda-setting as the structuring of the overall voting sequence and agenda-setting as making a take-it-or-leave-it proposal. However, if actors are sophisticated and anticipate potential attempts at manipulation by the agenda-setter, this distinction practically disappears (Shepsle and Weingast 1984). Moser (2000) offers a good introduction to this topic.
2. For a good introduction to spatial models see Hinich and Munger (1997).

12
The Facilitator of Efficient Negotiations in the Council: the Impact of the Council Secretariat

Derek Beach

Introduction

Why are intergovernmental negotiations in the Council not locked in a perpetual joint decision trap, where high transaction costs systematically result in inefficient, lowest common denominator outcomes or deadlock? Social constructivists and 'deliberative' approaches argue that Council decision-making is a very long-term iterative game that has resulted in the development of consensual norms that dictate that negotiators focus on finding solutions that promote the common European interest (Beyers 2005; Lewis, Chapter 9, this volume; Elgström and Jönsson 2000; Neyer 2006). Yet while persuasive evidence of the existence of these norms exists, these theories end up 'black-boxing' the actual negotiation process, as they offer little guidance on how actor motivations for doing 'the right thing' are channelled into an actual contractual agreement in complex intergovernmental negotiations. In contrast, liberal intergovernmentalism argues that EU decision-making is inherently efficient, as the potential high gains from cooperation will generate a sufficient supply of efficient agreements (Moravcsik 1999). However, when we look in more detail at the actual negotiation process, we find evidence that intergovernmental negotiations are not self-organizing, but require leadership in order to overcome high transaction costs (Beach and Mazzucelli 2007; see also Tallberg, Chapter 10 above).

In order for intergovernmental Council decision-making to be efficient, there must be a supply of leadership that matches the demand for leadership generated by high transaction costs and the political will for agreement. This chapter argues that intergovernmental Council decision-making is not a neutral transmission belt, where a political will for agreement is directly translated into an outcome. EU governments are often dependent upon leadership provided by actors such as the Presidency and the Council Secretariat to help them translate their often vaguely defined governmental preferences into an actual contractual agreement; yet by providing leadership, the leader also gains opportunities to promote its own private preferences.

Looking at intergovernmental negotiations in second and third pillar cooperation, this chapter focuses upon the leadership role of the Council Secretariat,[1] which has been all but discounted in the literature; perhaps not surprisingly given that it is a very small institution with few formal powers, and it assiduously cultivates the impression that '*Le Secrétariat du Conseil n'existe pas*'.[2] Yet a careful analysis that takes into account the causal impact of the provision of leadership in the actual negotiation process shows that the Council Secretariat is not merely a 'neutral' assistant. The Secretariat plays a key behind-the-scenes facilitating leadership role, oiling the wheels of compromise, ensuring that more 'integrative' agreements are reached in the Council than would otherwise have been the case.

The chapter proceeds in three steps. First, a delegated leadership model is developed which hypothesizes that intergovernmental negotiations within the Council have high transaction costs that can lead either to gains being left on the table or even to negotiation failure. Transaction costs can range from the costs of gathering and analysing all of the information necessary to understand a given negotiating context to the difficulties of finding mutually beneficial deals in situations where communication is difficult and actors have incentives to exaggerate their bottom-lines.

Leadership is viewed as a necessary factor in overcoming high transaction costs. Leadership as used here relates to what is also commonly termed instrumental leadership or entrepreneurship in the literature (Young 1991), and is defined as the provision of functions such as shaping the agenda, developing and drafting compromises and brokering deals that help solve or even circumvent collective action problems created by high transaction costs. Leadership is supplied by actors who possess a combination of relevant informational resources and the acceptance of their role by other governments. It is argued that when governments want a deal but are prevented from translating their broad preferences into an actual contractual agreement due to high transaction costs, they have incentives to delegate many leadership functions such as drafting texts and formulating compromises to the Council Secretariat, as it possesses a unique combination of comparative informational advantages, such as process expertise and drafting skills, and enjoys an unmatched level of trust amongst governments.

The chapter then undertakes a plausibility probe of the explanatory power of the theory using a comparative case study of the impact of the Secretariat in the two intergovernmental pillars of the EU: the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). The choice to focus upon intergovernmental policymaking was made in order to concentrate the inquiry upon negotiation processes within the Council itself without having to take into account strong formal powers in the policy process of other institutions, such as the Commission's agenda-setting powers or the EP's co-legislative role in first pillar cooperation.

The conclusion discusses delegated leadership by the Secretariat, its impact upon the efficiency and distribution of gains in EU intergovernmental negotiations, and the theoretical implications of these findings.

Theory: a demand-supply model of delegated leadership in EU intergovernmental negotiations

In this section the two assumptions of the delegated leadership model are briefly developed, followed by the factors that determine the demand for and ability of a given actor to supply leadership.

Theoretical assumptions: bounded rationality and the necessity of leadership

The assumptions of bounded rationality and leadership stand in marked contrast to the assumptions of negotiation efficiency and full/comprehensive actor rationality that undergird functionalist accounts of international negotiations such as neo-liberal institutionalism and liberal intergovernmentalism (Keohane 1984; Keohane et al. 1993; Moravcsik 1998, 1999).

Bounded rationality assumes that actors are intelligent, goal-seeking individuals, but also that they are constrained in choice situations by natural, cognitive limitations that prevent a fully synoptic, utility-maximizing search for the perfect coupling of problem-solution; termed full or comprehensive rationality in the literature (Simon 1997; Jones 2001). Actors use a variety of cognitive aids such as professional education and past experiences in order to make sense of complex choice situations. This means, for example, that an actor experienced in a given type of negotiation will have certain advantages over other actors in the negotiation, other things being equal.

But why should *governments* in Council negotiations ever face cognitive constraints, for are bureaucratic organizations such as foreign ministries not specifically created to compensate for the limitations of the individual? However, in any given negotiation there will only be a handful of national negotiators that have direct access to the negotiations, with the rest of the national bureaucracy several steps removed, making it exceedingly difficult for negotiators to transmit a fully synoptic picture of a complex negotiation to civil servants back in the national capital. Furthermore, when the chips are down in EU negotiations, high-level politicians take over and often purposely keep national civil servants outside the room in order to cut deals. Yet this also increases their dependence upon expert actors in the room in order to craft deals.

Building upon the bounded rationality assumption, it is posited that leadership in complex international negotiations is necessary for the demand for agreement amongst governments to be met with an adequate supply of agreement (Young 1994, pp. 114–15). There are often substantial transaction costs that can create collective action problems that can prevent the

achievement of joint gains, leading to less 'efficient' deals; either gains left on the table or even no agreement. In such circumstances, leadership that diagnoses the problems facing states and helps to craft solutions is necessary to help governmental negotiators find the Pareto frontier of mutually acceptable agreements (Young 1991, p. 283; Underdal 1994, p. 188). Furthermore, competing solutions to problems often exist and agreement does not always emerge by itself (Krasner 1991). Leadership is therefore often needed to create a 'focal point' around which agreement can converge (Garrett and Weingast 1993, p. 176; Tallberg 2002, p. 7). This involves a range of functions, such as drafting texts, shaping the agenda in ways that promote integrative bargaining, building coalitions, and brokering key compromises. Leadership alone is not *sufficient* for a negotiation to reach a mutually acceptable, Pareto-efficient outcome; there must also exist some form of political demand for agreement in order to reach a deal (Young 1991). Yet, as we see below, the provision of leadership is a *necessary* condition for efficient outcomes when institutional bargaining is affected by high transaction costs.

Why do EU governments not exclusively supply leadership in intergovernmental Council decision-making?[3] As illustrated by Tallberg in Chapter 10, the rotating Presidency of the Council does provide the necessary leadership in many situations. But there are three key factors that can prevent a Presidency from supplying leadership. First, a given EU government only holds the Presidency for six months. In contrast, the Secretariat is permanent, and in many respects acts as the institutional memory for how to conduct effective negotiations in the Council. It can also follow a proposal right from genesis to adoption. Second, many smaller governments simply lack the informational resources in the form of the necessary legal expertise, substantive knowledge and the bargaining skills to carry the full burden of the Presidency.[4] The Presidency of a smaller state will therefore strategically choose to focus its efforts on a few priority issues, while delegating functions on other issues, such as managing the agenda and drafting texts to the Council Secretariat.[5] Finally, while larger EU governments holding the Presidency (usually) have the necessary informational resources to go it alone, smaller states will often not trust a larger state Presidency with the exclusive task of formulating and securing agreement. For example, a text drafted by the Council Secretariat on a sensitive issue might be more acceptable to other delegations than one that originates from London or Paris. Therefore, a larger state Presidency often has incentives to delegate certain sensitive leadership functions such as drafting and brokerage to the Secretariat in order to ensure that all the potential gains from agreement are reached in an issue.

A delegated leadership model that explains the impact of the Council Secretariat

In what types of situations should we then expect leadership to be necessary, and when should we expect the Council Secretariat to be able to supply

leadership? In the following a demand-supply model is developed, but it must be stressed that the two are not always in equilibrium. Often there is a lack of demand for leadership in the Council due to a lack of will for agreement, resulting in stalled negotiations. Here the supply of leadership by any actor would be superfluous. The opposite is the case where governments want a deal, but where there is deficiency in the supply of leadership, resulting in either inefficient deals, deadlock or negotiation failure. In the model presented here the demand for leadership is a necessary condition for a potential leader to be able to supply leadership.

The demand for leadership

In my model, the demand for leadership is a function of: (1) the degree of common interests that states have in contractual agreement; and (2) the size of the transaction costs in the specific intergovernmental negotiation that block agreement, resulting in either sub-optimal outcomes or even negotiation failure. When governments want a contractual agreement, but are unable to reach it easily due to high transaction costs, they have strong incentives to delegate the provision of leadership functions in order to reach a mutually acceptable, efficient outcome.

At the end of the day, governmental preferences determine the broad bounds for what outcome will be the result of intergovernmental negotiations. If no political will exists for agreement, then only stronger forms of leadership supplied by actors with 'muscles', or alternatively longer-term entrepreneurial leadership as theorized by neo-functionalism, can potentially create a degree of common interest. When focusing upon a specific negotiation, I theorize that the demand for leadership is a function of the strength of the political will for agreement; the greater the will, the greater the interests governments have in delegating functions to a leader in order to overcome high transaction costs (see Figure 12.1).

The demand for leadership also varies according to the size of transaction costs in a given negotiation. These costs are determined by: (1) the complexity of a given negotiation in terms of both the technicality of the issues and the number of issues and parties in a given negotiation, and (2) the sensitivity of the issues. First, in complex and/or technical issues there will be a stronger demand for instrumental leadership provided by actors who possess comparative informational advantages, with the aim of helping the parties sort out the issues and craft agreement (Pollack 1997, pp. 126–7). Additionally, the number of issues and parties to the negotiations can increase the level of complexity of a negotiation if they also increase the number of cleavages in a given negotiation situation (Hampson and Hart 1995, pp. 28–9). In highly complex, multilateral negotiations that are characterized by many cleavages, it is difficult for the parties to identify possible agreements. Meaningful communication among parties also becomes increasingly difficult (Hampson and

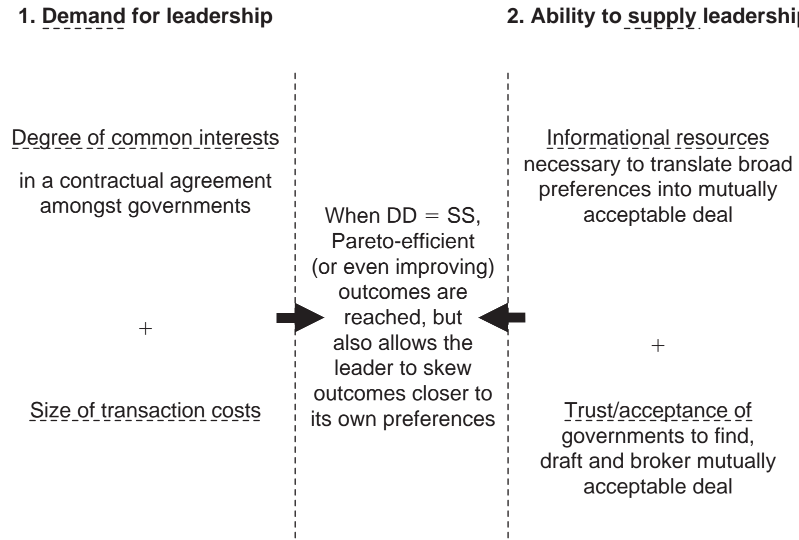


Figure 12.1 The demand for and supply of leadership in international negotiations

Hart 1995, pp. 28–9; Raiffa, 1982; Hopmann 1996). Complexity therefore creates a demand for leadership in the form of formulating and drafting texts and managing the agenda in order to help the parties find and craft a mutually agreeable outcome.

When sensitive issues are being discussed, governments are more dependent upon brokerage, and there is often the need to create a joint problem-solving atmosphere in order to transcend the lowest common denominator dynamics that plague traditional intergovernmental negotiations on sensitive issues (Haas 1961; Hopmann 1995). A joint problem-solving environment can be created and cultivated by a trusted, centrally placed actor such as a secretariat, which can act as a hub for inter-party communication, fostering norms that lead to an atmosphere of dialogue and compromise instead of hard-bargaining, and creating a focus upon the *common* interest instead of the particular bottom-lines of specific delegations.

The ability to supply leadership

I theorize that the ability of the Secretariat to provide leadership is a function of the size of: (1) its comparative informational advantages, and (2) the level of trust or acceptance of its role amongst governments.

When there are high transaction costs in a given negotiation, the possession of relevant comparative informational advantages, be they substantive expertise or bargaining skills, is a strategic asset that makes it more attractive

to delegate leadership functions to that particular actor. For instance, when negotiations reach an impasse, there is a demand for brokerage functions supplied by an actor with experience in brokering compromises.

The second necessary condition for the ability to supply leadership is the trust/acceptance of governments of the provision of leadership by a given actor. Even the largest EU governments are unable to *impose* solutions upon other governments, meaning that trust and acceptance are critical for any potential leader due to the consensual nature of Council decision-making. Trust, or level of acceptance, is however not necessarily synonymous with neutrality, but instead is based on recognition of the utility of the actor's contributions (Wehr and Lederach 1996; Bercovitch and Houston 1996, pp. 25–7; Hampson and Hart1995, p. 18; Tallberg 2003). Often, governments will know that the Secretariat has its own agenda (see below), but will still choose to delegate leadership functions to the Secretariat nonetheless, as it has less of an 'agenda' than other potential leaders. Furthermore,partiality must be perceived as such by governments. Due to the asymmetry of information between the principals and agents, governments are often simply unaware that their delegated leader is pursuing its own interests when it is cloaked by a mask of technicality.

The impact of leadership by the Council Secretariat

What impact can we expect the Secretariat to have when leadership functions are delegated to it? As theorized by principal-agent models, the strength of the delegated powers determines the degree to which the leader can pursue private gains (Pollack 1997; Tallberg, Chapter 10 in this volume). For instance, by delegating the pen to an actor, this allows the leader to insert its own priorities that do not necessarily reflect what its principals wanted. The degree of divergence between what the principals want and the actual outcome influenced by the leader is termed 'delegation costs'.

What agenda can we expect the Secretariat to promote? One must naturally be cautious when discussing the 'interests' or 'preferences' of civil servants who proclaim that they are neutral, but it is possible to discern clues from speeches, interviews and writings by Secretariat officials. With these caveats in mind, the Secretariat basically sees itself as a servant of EU governments, but as pointed out by former head Niels Ersbøll, 'our master is the Council – not the individual presidencies. We have ways of acting as a brake on national Presidency initiatives if ever they should take on an excessive national colouring' (in Westlake and Galloway, 2004, p. 350). Here we can see an emphasis on the 'common' interest that often transcends what a particular Presidency wants.

The Secretariat does not have strong interests in substantive policies. Given its mandate, the Secretariat usually defines its interests in terms of promoting 'workable' solutions based upon the professional norms and prior experience of key Secretariat officials, and will contradict governments that they feel are promoting unworkable outcomes. Further, the Secretariat is interested

in avoiding LCD outcomes, and in 'driving the Union forward in the most effective way'; this does not necessarily reflect what all governments want.[6]

The Secretariat is also a bureaucratic actor. Bureaucracies are strategic actors that will attempt to maximize their interests, but they are not the crude budget maximizers of early institutional theory.[7] Instead, I argue that they are intelligent actors that think strategically about how they can best maximize what Dunleavy (1991) has termed 'interesting' competencies in a process termed 'bureau-shaping'. Regarding the Secretariat, it is possible to detect an institutional interest in strengthening the Union, but only if the role of the Council of Ministers is strengthened in the process (Lipsius 1995; Charlemagne 1994; Piris 1999; Christiansen 2002).[8] This does not necessarily reflect what all governments want, as Belgium, Germany and Italy for example often prefer strengthening the Commission or the EP rather than the Council.

Comparative case study – the EU Council Secretariat in intergovernmental negotiations

The following section investigates the impact of the Secretariat in two different cases of intergovernmental bargaining in the second and third pillars: the 2005 negotiation of CFSP financing, and the negotiation of Eurojust within the third pillar. The two different pillars were chosen in order to detect whether the Secretariat's impact is similar across the different areas of intergovernmental cooperation in the EU.[9] The two cases chosen were both areas where there were relatively high transaction costs, although there was variance in the levels of the two components of transaction costs. In the CFSP case it was the sensitivity that really mattered for the demand for leadership, whereas in Eurojust it was the complexity of the issue itself.

On a methodological note, the impact of the Secretariat is measured using counterfactual reasoning and process-tracing techniques. For example, I discuss what could plausibly have happened had the Secretariat not taken an action, based upon the state of play at the time. Hard primary sources such as archival evidence have been utilized where they were available, and were supplemented by participant interviews and secondary accounts of the negotiations.

The Council Secretariat in second pillar CFSP negotiations: the issue of CFSP funding

As the Union has become an increasingly important actor in crisis management in actions in Africa, Asia, the Balkans and the Middle East, so the need for effective and adequate means to finance CFSP actions has become an increasingly important issue on the EU agenda. Two pressing problems vexed CFSP financing. First, the funds available to crisis management operations

financed by the Community budget have proved to be inadequate to meet demands, with CFSP funding often running out by mid-year, resulting in some suggested CFSP actions being rejected simply due to a lack of funds. By 2005, with the likely future costly involvement of the Union in Kosovo, the time was therefore ripe for a reform of CFSP financing.

Second, CFSP crisis management actions were increasingly of a mixed nature, with both civilian aspects such as humanitarian aid, and military aspects such as peacekeeping included in the same action. Whereas the common costs of many crisis management actions have been financed out of the normal Community budget under Article 28(3) EU, the article also stipulates that actions with 'military or defence implications' should be charged to governments based on a GNP scale. This procedure has been further consolidated with the creation in 2004 of a permanent mechanism for financing (the 'Athena' procedure), yet as will be developed below, the procedure is too cumbersome to deal effectively with crises (EU Bulletin, 1/2.-2004, 1.6.15).

The demand for leadership

After adopting a CFSP joint action by unanimity, it can be assumed that governments have clearly signalled that they want the action to be implemented effectively. Yet effective implementation requires funds. The reluctance of France and the UK in the 1990–91 IGC to grant the EP a role in Union foreign policy by deciding to create a separate intergovernmental funding mechanism in Article 28(3) EU for actions with security or defence implications came back to haunt the Union a decade later, as the EP was reluctant to agree to increases in the CFSP budget without gaining any influence on the policies adopted. At the same time, most EU governments (read national finance ministers) were also reluctant to see any increase in national funds paid to the Union through Article 28(3) EU over and above normal budgetary contributions. This resulted in the total inadequacy of funds for CFSP crisis management actions with military or defence implications.

An additional challenge was created when governments decided to use the Athena mechanism, as it is a mechanism that only provides for a single mission, with no permanent funds available either to facilitate rapid disbursement of finance for urgent actions, or to allow for the funding of preparatory activities for actions. There was therefore a clear demand for some solution to this under-financing problem.

The need for reform became increasingly pressing after the rejection of the Constitutional Treaty in the Dutch and French referendums in May/June 2005. After the no-votes, governments were searching for concrete ways to demonstrate 'results', and many believed that showing that the Union was an effective global player could be a key element of this strategy. However, this required that the under-financing problem be tackled.

The question of how the budget for CFSP in crisis management actions could be effectively funded was a relatively complex issue that required

extensive knowledge and experience of how the CFSP/European Security and Defence Policy (ESDP) works, in particular in financial matters. Of more importance though was the sensitive nature of the issue, which raised the basic question of the role of the Commission and the EP in EU foreign policy, pitting proponents of intergovernmental cooperation against demands for more supranational foreign policy cooperation. At the same time governments were not unitary actors, as finance ministers from even the most intergovernmentalist countries wanted to increase CFSP financing through the normal Community budget in order to avoid further taxing their national treasuries with EU spending.[10]

The ability to supply leadership

The Council Secretariat had certain comparative informational advantages in the issue of CFSP/ESDP funding. While the Secretariat is often at a disadvantage as regards substantive expertise on specific foreign policy issues, and especially lacks actionable intelligence, it has gained extensive hands-on experience with the working of CFSP/ESDP actions.[11]

Of greatest importance though was the fact that the Secretariat, and in particular its Secretary-General Solana, was a trusted actor in EU external action.[12] Some of this is due to the secondment of national officials to the Secretariat's DG-E (external affairs) (Westlake and Galloway 2004, p. 66; Hayes-Renshaw and Wallace 2006). At the same time, the Secretary-General as High Representative for CFSP is also supposed to be 'a personality with a strong political profile'.[13] It was therefore accepted that Solana takes independent initiatives; indeed the Council's Rules of Procedure (2004) even state that, 'If appropriate, the Secretary-General may ask the Presidency to convene a committee or working party, in particular in relation to matters concerning the Common Foreign and Security Policy, or to place an item on the agenda for a committee or working party.'[14] That governments approved of Solana's higher-profile role was seen in his reappointment in 2004. Another factor that created trust was the parachuting into the Secretariat of national officials.

The negotiations: the drafting of a new mechanism for CFSP funding

There was a strong demand for leadership, and the Secretariat (in particular the Secretary-General) was centrally poised to supply leadership. The Secretariat's delegated role in CFSP was one of both assisting the Council and Presidency and agenda-setting, although governments are under no obligation to take up Solana's proposals. Solana as High Representative was also often delegated executive functions, such as implementing joint actions. Furthermore, given the Secretariat and Solana's roles, the Secretariat had a natural interest in ensuring the effectiveness of the CFSP.

As stated above, the sensitive nature of the issue meant that there was a strong demand from governments for 'impartial' leadership. But the British

Presidency in the autumn of 2005 was clearly on one side of the issue; something that they acknowledged publicly. Minister for Europe Douglas Alexander put it delicately after the end of the British Presidency in the House of Lords, ‘as a member of the Council it is not entirely within our gift to resolve the challenge that has been identified’.[15] Neither was the Commission especially keen to provide leadership on the issue, as it was uninterested, if not in outright opposition, to proposing a major increase in CFSP funding in the normal Community budget; a move that would take funds away from other programmes in which the Commission actually had a say. Further, discussions at the COREPER level on the issue had been trapped by the institutional rivalry between the Commission and the Council, and the Commission had succeeded in blocking serious reform efforts.[16]

Aware that a window of opportunity had opened in mid-2005 as a result of the combination of the rejection of the Constitutional Treaty and the continuing debate on the future financial framework for 2007–13, which was scheduled to conclude in late 2005, Solana seized the initiative by first raising the question of the inadequacy of CFSP financing in informal COREPER meetings in September prior to the Hampton Court informal European Council Summit in October 2005.[17] Solana made the case that it would be impossible for the Union to continue mounting operations with the ‘laughable level’ of resources available.[18]

But the key to Solana’s leadership strategy was his decision to appeal to the Heads of State and Government (HOSG) at Hampton Court. In order to sidestep the stalemate in the discussions at the COREPER level, where the Commission had been successful in blocking progress, Solana decided to lift the debate to the highest political level, at which the HOSG could easily overcome Commission resistance.[19] The British Presidency acknowledged that it was too partial to provide leadership in the issue, and therefore chose to delegate the task of formulating options to Solana to take the work on the issue forward. Solana was therefore officially asked by the European Council in Hampton Court to return to the December 2005 summit with ‘initial orientations’ on four matters on CFSP, including CFSP funding (Council Doc. 13992/05, 4 November 2005).

The Secretariat then drafted a paper that discussed four problems with EU crisis management. Most of the work took place internally in the Secretariat, with the UK Presidency only being consulted at the very end.[20] The Secretariat paper proposed two alternative tracks to solve the problem of CFSP funding. First, it proposed a major increase in CFSP funding over the Community budget. Second, the paper discussed a possible reform of the Article 28(3) EU procedure (Athena) which would create a more permanent fund in order to avoid lengthy discussions prior to every action.

Track one was chosen in behind-the-scenes negotiations on the financial framework. Outgoing German Chancellor Schröder took up Solana’s suggestion by proposing a massive increase in CFSP spending within the

Community budget – an increase from €60 million to a figure of €300 million was suggested.[21] The Commission and the EP felt pressured by the Solana paper, as they were afraid that if they did not agree to a radical increase in CFSP spending within the Community budget, governments would choose track two – the intergovernmental 'Athena' route – which could create a precedent for member states to act increasingly outside the Community framework, further diminishing the role of the Commission in the CFSP.[22] The EP in return was granted greater consultation rights in CFSP through a revision of the 1999 Interinstitutional Agreement on the budgetary procedure, including mandating that the Council would send the chairman of the Political and Security Committee (PSC) to the EP Foreign Affairs Committee instead of sending a low level official, as had been previous practice;[23] but the EP was not granted a greater say over the actions per se.

Once track one was accepted by governments, the Commission, and the EP, it was informally agreed that the CFSP budget would be close to €340 million by 2013.[24] The Commission thereafter took over the task of filling in the details of the rate of increase from 2007 to 2013, with input from the Council and in consultation with the EP.[25] At the same time, according to Secretariat sources, if track one did not prove effective in dealing with the under-financing problems plaguing crisis management, Solana was prepared to 'reactivate' the debate on creating a new permanent intergovernmental fund in order to make funds available for preparatory actions and rapid response – in effect hanging a sword of Damocles over the heads of the Commission and EP if they did not cooperate in the discussions.[26]

The debates on CFSP funding in late 2005 illustrate the impact of Secretariat leadership. While Secretariat leadership arguably did not have a major impact on the actual substance of the agreement, it did ensure that more efficient outcomes were reached in the Council. In 2005 the issue of improving the effectiveness of EU crisis management was bogged down in COREPER and going nowhere fast. Secretariat leadership involved lifting the debate on CFSP financing to the HOSG level in order to inject political dynamism to overcome deadlock, and invoking the threat of more intergovernmental CFSP financing in order to persuade both the Commission and EP to agree to substantial increases in CFSP spending without a substantial reciprocal increase in their influence over actual CFSP actions. At the same time, the case also illustrates the pragmatic and sophisticated nature of the Secretariat's preferences, for if the Secretariat was merely a 'budget maximizer', it should have only advocated the track two solution involving the creation of a permanent fund that would be administered by the Secretariat itself. Instead, the Secretariat proposed an increase in CFSP funding *within* the Community budget – in effect prioritizing policy effectiveness over its own institutional prerogatives.

The Council Secretariat in third pillar JHA negotiations: the creation of Eurojust

As with all good things, the opening of markets and borders in the EU through the Internal Market and Schengen came with a catch. The increased ease of movement of persons, goods and capital across EU borders allowed organized crime to follow suit. Existing intergovernmental conventions proved to be both too cumbersome and too modest effectively to tackle the challenge of serious cross-border crime (Monar 2001, pp. 749–51). In response to this, the Treaty of Amsterdam strengthened the third pillar provisions aiming at fighting cross-border crime (Justice and Home Affairs – JHA), but there was still a significant lack of actual mechanisms to deal with the problem of creating a common area of freedom, security and justice in the Union, such as effective cooperation between national judicial officials.

The demand for leadership

In the late 1990s, governments were increasingly concerned about cross-border crime and how to deal with it at the European level – there was a serious problem in search of a solution. Ministers routinely complained that 'we are fighting 21st century criminals with 19th century methods' (Nilsson 2000, p. 1).

But the key question, which had potentially very serious implications for national legal systems, was what mechanisms could and should be created. The basic cleavage on the issue was between proponents of what can be termed a 'harmonization' approach – involving the creation of a common centralized judicial area at the Union level, including common rules for certain areas of civil law, automatic recognition and enforcement of court decisions across the EU, and a European Public Prosecutor – and a less intrusive 'cooperation' approach that involved some form of closer cooperation between judicial authorities, along with mutual recognition of national court rulings (Monar 2001, pp. 757–8; Nilsson 2000).

The ability to supply leadership

The Council Secretariat enjoyed numerous comparative informational advantages in third pillar JHA matters. Since the mid-1990s, the Secretariat had actively recruited competent national judicial officials who had extensive experience with the Council of Europe and the TREVI group to its new JHA Directorate General (DG) (Westlake and Galloway 2004, p. 137; Mangenot 2006). Further, as the novel policy area developed in the late 1990s, the Secretariat gradually became the permanent JHA institutional memory on which every Presidency was dependent (Westlake and Galloway 2004, p. 137). DG H on Justice and Home Affairs in the Secretariat was also one of the largest in the Secretariat, with over 60 officials (ibid.)

The Secretariat was viewed as a trusted actor in JHA,[27] as it was seen as a means whereby governments can 'ensure a driving force and coordination over time between various initiatives' (ibid., p. 138). Some of this is due to the recruitment practices described above, but governments were also accustomed to a secretariat playing a key initiating role in judicial intergovernmental cooperation, as in the Council of Europe the secretariat plays a key initiating role, producing first drafts to be debated and discussed by the parties.

The negotiation of Eurojust: the Secretariat as the 'Commission' of the third-pillar?

The negotiation of Eurojust is an illustration of a situation where governments want a solution to a problem but are dependent upon leadership in order to help them achieve a workable solution. The Secretariat enjoyed a strong institutional position in the negotiations, especially in the agenda-setting phase. While the Secretariat does not formally have the same role as the Commission in the supranational first pillar, and instead plays the role of 'assistant' to the Presidency and Council, in reality the Secretariat often acts as the 'motor' of JHA, with many initiatives informally coming from the Secretariat, and most texts being drafted by it (ibid.)

The idea of Eurojust was 'born' in the Secretariat, although a similar idea had been floated by Belgium in 1993 (Mangenot 2006). The concept had a natural appeal to the Secretariat, as it was seen as a way to bridge neatly the cleavage between governments on how to achieve effective cross-border judicial cooperation (Nilsson 2004). Improving cooperation between different legal systems *instead* of harmonizing could satisfy both camps, as it avoided some of the problems of merely using mutual recognition, while also avoiding the centralization required if national legal systems were to be harmonized.

The idea was first tabled by the Secretariat in a paper to the 1996 IGC, which was distributed after it was accepted for inclusion on the agenda by the Irish Presidency in November 1996 (CONF/3977/96). However the suggestion of inserting a provision into the treaties proved a bridge too far, and was never discussed seriously in the IGC negotiations (Westlake and Galloway 2004, p. 138).

After the new JHA provisions in the Amsterdam Treaty came into force, governments wanted to focus the coming Tampere European Council in October 1999 upon JHA matters. In this context, the Secretariat again tried to raise the issue of Eurojust. In the run-up to an informal JHA ministers meeting in Turku in September 1999 the Secretariat distributed a note that according to Secretariat officials should have made ministers say 'good idea' and agree to create Eurojust in the Tampere conclusions.[28] However, the Finnish Presidency was opposed to the idea, and therefore it seemed it would have to wait.

In order to overcome this obstacle, the Secretariat utilized its extensive network of contacts in order to find another conduit through which to get the idea on the table. One contact used was an adviser of the French minister Guigou, who persuaded the minister to raise the idea at the meeting. Another contact was a senior German judge, Schomburg, who belonged to the same political party as the German minister Däubler-Gmelin. After these two ministers raised the idea, a majority of ministers in the meeting stated that they 'found the idea interesting', resulting in its inclusion in the Tampere conclusions.[29] Article 46 of the Tampere European Council Conclusions mandated that the Council agree upon practical measures to create Eurojust by December 2001.

In order to prevent the 'taking of the wrong direction in developing Eurojust',[30] the Secretariat started drafting briefing notes to create a focal point that would maximize gains while still being politically realizable within the deadline for the negotiations. The Secretariat ended up drafting all of the texts for the four Presidencies that would chair the Council until December 2001, and helped them avoid an LCD outcome by finding and formulating compromises on sensitive issues, such as the binding powers of Eurojust recommendations, which ensured that sceptics' concerns were met, while at the same time maximizing the realizable gains.[31]

Two actions by the Secretariat considerably increased the efficiency of the negotiations. First, it initiated informal discussions between the four Presidencies that were to chair the Council until December 2001 to help them formulate a common position that would ensure a smooth negotiation.[32] Given that, for example, Belgium and Sweden were on different sides of the cleavage in the issue, there was otherwise the significant risk that the negotiations would lurch back and forth over the course of the four Presidencies, resulting either in a lowest common denominator outcome, or even in failure. Secretariat actions prevented this, thereby increasing the efficiency of the negotiations. Second, the Secretariat proposed the setting up of a provisional Eurojust unit, and helped formulate texts that ensured its adoption.[33] While the official justification was for the unit to test what worked and did not work, a more important result of a coterie of national judicial officials – actually sitting in the Justus Lipsius building from mid-way in the Eurojust negotiations (March 2000) – was to create an informal in-house lobby that could convince sceptical delegations that Eurojust was not a threatening prospect and that it could work.[34]

Thus, the creation of Eurojust is a good illustration of the impact of Secretariat leadership, along with its limits in EU intergovernmental negotiations. Given the complexity of many Council negotiations and the cleavages often splitting governments, the latter are frequently in the situation where they recognize a problem but are unable to formulate and agree upon an efficient outcome. In such circumstances governments are dependent upon the provision of leadership. The Secretariat provided a formula for Eurojust

cooperation that proved to be acceptable to governments, as it cleverly bridged the existing cleavages on the issue. Arguably no single government could have proposed such a solution, as any such proposal would have been viewed as being partial. Further, the Secretariat then increased the efficiency of the negotiation process by ensuring cooperation between the four Presidencies, and by helping the Presidencies draft legal texts. Yet the case also showed that when governments are not amenable to an idea proposed by the Secretariat, as was the case in 1996, they can merely disregard it.

Conclusions

The central argument of this chapter is that the Council Secretariat plays an important but much overlooked role in ensuring the efficiency of intergovernmental Council decision-making. The chapter first developed a theory of delegated leadership that, based upon two core assumptions, explained why leadership is necessary and why delegation to a leader can lead to unwanted outcomes. Governments are viewed in the model as intelligent, knowing broadly what they want, but they are also often dependent upon leadership in order to get their preferred outcomes. The delegated leadership theory posited that when governments want agreement but are hindered by high transaction costs, there exists a strong demand for leadership to help them find and agree upon a mutually acceptable outcome. This leadership is often supplied by the Presidency, but the Presidency is sometimes prevented from providing the necessary leadership by either: (1) a lack of the informational resources necessary (smaller-state Presidency); or (2) a lack of trust/acceptance amongst governments of its leadership (larger-state Presidency). A further factor that limits the ability of an individual Presidency to provide leadership is its short duration. As most Council decisions take several years to reach, an individual Presidency is unable to follow a proposal from genesis to agreement, whereas the Secretariat is permanent and can follow the proposal through.

When the Council Secretariat possesses a combination of the necessary informational resources and the trust/acceptance of governments, the latter and/or the Presidency will often informally delegate leadership functions to the Secretariat. This is especially the case with sensitive functions such as drafting texts and brokering compromises.[35] The Secretariat often works behind the Presidency, using its extensive network of contacts at multiple levels to find acceptable compromises and push deals. While the Secretariat's role in the second and third pillar is a far cry from the strong leadership role that the Commission (used to?) play in first pillar politics through its agenda-setting powers and expertise, the Secretariat does have a significant role in increasing the efficiency of intergovernmental Council decision-making.

However, providing leadership enables the leader to skew outcomes towards its own institutional preferences. In contrast to the arguments of

neo-liberal institutionalism and liberal intergovernmentalism, institutions such as the Council Secretariat not only increase the efficiency of interstate cooperation, but can also have substantive effects (Abbott and Snidal 1998; Keohane 1984; Keohane et al.1993; Moravcsik 1998, 1999). The preferences of the Secretariat were basically to ensure the effectiveness of the Union while also strengthening the Council.

EU governments are well aware that delegating leadership functions to the Secretariat has costs. However, it is usually a more attractive option in a given negotiation than any alternative sources of leadership. First, as we are dealing with informal delegation, governments are under no obligation to listen to their agent, meaning that they can easily revoke delegated functions from the Secretariat. This means that governments and in particular the Presidency can delegate leadership functions to the Secretariat and still feel that they are in control of the process, although bounded rationality and complexity place limits on the ability of the principals (governments/Presidency) to detect 'shirking' by the agent (the Secretariat). The case of the Secretariat suggesting a treaty base for Eurojust in 1996 shows that governments can simply ignore unpalatable Secretariat initiatives if they want to. This informality is slowly changing as the third pillar is increasingly communitarized, meaning that we should expect a decline in informal delegation as more formal powers are given to potential leaders like the Commission.

Second, significantly less efficient outcomes are often reached when a smaller-state Presidency or government attempts to provide all of the leadership functions but proves unable to carry the burden. Third, smaller governments often expect that leadership provided by a larger member state will result in higher delegation costs than if it was provided to the Secretariat. Therefore, smaller governments tend to treat the leadership provided by the larger state with a degree of suspicion, thereby also weakening the ability of a large state Presidency to supply leadership.

Finally, in intergovernmental Council decision-making, EU governments have strong incentives to delegate leadership functions to the Secretariat, and the case studies above have suggested that the Secretariat has played a key behind-the-scenes role, ensuring that the negotiations are 'efficient'. Yet by providing leadership, the Secretariat is also granted opportunities to skew outcomes closer towards its own pro-Council and integrative preferences than would otherwise have been the case. Who supplies leadership matters.

Notes

1. The formal name is the General Secretariat of the Council.
2. A notable exception is Christiansen (2002, 2003). Also Beach (2004, 2005, 2007), Hamlet (2003), Mangenot (2006). Quote is from correspondence with senior Council Secretariat official.

3. The Lisbon Treaty introduces a new leader for the European Council (the President). As regards the Council itself, it remains to be seen whether the creation of a strengthened High Representative for foreign policy can play a stronger leadership role, given that the holder will also be a vice-President of the Commission, enabling them to draw upon the informational resources of the Commission.
4. This assertion is backed by extensive research in foreign ministerial archives and participant interviews by the author.
5. In certain circumstances, smaller Presidencies have chosen to delegate functions to the Commission, as the Luxembourg Presidency did in the 1985 IGC (see Beach 2005).
6. Secretariat official, Brussels, 10 October 2006.
7. That is, they are not the crude budget maximizers theorized by Niskanen and others (Niskanen 1973).
8. Substantiated by numerous interviews with Council Secretariat staff at various levels, along with national officials and Commission officials that deal with the Secretariat.
9. In research published elsewhere, I have extensively investigated the leadership role of the Secretariat in treaty reform negotiations (see Beach 2004, 2005, 2007).
10. Interview with senior Council Secretariat official, telephone interview, 4 May 2006; senior Danish civil servant, telephone interview, 12 May 2006.
11. Christiansen (2003); interview with senior Council Secretariat official, Brussels, 12 October 2006.
12. Westlake and Galloway (2004, p. 352); interview with senior Danish civil servant, telephone interview, 12 May 2006.
13. Vienna European Council Conclusions, December 1998.
14. *Official Journal of the European Union*, L 106/35, 15.4.2004.
15. Minister for Europe Douglas Alexander in the House of Lords, Thursday 2 February 2006. Twenty-sixth report – Current Developments in European Foreign Policy, House of Lords European Union Committee, 3 March 2006.
16. Interview with senior Danish civil servant, telephone interview, 12 May 2006.
17. Interview with two senior Council Secretariat officials, telephone interviews, 4 May 2006 and May 11 2006; senior Council Secretariat official, Brussels, 12 October 2006.
18. Ibid. See also *Financial Times*, 27 October 2005.
19. Interview with senior Danish civil servant, telephone interview, 12 May 2006.
20. See Council of the European Union, The Secretary-General/High Representative, S416/05. Interview, senior Council Secretariat official, Brussels, 12 October 2006; British civil servant, 12 October 2006.
21. Interviews with two senior Council Secretariat official, telephone interviews, 4 May 2006 and 11 May 2006; senior Danish civil servant, telephone interview, 12 May 2006.
22. On this point, see COM(2001) 647 final, 'Financing of Civilian Crisis Management Operations'.
23. Article 43, IIA on budgetary discipline and sound financial management, 2006/C 139/01.
24. Interview with senior Council Secretariat official, telephone interview, 4 May 2006; British civil servant, Brussels, 12 October 2006.
25. Interviews with two senior Council Secretariat officials, telephone interviews, 4 May 2006 and 11 May 2006.

26. Telephone interview with senior Council Secretariat official, 4 May 2006; senior Danish civil servant, telephone interview, 12 May 2006.
27. Interview with British civil servant, Brussels, 12 October 2006.
28. Interview, two senior Secretariat officials, Brussels, 12 October 2006.
29. Ibid.
30. Internal Secretariat document, 'Eurojust', 10 October 1999.
31. Interviews with two senior Secretariat officials, Brussels, 12–13 October, 2006; British civil servant, Brussels, 12 October 2006.
32. Interviews with British civil servant, Brussels, 12 October 2006, senior Secretariat official, Brussels, 13 October 2006.
33. That is, in order to avoid the extensive ongoing debates about the scope of Eurojust, the Secretariat successfully proposed limiting the scope by using the wording from Tampere on 'combating serious organized crime'. See the draft papers of the Secretariat from the beginning to mid-September 2000 on the Provisional Eurojust unit.
34. Interviews with two senior Secretariat officials, Brussels, 12–13 October 2006.
35. For more evidence, see Beach (2007).

13

The Relative Power of Member States in the Council: Large and Small, Old and New

Robert Thomson

Introduction

This chapter examines the relative power of state representatives in the Council of Ministers to shape decision outcomes in the legislative arena. I focus particularly on the relative power of large and small member states. This research focus is relevant in the light of the recent enlargement of the European Union (EU), since most of the new member states are small. Therefore, the impact of enlargement on the EU's decision-making processes will depend on the extent to which small states affect decision outcomes. Moreover, the legislative acts examined in the present study have had tangible effects on a wide range of policy areas, including the funding of student exchange programmes, subsidies for agricultural products, and the content and labelling of foodstuffs. This importance warrants an examination of how these decisions were taken.

The present chapter makes two main contributions by building on existing research on legislative decision-making in the European Union. First, I elaborate and apply a conception of power as capabilities. Capabilities are pertinent at the influence stage of decision-making prior to the final decision stage, and are based on a variety of formal and informal resources. I present the results of a small survey of EU practitioners who estimated the relative capabilities of the member states in the EU-15. This approach complements other studies that have estimated member states' relative power based on their formal votes using voting power indices (for instance, Hosli 1995; Hosli and Machover 2004). Second, I take the estimates of practitioners as a hypothesis, by comparing them with other hypothesized distributions of capabilities among large and small member states using a simple bargaining model. The model used is the compromise model or Nash Bargaining Solution (Achen 2006b). In previous research, this model generated significantly more accurate predictions of decision outcomes than a range of other models (Thomson et al. 2006). The model posits that the decision outcome on a controversial issue is a simple function of actors' policy positions, weighted by their capabilities

and the levels of salience they attach to the issue. Here, I test the predictive accuracy of alternative variants of the compromise model in the EU of 15 member states (EU-15), and in the post-2004 enlarged EU. Each variant makes a different assumption about the distribution of capabilities among the member states.

The next section of this chapter describes the capability-based conception of power, practitioners' estimates of the distribution of capabilities in the Council of the EU-15, and possible alternative distributions of capabilities that might be applicable. The third section describes the research design for testing the validity of these alternative capability distributions. This includes a brief presentation of the compromise model, and a description of the dataset on decision-making in the EU-15 to which the model is applied. The fourth section contains the analyses. The fifth section presents a similar analysis of a dataset on decision-making in the post-2004 EU. I conclude by drawing inferences on the relative power of large and small states, and of old and new members.

The distribution of capabilities in the EU-15

A common conception of collective decision-making in many political systems is that it consists of an influence stage followed by a decision stage. Achen (2006b, p. 86) notes that this general conception has been shared by a broad range of studies, including the work of Bentley (1967 [1908]). Stokman and Van den Bos (1992) formalized this conception in their two-stage model of policymaking. At the influence stage, actors attempt to win support for the decision outcomes they favour most. During this influence stage, actors employ a range of strategies in pursuit of this goal. They may attempt to induce other actors to support them by offering favours or political support on other issues. They might attempt to coerce other actors into supporting them by threatening to block the proposals of those other actors. They could even attempt to convince other actors of the merits of their favoured decision outcomes with new information. The main constraints on actors' behaviour at this influence stage are the prevailing norms of what is acceptable in the policy area in question, and the capabilities required to pursue such strategies. At the influence stage, the relevant actors need not be limited to those represented in the decision-making body or committee. Furthermore, if the relevant actors are represented in the decision-making committee, their weight at the influence stage need not be reflected in the number of votes they hold in that committee. The activities during the influence stage may result in actors shifting support from the decision outcomes they initially favoured to other decision outcomes. At the decision stage, by contrast, the relevant actors are limited to those formally represented on the decision-making committee. Moreover, at the decision-making stage,

actors' weights are defined by the rules that govern decision-making in the committee, including the number of votes each has.

For the present analysis, the key insight from this two-stage conception is that member states' weights in defining the content of decision outcomes depend not only on the formal rules that govern Council decision-making, such as the number of votes they have. Their influence also depends on their ability and willingness to deploy a broader range of capabilities to influence other actors. These capabilities define actors' potential to influence others and the contents of decision outcomes. Capabilities depend on the possession of a range of resources that could bolster influence (Bueno de Mesquita 2003, Chapter 7; Thomson et al. 2003). Whether or not a resource is relevant depends on the decision situation in question. For example, military resources are unlikely to be relevant when the EU's banking regulations are being debated. However, the size of a country's economy and the efficiency of its civil servants may be relevant. An actor's formal representation on a decision-making committee may also be a resource at the influence stage if this enables it to make credible threats or promises to other actors. In this respect, the resources at actors' disposal during the decision stage may not be independent of their resources at the influence stage. Whether or not a member state decides to exert its potential to influence depends on how salient the issue is to it. Stokman and Van den Bos (1992) formalize the concept of influence as the proportion of an actor's capabilities that it is willing to put into effect during the decision-making process.

Bueno de Mesquita (2003, pp. 598–602) developed a method for estimating actors' capabilities that has been applied in a wide variety of settings in international relations. This method was adapted and applied in the present study. The method involves semi-structured interviews with key informants, during which the informants are asked to quantify their views on the distribution of capabilities among the actors involved. Informants may include any power resources they believe to be relevant in their estimates of actors' capabilities. The nature of the relevant resources depends on the decision situation examined. The aim is to arrive at a quantitative assessment of the relative weight that each actor potentially has in the decision-making process.

In the present study, 14 sets of estimates of the distribution of capabilities among the member states in the EU-15 were obtained from interviews held in 2000 and 2001. The interviewees were selected on the basis of their professional position. They had been working in the EU for many years and/or had reached a position from which they could observe the relative power of the EU actors in a broad range of areas. The experts were of different nationalities (from Austria, France, Germany, Italy, Spain, Sweden and the United Kingdom) and different levels of seniority in the permanent representations of the member states. In addition, four of the informants were officials from the European Commission and one was an official in the European Parliament (EP). The views of the Commission and EP officials provided useful points of

comparison with the views of officials from the permanent representations. The interviews lasted an average of 100 minutes and were devoted to the interviewees' estimates of the relative capabilities of the EU actors. Before discussing the capabilities of the actors, the standard request was worded as follows:

> [D]ifferent stakeholders have different capabilities or amounts of potential to influence decision outcomes. This ability is based on a number of different resources: for example, the formal authority to take decisions, financial resources, information, access to other important stakeholders, leadership of a large number of people etc.

When considering the relative capabilities of the member state representatives in the Council of Ministers, the informants were invited to rate each on a scale from 0 to 100. In most cases, the informants found it easiest to attribute a score of 100 to the actor or actors who in their view held most capabilities and to rate the other member states relative to this score. Some preferred to give the actor with most capabilities a score below 100, and to rate the other actors relative to that. To make the scores comparable with each other, they were rescaled after the interview so that the actor with the most capabilities always has a score of 100. Throughout the interview, informants were asked to provide qualitative information to support their estimates, and to consider the relative capabilities of different hypothetical coalitions of actors on issues to which the actors attached equal levels of salience.

Figure 13.1 reports the relations between these average capability scores, whereby the highest average – the score for France – has been set to 100, and the scores of the other member states are presented relative to the French score. In a detailed analysis of the fourteen sets of estimates, Stefanie Bailer (2002, 2004) examined the differences between the estimates provided by informants who focused on different policy areas, by informants of different nationalities, and by informants with different institutional affiliations. Austria and Luxembourg were generally estimated to have fewer capabilities by informants who focused on fisheries than on other policy areas. With this obvious exception, no substantial differences were found between the estimates provided by different informants.

Intriguingly, informants who focused on policy areas where the unanimity requirement is common provided similar estimates of the distribution of capabilities to informants who focused on areas where qualified majority voting (QMV) is common. This suggests that while the voting weights may differ between unanimity and QMV, the distribution of capabilities among member states at the influence stage may be similar. It was therefore decided to pool the estimates and take the average score for each member state.

The distribution of capabilities estimated by key informants has an inclusive-regressive form (Figure 13.1). It is inclusive in the sense that all

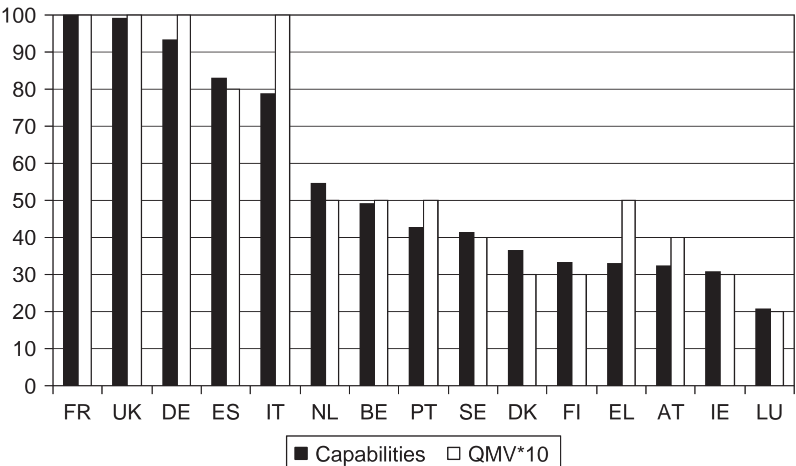


Figure 13.1 Relative capabilities of EU-15 member states in the Council of Ministers
Source: Adapted from Thomson and Stokman (2006, p. 51). See Figure 13.3 for complete country codes.

member states have substantial capabilities; it is regressive in the sense that large member states have more capabilities than small member states, but not in proportion to their population sizes. The number of qualified majority votes held by each member state (multiplied by ten) is included in Figure 13.1 to provide a point of comparison. There is obviously a strong relationship between the relative capabilities estimated by informants and the share of qualified majority votes held by each state.

There are a few noteworthy differences between states' capabilities and their relative share of qualified majority votes. Of the four large member states that held ten qualified majority votes, Germany and Italy have somewhat fewer capabilities than do France and the UK. When attributing lower capability scores to Germany than to the UK and France, the informants referred to different levels of negotiating skill held by their diplomats. The German federal system was also said to pose a challenge to diplomats in formulating and coordinating coherent positions. Scharpf (1998) famously labelled the German polity as 'cooperative federalism', in which power is distributed and shared across several layers of government. The implication for German diplomats negotiating in Brussels is that they sometimes have less room for manoeuvre than their colleagues in other delegations.

Several informants justified a lower capability score for Italy on the grounds that the Italian delegation often appeared to be poorly organized and unable to articulate a clear position in meetings. By contrast, the informants generally agreed that the Spanish delegation has more capabilities relative to other

member states than its share of votes suggests. This was attributed to skilful and tenacious diplomacy by the Spaniards. This distinction parallels Bindi and Cisci's 'tale of contrasting effectiveness' of Italy and Spain in the EU, in which they note that 'Italy has been generally passive in low politics' (2005, p. 156), of which the legislative proposals examined here are examples. By contrast, Spain is central to the discussions that take place at working group level (Beyers and Dierickx 1998, pp. 306, 312).

The inclusive-regressive capability distribution has a substantial degree of face validity. It is based on the combined experience of a carefully selected group of key informants. It also resonates with academic research on member states' influence in the Council (see for example Naurin and Lindahl's findings concerning the distribution of 'network capital' in Chapter 4 above). However, this does not necessarily imply that the estimates are accurate. Indeed, these estimates will gain more credibility if they are compared against other possible sets of capability scores in a way that facilitates a comparative test. In the following analyses, the estimates of the practitioners are treated as a hypothesis. I compare the inclusive-regressive distribution with three alternatives.

- The first alternative capability distribution is the inclusive-equal distribution. According to this distribution, each of the member states has an equal amount of capabilities with which to influence other actors and decision outcomes.
- The second alternative distribution is the big-five distribution. According to this distribution, the five large member states (France, Germany, Italy, Spain and the UK) have equal capabilities while the remaining member states have none. In contrast to the inclusive-regressive distribution, this distribution excludes the medium-sized and small member states from exerting influence.
- The third alternative distribution is the Franco-German distribution according to which France and Germany have equal capabilities, while other member states are excluded. Investigation of this possibility is warranted by the importance of cooperation and compromise between France and Germany throughout the course of European integration (Pedersen 1998).[1]

These alternative distributions may be more applicable under certain conditions. For instance, the inclusive-equal distribution may be more relevant to issues that must be decided by unanimity in the Council rather than by QMV. Although votes are rarely taken in the Council, and member states often strive for consensus even when a QMV majority would be sufficient, previous research shows there are significant differences between proposals decided by QMV and unanimity (Golub 1999, 2002; Schultz and König 2000). The more restrictive distributions of power, which only include the large

member states, may be more applicable when there is consensus among the large member states. For instance, when France and Germany share the same position, these actors may define the content of decision outcomes.

Research design for the EU-15 study

To test the four hypothesized capability distributions against each other, I formulate four variants of a model of political bargaining, one with the inclusive-regressive distribution of capabilities and three with the alternative distributions. The bargaining model generates predictions of decision outcomes on controversial issues using estimates of actors' capabilities, policy positions, and the levels of salience actors attach to issues. By identifying whether or not alternative capability scores can improve on the predictive accuracy of the model with the informants' estimates, inferences can be made about the accuracy of these estimates. The first part of this section describes the model. The second part describes the dataset on which the analyses are performed.

The compromise model/Nash Bargaining Solution

The compromise model's prediction is simply the mean average of the actors' policy positions, weighted by the product of their capabilities and the levels of salience they attach to the issue on which the prediction is being made. As a formula:

$$O_a = \frac{\sum_{i=1}^{n} x_{ia} c_i s_{ia}}{\sum_{i=1}^{n} c_i s_{ia}} \qquad (13.1)$$

where O_a is the prediction of the decision outcome on issue a; x_{ia} denotes the position of actor i (from the set of actors, n) on issue a; c_i denotes the capabilities of actor i; s_{ia} is the level of salience actor i attaches to issue a.

The compromise model was first proposed in this form by Jan van den Bos (1991) in his study of decision-making in the Council of the European Community. When describing the decision-making process this model represents, he emphasized that it 'takes all positions of Member States into account, weighting these by the resources a Member State can apply during the negotiation and the importance each attaches to the decision at hand' (Bos 1991, p. 176). The compromise model is not concerned with the composition of actors' capabilities. That is exogenous to the model. Rather, it is concerned with the transformation of actors' positions into decision outcomes, and how the relative capabilities and levels of issue salience affect this transformation.

More recently, Achen (2006b) greatly improved the theoretical standing of the compromise model. First, he drew parallels between this model and

the research traditions of institutional realism in political science and social action theory in sociology. He concluded that '[t]his sophisticatedly simple equation neatly summarises much of the previous century's thought about political policy-making' (ibid. p. 94). Second, Achen proved that if a certain condition is met, the compromise model is a first-order approximation of the famous Nash Bargaining Solution (Nash 1950). Nash formulated the bargaining solution as an answer to the question of what each actor should get in a situation where they must collaborate for mutual benefit. Informally, the essence of Nash's answer is that it is the decision outcome that minimizes the utility losses of the actors involved. Achen's insight is that if the disagreement outcome is highly undesirable, the compromise model and the Nash Bargaining Solution are one and the same.

It is clear that the disagreement outcome is generally highly undesirable in EU decision-making, and therefore that the compromise model is an appropriate formula with which to represent the Nash Bargaining Solution in this context (Achen 2006b, pp. 101–3). Close observers of decision-making in the EU know that negotiators go to great lengths to avoid breakdown in discussions, even when parts of the legislative proposal are unpopular. Hayes-Renshaw and Wallace refer to this as the imperative of making propositions 'yesable' (2006, p. 303). The successful application of this norm is also evident in the paucity of no-votes in the Council, as discussed in other chapters of this book. It is true that on certain controversial issues, including those studied in the dataset examined here, there are often member state representatives who would prefer the so-called 'reference point'. The reference point is the decision outcome that would prevail if no decision were taken. However, this reference point does not capture two very important negative consequences of a failure to agree. The first is that other, perhaps uncontroversial, parts of the legislative proposal would be lost if no agreement were reached. The second is that breakdowns in the decision-making process are damaging to the long-term relationships between decision-makers, a cost that is not worth bearing unless the stakes are extremely high.

In addition to having strong theoretical foundations, the compromise model or Nash Bargaining Solution has an impressive track record in predicting decision outcomes more accurately than supposedly more sophisticated models. In one study, the compromise model was tested against two models of bargaining in the Council of Ministers, a non-cooperative conflict model and a cooperative exchange model (Bueno de Mesquita and Stokman 1994). The predictions of decision outcomes generated by the compromise model were not statistically distinguishable from those of the more complex bargaining models. In a more recent study that examined the same dataset as the one examined here, the compromise model was tested against a range of rational choice institutionalist models of legislative decision-making (Thomson et al. 2006). None of the more complex models generated more accurate predictions than the compromise model, and most generated

significantly less accurate predictions. Similarly, Moravcsik (1998, p. 498) suggests that landmark decisions in the course of European integration can be understood using the framework of the Nash Bargaining Solution. Like any model, the compromise model/Nash Bargaining Solution does not produce perfectly accurate predictions. However, relative to other models, it has a high predictive power. In the present study, I take advantage of this predictive power by using the model to identify which estimates of the distribution of capabilities in the Council are associated with the most accurate predictions of decision outcomes.

To apply the compromise model, estimates are also needed of the relative capabilities of the three institutions, the Council, the Commission and the European Parliament (EP). Thomson and Hosli (2006) identified the relative capability scores for these three institutional actors which minimize the prediction errors of the compromise model.[2] These scores are used in the present analysis. Under the consultation procedure combined with unanimity in the Council, the Commission has 30 per cent of the capabilities of the Council as a whole, while the EP has 15 per cent of the capabilities of the Council as a whole. Under consultation combined with unanimity voting in the Council, all capabilities are held by the Council members. Under the co-decision procedure, the Commission has 15 per cent of the capabilities of the Council as a whole, while the EP has 25 per cent of the capabilities of the Council as a whole.

A dataset on legislative decision-making in the EU-15

The Decision-Making in the EU (DEU) dataset contains information on the policy positions of the 15 member states, the Commission and the EP on 162 controversial issues from 66 legislative proposals introduced between the first half of 1996 and the second half of 2000 (see also König and Junge, Chapter 5 in this volume). Full details of the research design decisions can be found in Thomson and Stokman (2006).[3] The legislative proposals were selected according to the following three criteria: the type of legislative procedure followed, the time period involved, and the level of political importance. Concerning the decision-making procedure, the legislative proposals selected were subject to either the consultation or the co-decision procedures. Forty of the 66 legislative proposals, covering 94 of the 162 issues, were subject to the consultation procedure; the remaining issues were subject to the co-decision procedure. Regarding the time period, each legislative proposal was on the Council's agenda in the years 1999 and/or 2000. Regarding political importance, the selection was restricted to proposals on which there was an indication of at least some political importance and controversy. Each proposal was mentioned in *Agence Europe*, a news service covering European affairs. Furthermore, informants had to identify at least one substantive disagreement between at least some of the actors. Of course, issues on which

the member states agreed do not provide an opportunity to test alternative views on the distribution of capabilities among the member states. Given these selection criteria, the legislative proposals cover a range of policy areas. Agriculture (14 proposals), internal market (13 proposals), and fisheries (7 proposals) are the most common. The remaining proposals are distributed across the areas of economic and financial affairs, justice and home affairs, general affairs and other policy areas.

Each of the controversial issues was represented spatially, in the form of a policy scale ranging from 0 to 100. The decision outcomes favoured most by the Commission, each of the 15 member states and the European Parliament were estimated using interviews with key informants from the Commission and member states' representations, and Council documentation. The interviews were conducted separately from the interviews on the distribution of capabilities in the Council. The informants' estimates of the actors' positions refer to the decision outcomes favoured by each of the actors at the time of the introduction of the Commission's proposal. For each issue, the most extreme decision outcomes are located at the ends of the policy scale, at positions 0 and 100. Actors with other positions were placed between these extremes by the key informants to represent their views on the political distances between their positions and each of the extremes.

The informants were also asked to estimate the level of importance each of the actors attached to each issue. This level of importance was estimated on a scale of 0–100, whereby a score of zero indicates that the issue was of no importance whatsoever, 50 that it had an 'average' level of importance to the actor concerned, and 100 that the issue could hardly be more important. The relations between the salience scores for different actors are more important than the absolute values of the scores. As with the procedures for estimating actors' capabilities and actors' positions on controversial issues, the procedure for estimating issue salience was adapted from a widely-used procedure for decision analysis (Bueno de Mesquita 2003, pp. 598–602). When obtaining the judgements on actors' positions and the levels of importance they attached to the issues, they were asked to substantiate their judgements extensively.

Validity and reliability tests were conducted on the informants' judgements with satisfactory results. These tests consisted of comparing informants' judgements with information from Council documentation, and comparing judgements from different informants (Thomson 2006). These tests show that of all the points of discussion raised in the Council, key informants generally focus on issues that are more controversial, and that are more difficult to resolve. These are exactly the kinds of issues most relevant to exploring the validity of alternative capability distributions in the Council, because they are cases in which member states disagree with each other. Informants' estimates of actors' initial policy positions sometimes differ from information reported in Council documentation. On examination, these differences are

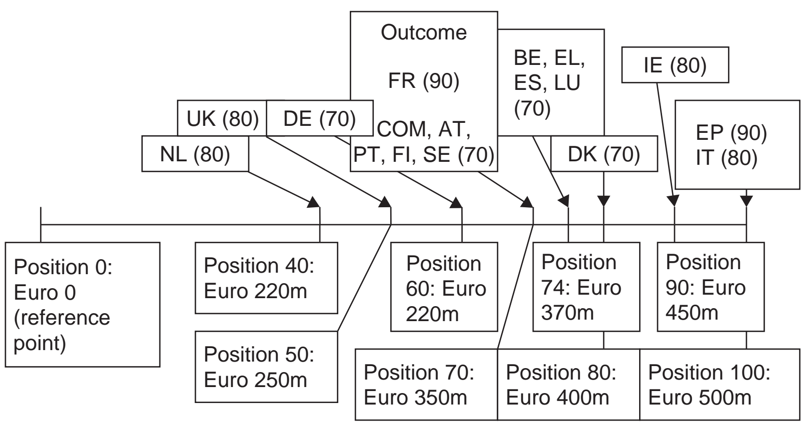


Figure 13.2 Positions of EU-15 on the issue of funding for the European audiovisual industry (salience scores in parentheses)

Note: Reference point: decision outcome in the event of disagreement. See Figure 13.3 for complete country codes.

due to the fact that Council documents do not refer to initial policy positions, but to the decision outcomes actors were prepared to accept during the course of the negotiations. In addition, König et al. (2007) compared 31 point estimates provided by these key informants with estimates from informants in the European Parliament and found that 30 match perfectly or almost perfectly.

An example of this way of representing controversies is given in Figure 13.2. The example is taken from a controversial issue raised by a legislative proposal from 1999 on financial support for the European audiovisual industry, the so-called MEDIA-plus project (CNS/1999/276).[4] The legislative proposal aimed to provide financial support for the European film industry in the period 2001–05. Two justifications for this financial support were given. First, since this support would encourage productions from one member state to be distributed in other member states, it would introduce European citizens to other European cultures and languages. Second, it would enable European films to compete against better-financed American productions. The most controversial issue raised by this proposal concerned the amount of money to be allocated. The key informants explained that the decision outcomes favoured most by the member states were defined by their general stance on fiscal issues, their general attitude to American productions, and what they expected to gain from this particular programme. The Netherlands and the UK, for instance, favoured the allocation of relatively low levels of funding for this programme, €200 million and €250 million respectively. These member states are generally fiscally conservative when it comes to EU

expenditure. Furthermore, these countries are generally not considered to be defensive when it comes to the import of American culture. Member states that favoured higher levels of expenditure on this programme had different views on spending in general, the protection of European culture against American imports, and what they expected to gain from this programme.

The issue of the level of funding for the audiovisual industry also illustrates how alternative variants of the compromise model are used to generate different predictions of the decision outcome. In this case, the inclusive-regressive distribution of capabilities gives the most accurate prediction of the decision outcome. The decision outcome was that €350 million was allocated to the MEDIA-plus programme. This outcome corresponds to position 70 on the issue scale. Rounded to the nearest whole number, the compromise model with the inclusive-regressive capability distribution generates a prediction of position 70 on the scale. Therefore, this model has an error of zero on this issue. The other variants of the model produce predictions further from the actual decision outcome. Both the inclusive-equal distribution and the big-five distribution generate predictions of position 72 on the policy scale, which corresponds to a prediction of €360 million. The compromise model with the Franco-German capability distribution has a higher error. Its prediction is point 66 on the scale, or €330 million. In the following analyses, I use the average of the absolute distances between each model's predictions and the actual decision outcomes on the standardized 0–100 policy scales to measure the models' predictive power. Note that for most of the other issues in the dataset, the positions of the actors range from 0–100, which means there are larger differences between the point predictions of the different variants of the compromise model than in Figure 13.2.

Analysis of decision-making in the EU-15

The inclusive-regressive distribution of capabilities among the member states, as estimated by practitioners, is associated with the most accurate predictions of decision outcomes across all of the issues in the dataset. Table 13.1 shows that across the 162 issues in the dataset, the compromise model loaded with the inclusive-regressive distribution has an average absolute error of 21.94 scale points. The compromise model with the inclusive-equal distribution has a slightly higher error, 22.14 scale points. Although the error associated with the inclusive-equal distribution is higher than that of the inclusive-regressive distribution, these two models do not differ significantly from each other in predictive accuracy. The other two variants of the compromise model, the big-five distribution and the Franco-German distribution, make significantly less accurate predictions than the compromise model with the inclusive-regressive distribution. In the following analyses I also examine sub-sets of issues, for instance, issues subject to the same decision-making procedure. There are no conditions under which an alternative distribution

Table 13.1 Errors of inclusive and restrictive models compared across all issues

Procedure	N	Inclusive-regressive	Inclusive-equal		Big-five		Franco-German	
		Error	Error	z-score	Error	z-score	Error	z-score
CNS-QMV	55	23.02	23.35	−1.01	23.04	−0.17	27.77	−2.24**
CNS- Unn.	39	15.70	17.33	−1.65*	15.17	0.76	18.27	−0.65
COD	68	24.65	23.93	1.36	27.91	−3.34***	32.66	−4.22***
Total	162	21.94	22.14	−0.41	23.19	−1.80*	27.54	−4.40***

Note: Negative z-scores imply deterioration in predictive accuracy compared to inclusive-regressive model. Z-scores obtained from Wilcoxon's matched pairs signed rank test. *: $p < .10$; **$p < .05$; ***$p < .01$.

of capabilities enables the compromise model to improve significantly on its performance with the inclusive-regressive capability estimates.

Within each decision-making procedure, the predictive accuracy of the inclusive-regressive capability distribution is not significantly improved upon by any of the three alternative capability distributions. Table 13.1 divides the 162 issues into issues subject to the consultation procedure in combination with QMV in the Council, consultation in combination with unanimity in the Council, and issues subject to the co-decision procedure. Most of the co-decision issues were combined with QMV in the Council. On the consultation-QMV issues, the inclusive-regressive distribution generates the most accurate predictions, although the big-five distribution is essentially just as accurate. Surprisingly, the inclusive-equal distribution does not generate more accurate predictions when the unanimity rule in the Council applies. Indeed, on the consultation-unanimity issues, the inclusive-equal distribution predicts significantly worse than the inclusive-regressive distribution, while the big-five distribution is the most accurate by a small margin. By contrast, for issues subject to the co-decision procedure, the inclusive-equal distribution is associated with the most accurate predictions. However, the difference between the errors of the inclusive-regressive and the inclusive-equal distributions is not statistically significant by conventional standards (p-value is 0.17).

I speculated that the Franco-German capability distribution may be associated with more accurate predictions when there is agreement between the French and German representations. There is only partial and weak support for this expectation. Table 13.2 examines the 69 issues on which the French and German representations in the Council shared the same policy position. Considering all 69 of these issues, the Franco-German capability distribution gives significantly less accurate predictions than does the inclusive-regressive

Table 13.2 Errors of inclusive and restrictive models compared across issues on which France and Germany share the same position

Procedure	N	Inclusive-regressive	Inclusive-equal		Big-five		Franco-German	
		Error	Error	z-score	Error	z-score	Error	z-score
CNS-QMV	18	26.02	27.18	−1.59	24.66	1.29	30.48	−0.76
CNS-Unn.	18	12.88	14.17	−1.25	14.01	−0.27	12.50	0.90
COD	33	21.50	20.50	1.19	25.70	−2.56***	31.58	−3.42***
Total	69	20.43	20.59	−0.43	22.38	−1.14	26.32	−2.82***

Note: Negative z-scores imply deterioration in predictive accuracy compared to inclusive-regressive model. Z-scores obtained from Wilcoxon's matched pairs signed rank test. *: $p < .10$; **$p < .05$; ***$p < .01$.

Table 13.3 Errors of inclusive and restrictive models compared across policy areas

Policy area	N	Inclusive-regressive	Inclusive-equal		Big-five		Franco-German	
		Error	Error	z-score	Error	z-score	Error	z-score
Agriculture	40	26.44	26.31	0.22	27.23	−0.58	32.00	−2.23**
Internal market	34	28.20	27.49	1.21	30.27	−2.21**	34.56	−2.59***
Other	88	17.49	18.18	−1.35	18.62	−0.60	22.80	−2.87***
Total	162	21.94	22.14	−0.41	23.19	−1.80*	27.54	−4.40***

Note: Negative z-scores imply deterioration in predictive accuracy compared to inclusive-regressive model. Z-scores obtained from Wilcoxon's matched pairs signed rank test. *: $p < .10$; **$p < .05$; ***$p < .01$.

capability distribution. However, in the sub-set of 18 issues to which the unanimity rule applied, the Franco-German distribution is associated with the most accurate predictions, although these are not significantly better than those of the inclusive-regressive distribution.

The finding that no alternative capability distribution significantly improves on the predictive accuracy of the inclusive-regressive distribution holds when considering the results by policy area. Table 13.3 divides the issues into those relating to agriculture, internal market and 'other' policy areas. None of these other policy areas is a large enough group of issues to warrant a separate quantitative analysis. For both agriculture and the internal market the inclusive-equal capability distribution is associated with the most accurate predictions. However, the predictions of the inclusive-equal capability distribution do not differ significantly from those of the inclusive-regressive distribution.

Old and new member states in the enlarged EU

This section examines decision-making in the enlarged EU using a similar modelling approach to the one applied to the EU-15 data in the previous section. The findings from the EU-15 study point to the conclusion that small member states have a substantial impact on decision outcomes. This leads to the expectation that the new member states in the enlarged EU, most of which are small, wield considerable influence. To test this expectation, I formulate two variants of the compromise model, and test these with new data on decision-making in the post-2004 period. The first variant of the compromise model is the 'all member states compromise', which includes the positions of all member states after 2004. The second variant is the 'old member states compromise', which includes only the positions of the 15 old member states.[5]

The following analysis is based on information on 53 controversial issues from 17 legislative proposals that were discussed in the Council after the 2004 enlargement. As in the above-mentioned research on decision-making in the EU-15 (Thomson et al. 2006), these legislative proposals were selected on the basis of their political importance, as indicated by media reports and by reports of controversy by key informants. The proposals cover a range of policy areas: for example, sugar sector reform, regional development, liberalization of port services, and the rights of passengers with reduced mobility in air transport. Three other researchers and I held 130 semi-structured interviews with key informants, using the same procedure as outlined above. The key informants were from the permanent representations of the member states (including both old and new members), the Commission, and the EP. We collected these data with the aim of replicating and moving beyond the study by Thomson et al. (2006), by collecting comparable information on controversial issues and the positions of actors on those issues in the post-2004 EU.[6]

The main finding from the analysis of the post-2004 enlargement data is that when the new member states take positions, they appear to influence the content of decision outcomes. This is illustrated by the case of the European Neighbourhood and Partnership Instrument (ENPI). This regulation, adopted in October 2006, shows how enlargement is gradually shifting the balance of the Union's external interests from South to East. The ENPI introduced a set of criteria on the basis of which potential recipients of EU external aid will compete for funding. The general expectation is that the neighbouring countries to the East will be more successful in competing on the basis of these criteria than the neighbouring countries to the South. The Southern member states, in particular France, attempted to safeguard funding for Northern Africa, where they have strong interests, by proposing to split the budget such that a large proportion would be set aside for this region. The French proposal was supported by Italy and Portugal. In addition, Spain, Greece, Cyprus and

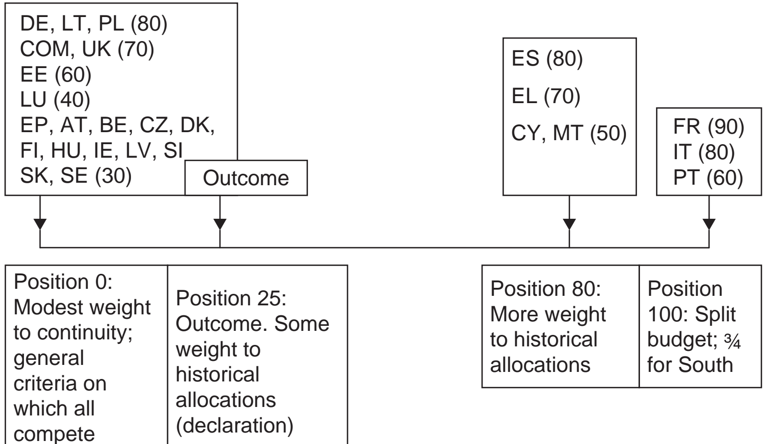


Figure 13.3 Positions of EU-25 on the issue of continuity in the programming of the EU's neighbourhood policy (salience scores in parentheses)

Note: AT: Austria; BE: Belgium; CY: Cyprus; CZ: Czech Republic; DK: Denmark; EE: Estonia; FI: Finland; FR: France; DE: Germany; EL: Greece; HU: Hungary; IE: Ireland; IT: Italy; LV: Latvia; LT: Lithuania; LU: Luxembourg; MT: Malta; NL: The Netherlands (no position on ENPI); PL: Poland; PT: Portugal; SI: Slovenia; SK: Slovakia; ES: Spain; SE: Sweden; UK: United Kingdom; COM: Commission; EP: European Parliament.

Malta also called for more weight to be given to historical allocations, which would favour Southern neighbours, when allocating funds under the ENPI.[7] The final decision outcome contains only a modest concession toward the French demand. The regulation was appended with a declaration stating that the Commission would consider historical allocations when deciding how to allocate funds. Such declarations are not legally binding, although some key informants speculated that the declaration could be used by the French to exert influence on the Commission when the financial allocations are being made. It seems likely that the decision outcome would have been substantially different had this decision been taken in the EU-15. A larger concession towards the French demand would probably have been necessary in order to reach an agreement. In this case, the all member states model makes a prediction of 26 on the issue scale, while the old member states model predicts 31. Obviously, the all member states model is closer to the actual decision outcome which is positioned at point 25 on the scale (see Figure 13.3).

Overall, the all member states compromise model generates more accurate predictions than does the old member states model. The difference is more marked when one unusual case is excluded from the analysis. Table 13.4 shows that over all 53 issues in the dataset, the all member states compromise model has an average error of 22.29, compared to an average error of 23.84 of the old member states compromise. Although lower, the difference is not

Table 13.4 Errors of models in the post-2004 EU

	N	All member states compromise	Old member states compromise	
		Error	Error	z-score
All issues	53	22.29	23.84	−1.56
All issues excluding sugar sector reform	50	22.41	24.91	−2.19**

Note: Negative z-scores imply deterioration in predictive accuracy compared to the all member states compromise. Z-scores obtained from Wilcoxon's matched pairs signed rank test. $^{**}p < .05$.

statistically significant ($p = .12$). If the three controversial issues raised by the sugar sector reform are excluded from the analysis, the all member states compromise model is a clear winner. Its predictions are significantly more accurate than those of the old member states compromise.

The sugar sector reform is a unique case in that the model containing only the positions of the old member states gives more accurate predictions of the decision outcomes than the model including the new member states' positions. This was the first important agricultural decision after the 2004 enlargement. When enacted, the reform introduced a substantial cut in the support price for sugar production. The inexperience of some of the new member state representatives showed in the tough negotiations that took place among agriculture ministers in November 2005. It was reported, and confirmed by several key informants, that the Polish 'Minister's apparent refusal to engage in negotiation failed to provide the Presidency with any obvious Polish concessions' (*AgraFacts*, 24/11/05). It was also noted that the outcome 'left some countries, such as the Czech Republic, with little to show for their loyalty in backing a deep price cut' (ibid.) The fact that this was the first important negotiation in the area of agriculture is likely to have played a role in preventing the new member states from exercising their influence to the full.

While the all member states model generates more accurate forecasts than the old member states model, the difference in predictive accuracy is not large. Two factors account for the similar predictions of these models. The first is the fact that new members do not have strong policy positions on some issues, and sometimes do not take positions at all. Three of the seventeen proposals studied concern fisheries. Since most of the new member states are landlocked, they do not have strong interests in this area. Of the old member states, Austria and Luxembourg are in a similar position. Moreover, there appears to be a 'new member effect' that dissuades new members from taking strong positions. For example, on the proposal on rights for passengers with reduced mobility when travelling by air, of the new member states only

Hungary, Malta and Slovakia took positions. One informant stated that the new member states were keen to be seen as the 'good boys of the class' by not causing difficulties. It is likely that this tendency will become less marked over time.

The second factor that accounts for the similarity between the two models' predictions concerns the alignments of actors. On the majority of issues, there is generally no clear divide between the positions of the old and new member states. In most of the controversies examined, the set of member states supporting any given decision outcome is a mixture of new and old members. The effect of this is that a model containing only the positions of the old member states generally also captures the positions taken by the new member states. There are of course exceptions to this rule. In approximately a quarter of the controversial issues studied, there is a clear difference between the positions taken by the old and new member states. Such issues are generally about the distribution of EU funds to new member states, such as was the case in the controversies raised by the European Regional Development Fund (ERDF).

Conclusion

The main conclusion of this chapter is that small member states have enjoyed considerable influence over decision outcomes in the European Union, both in the EU-15 and in the enlarged EU. For the EU-15 analysis, a select group of practitioners was asked to estimate the distribution of capabilities among the member states. Their estimates form an inclusive-regressive distribution that, with some exceptions, corresponds to the distribution of qualified majority votes in the Council. This inclusive-regressive capability distribution was treated as a hypothesis to be tested. I applied these estimates in the compromise model (or Nash Bargaining Solution) to generate predictions of decision outcomes across 162 issues in the EU-15. I then examined whether alternative capability distributions could improve on the predictive accuracy of the practitioners' inclusive-regressive distribution. None of the alternative capability distributions gave significantly more accurate predictions. Across all 162 controversial issues, assuming that decision outcomes are a compromise among only the large member states results in significantly less accurate predictions. Even when there is agreement between the large member states, the positions of small member states matter. This conclusion is in line with the findings of other research that has examined the allocation of EU funds among member states (for instance, Mattila 2006).

The inclusive-equal distribution also performed well in enabling the compromise model to generate relatively accurate predictions. Indeed, the inclusive-regressive and inclusive-equal models did not differ significantly from each other across all issues in the EU-15 study. The performance of the inclusive-equal distribution, which assumes that all states have equal

capabilities, also supports the conclusion that small member states wield significant power in the EU. However, as Hayes-Renshaw and Wallace note, '[i]t would be naïve to suggest that some member states do not carry more weight than others in the Council' (2006, p. 252).

The findings point to the importance of informal bargaining in the process of transforming actors' initial positions into final decision outcomes. Capabilities refer to a range of resources that actors may use to influence each other and decision outcomes, not only at the final decision stage, but also at the preparatory influence stage. When the unanimity rule applies in the Council, member states have equal votes, but unequal capabilities to influence decision outcomes. In the sub-set of issues subject to unanimity voting, the inclusive-regressive distribution of capabilities gives significantly more accurate predictions than the inclusive-equal distribution. This finding contrasts with analyses using voting power indexes which conclude that actors have equal *a priori* power under unanimity.

The analysis of decision-making in the EU-25 also indicates that the mostly small new member states are influencing decision outcomes. This qualifies somewhat Goetz's (2005, p. 254) statement that '[t]he capacity of the new members to influence the integration process is limited as a consequence of their diverse interests and weak intraregional coordination amongst the Central and Eastern European States'. It is certainly the case that the heterogeneity of policy positions of the new member states makes their influence less markedly visible. Nonetheless, the compromise model generally makes better predictions of decision outcomes when it includes information on new member states' positions than when it does not. A case in which the model with only old member states' positions predicted much more accurately, the sugar sector reform, is unique in being the first important agricultural decision taken after enlargement. As new member states gain more experience in Council negotiations, they are likely to exert their influence more effectively.

The method applied does not provide detailed insights into the nature of the informal bargaining mechanisms through which small member states exert influence. Some of the other chapters in this book explore such mechanisms. For example, the chapters on deliberation examine how member state representatives may use arguments to exert influence. Jonas Tallberg (Chapter 10) examines how member states use the power of the Council presidency to obtain decision outcomes closer to their preferences. Elsewhere, it has been suggested that small member states exert influence on decision outcomes via the European Commission (Bunse et al. 2005; Thomson 2008a). Furthermore, under the co-decision procedure, member states may exert influence via MEPs of the same nationality. The inclusive-equal distribution gives somewhat more accurate predictions than the inclusive-regressive distribution on issues subject to co-decision. This suggests that co-decision may give small member states additional opportunities to influence decision outcomes.

The findings from the present chapter should be considered in the light of the fact that there is substantial variation in the alignments of member states (compare the chapters by Mattila, Hagemann and Naurin and Lindahl). Member states that take different positions on one controversial issue may share the same position on another issue, even when the issues concerned are raised by the same legislative proposal. It is exceptional for there to be a clear division between large and small member states, just as there is a clear division between old and new member states on a minority of controversies. Thomson et al. (2004, p. 257) note that variation in actor alignments ensures that decision outcomes are not consistently further from the positions of some member states than others. In other words, if a broad selection of decision outcomes is considered, there are no clear winners and losers in the Council. The present chapter's findings demonstrate that variation in who wins and who loses is not simply the result of variation in the alignments of actors. It is also due to the fact that all member states hold substantial capabilities with which to influence decision outcomes.

Notes

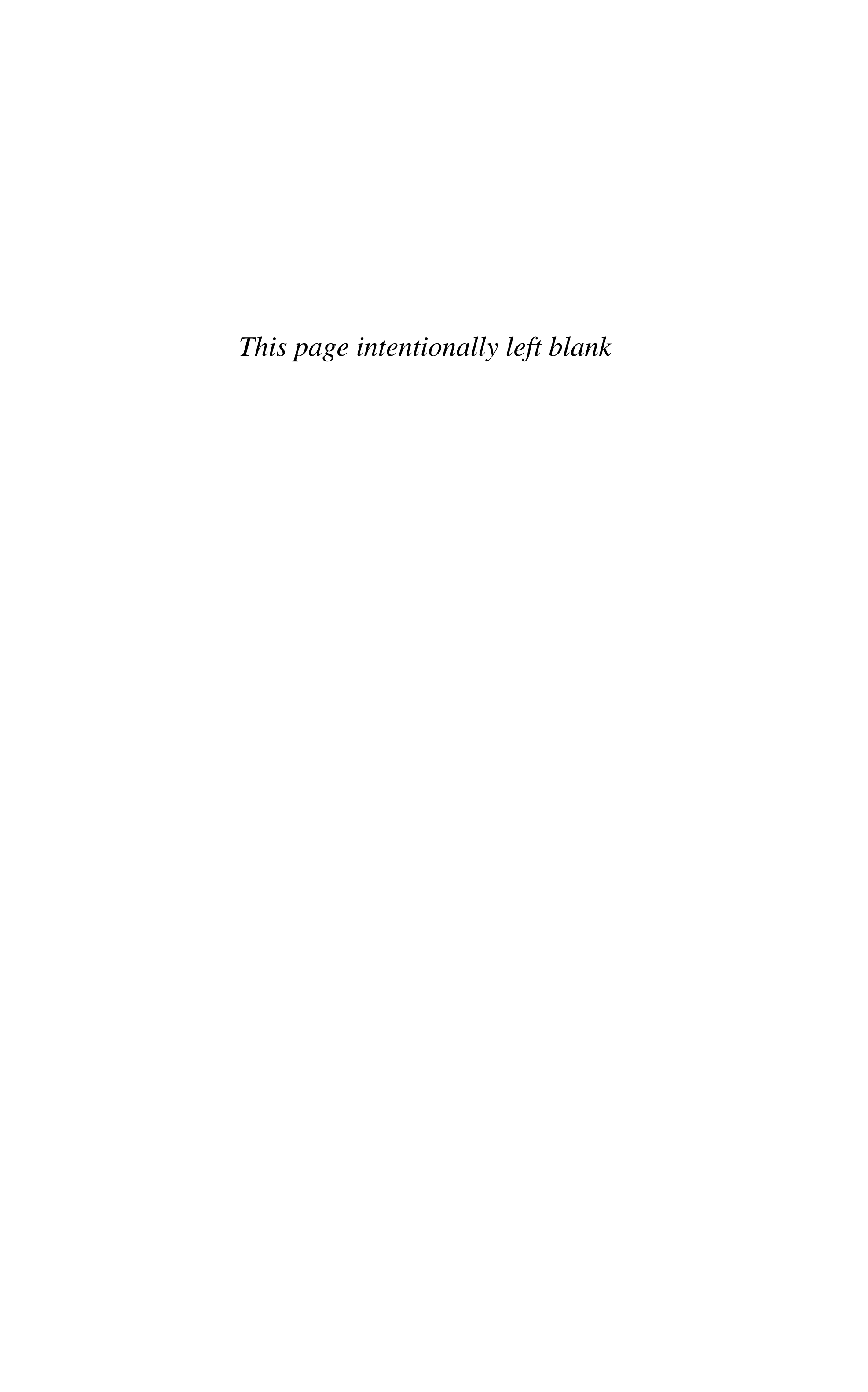
I am grateful for the comments by two anonymous referees and the editors, which improved an earlier version of this chapter. I also acknowledge the financial support of the Dutch Science Foundation and the Institute for International Integration Studies, the Benefactions Fund and the New-Lecturers Start-up Fund, Trinity College Dublin.

1. In analyses not reported here, I also applied an additional distribution, one in which France, Germany and the UK have equal capabilities and the other member states none. This model generates predictions very close to the Franco-German distribution, and did not change the results substantively.
2. Thomson and Hosli (2006) identified these weights by systematically applying several thousand alternative combinations of capability scores for the Commission, Council and EP. The weights used here are the ones associated with the most accurate forecasts of decision outcomes.
3. Links to the codebook and order form for the data are available at www.councildata.cergu.gu.se.
4. Torsten Selck conducted five interviews on this case at the time of the decision-making.
5. The data examined refer to decision-making on proposals introduced before the 2007 accession of Bulgaria and Romania, and therefore refer to EU-25, rather than EU-27. Both the 'all member states compromise model' and the 'old member states compromise model' attribute capability scores to states in proportion to their qualified majority votes in the Council as specified in the Nice Treaty. Recall that experts' judgements of the distribution of capabilities among the EU-15 member states were highly correlated with states' qualified majority votes. The capability scores used for the Commission and the EP relative to large member states in the Council are the same as those used in the EU-15 analysis. This implies the assumption that

enlargement has not changed the distribution of capabilities among the Commission, EP and member states.

6. The interviews for the post-2004 study were held by Javier Arregui (University of Pompeu Fabra), Rory Costello (Trinity College Dublin), Robin Hertz (University of Zürich) and the present author.
7. The key informants indicated that the Dutch delegation did not take a clear position on this issue.

Section Five
Methodological Debate



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14

How Should We Best Study the Council of Ministers?

Dorothee Heisenberg

Introduction

Understanding the Council of Ministers and how it makes decisions constitutes the goal of this volume, as well as of many academics and policymakers throughout the world. The goal is important because of the stature of the EU in the world and the perception that the EU's actions are determined primarily by the member states in the Council.

This chapter reviews recent work on the Council and analyses the divergent conclusions and methodologies. The primary argument is that qualitative, empirical work is better at generating policy-relevant questions about the Council and providing answers to these questions than are either quantitative empirical work or qualitative and quantitative formal work on the Council. This argument is made on the basis of matching a methodology to the specific context studied, rather than on the basis of a generalization about the merits of qualitative, quantitative or formal methodologies. The robust exceptionalism in Council of Ministers' decision-making norms noted by observers is completely obscured by the formalists, and only incompletely addressed by the quantitative empiricists; therefore, qualitative empirical research is the best methodology for studying the Council. Whereas other work supports the idea of methodological pluralism in general (see, for example, Pahre 2005; Walt 1999a, 1999b), this chapter argues that the small number of decision-makers, and the idiosyncratic nature of decision-making in the Council lends itself better to qualitative, empirical studying.

A secondary argument of the chapter is that theoretically coherent, but pragmatic, academic scholarship is more important than ever in the EU because of its changing institutions and membership. The state of academic political science in the United States (where the methodological debates and questions about policy-relevance have been swirling for years) is an extreme example of how the 'science' has overtaken the 'political'. The advent of formal modelling and rational choice methodologies in academic writings have estranged US academic political science from reality so much so as to have

little to contribute to solving the problems of the day. Similar points are made by Walt (1999a, 1999b), who decried the use of reductive assumptions to create parsimonious models with only a slight resemblance to reality and little utility to give guidance in important policy decisions. With the decision-making system in the EU in flux due to enlargements, institutional changes and greater EU competencies, it is argued here that it would be better if more good qualitative empirical work on the Council – with explicit hypotheses and theoretical links – were forthcoming from the universities. The answer to bad empirical work, however, is not the quantification of variables and statistical testing –the data about the Council are simply unavailable. Moreover, the quantification of preferences adds more measurement error than it contributes to new understandings of the dynamics of decision-making.

The remainder of this chapter lays out these arguments in the following manner. The first section below reviews and categorizes selective existing academic work on the Council of Ministers. The review references the most often cited works in this area and is not intended to be exhaustive. The second section debates the value of using formal tools in general and making formal models of the Council in particular. The third section examines the work of the quantitative empiricists and the rational choice institutionalists, highlighting some of the embedded assumptions of the models tested and certain inherent problems in developing quantitative data to test formal models. The final section discusses the strengths and weaknesses of using qualitative and empirical methods to make theoretical statements about the workings of the Council that are nonetheless policy-relevant.

Two assumptions embedded in the chapter are important to an understanding of where I differ from my critics. First, the idea that political science scholarship should be policy-relevant as an important goal is disputed in many corners of academia. The justification for this assumption is that political science should provide coherent answers to relationships between variables that can be manipulated, while political theory, mathematics or philosophy is not as concerned with practical questions. Correct causal models should have some predictive power and thus the academic enterprise of explaining causal relationships is not antithetical toward giving predictions. Hence, arguments that concede that the empirical world is distinct from theoretical models (for instance Felsenthal et al. 2003) are deemed to be valid but lie within the purview of political theory.

Second, the idea that the EU is *sui generis* and has developed systems of interactions that are unique is highly disputed among academics in the field. Oddly enough, many political scientists in the US make their living studying the US exclusively, and 'American exceptionalism' is a justification for many political scientists to simply study Congress or the Presidency, although certainly the US has more in common with other states than does the EU. If one takes the biological analogy of the EU as an elephant, are we better served studying it as a unique animal or by examining its trunk, noting it looks like

a large worm and comparing it to worms? The *sui generis* question about the EU is a larger question than the chapter can accommodate, but it sets historical institutionalist scholarship at odds with much of the rationalist paradigm discussed below. The assumption that it is better to understand the system of the EU and thereby discover the ways in which it is distinct from other national systems is grounded in a paradigm that assumes that temporality and sequence matter, and that decisions made earlier in a sequence of decisions are more important than decisions made later (Pierson 2000a, 2000b) and cannot simply be aggregated as data points. This historical institutionalist view, however, does not imply that it is impossible to study the Council decision-making, as critics contend: it merely places an obligation on the part of the researcher not to use assumptions that may be warranted in other contexts but are clearly inappropriate for the Council. One example below is the research on roll-call analysis which may be appropriate in the US legislative context but cannot be justified in the EU context because of the lack of voting record data.

Categories of academic work on the Council

The Council of Ministers is still the least accessible part of the EU decision-making process, and so it is relatively more difficult to study. Summary of Council Votes and webcast Council meetings notwithstanding, most of the important work is done behind closed doors and over dinner tables. There is widespread agreement on that by all academics.

There is less agreement on other aspects of the workings of the Council: How do voting rules and other institutional features matter? How stable are the norms in the Council with the addition of new member states? How does the Council interact with the Parliament and Commission? What role does the Secretariat play? How important is COREPER? Can we discern a 'pro-integration' bias in the Council? What role does power play? These and other questions are rightly debated and theorized among academics, not least in this volume. But how should one best study the Council's decision-making? To date there are three main approaches (see Table 14.1): qualitative and quantitative empirical, and quantitative formal. The list of authors cited in Table 14.1 is not meant to be exhaustive but rather to categorize often-cited work on the Council. Each of the authors has written more than one article about the Council, and their work has been published in major international journals. While there is a tendency to focus the quantitative discussion on spatial and voting power index articles, these are the articles which have received the greatest attention from the general political science audience, and are also the ones in which multiple extensions of the argument have been presented as 'progress' even as the fundamental assumptions were called into question by critics. The distinction between quantitative empirical and quantitative formal should be taken as whether or not a dataset is used to

Table 14.1 Qualitative and quantitative studies on the Council of the European Union

	Empirical studies	**Formal models**
Qualitative	Westlake (1995) Van Schendelen (1996) Corbett (2000, 2001) Hayes-Renshaw and Wallace (1995, 1997, 2006) Lewis (1998, 2000, 2003a) Sherrington (2000) Elgström and Jönsson (2000)	EU website
Quantitative	Bueno de Mesquita and Stokman (1994)	Brams and Affuso (1985)
	Mattila and Lane (2001)	Felsenthal and Machover (2004) Felsenthal et al. (2003)
	Pajala and Widgrèn (2004)	Johnston (1995)
	Thomson et al. (2006)	Garrett and Tsebelis (1996, 2001b) Hosli (1993, 1995, 1999)

test a formal model or whether the model stands alone. A fourth approach logically exists (qualitative formal), but only the EU's website claims that the formal rules accurately reflect how the Council operates. Thus it will not be described in this section.

The qualitative empirical approach dominated the analysis of the Council until the mid-1990s. To the extent that researchers specialized in the Council at all (Edwards and Wallace (1976) published an article on the Council Presidency and contributed to several books), these were qualitative empirical accounts that theorized how best to understand the evolution of the Presidency and its role in the EEC. The methodological critique of qualitative empirical work was that it was overdetermined: it used too many variables explicitly or implicitly to explain variation among cases.

Ideally, using quantitative approaches should show which variables were the most important (statistically significant) and point out patterns that were not discernable to human intuition. It has been well-documented that the average person cannot intuit certain statistical phenomena (for instance Kahneman and Tversky 1972), and so quantitative methodologies can point out counterintuitive findings by analysing data in a way non-quantitative methods cannot. Of course, it all depends on the quality of the data. Since the Council had no data to release until 1996, the early scholarship was formal/rational.

In the mid-1990s, a group of mainly American scholars began to apply rational choice modelling techniques that had previously been used for the

US legislative process to the European institutions (Bueno de Mesquita and Stokman 1994; Tsebelis 1994). These came in two main varieties: the first was a set of spatial models that calculated the institutional interplay between the Parliament, Council and Commission to make hypotheses about agenda-setting in the Union and relative institutional power. The essence of these models was that member states' preferences on a specific legislative item could be arranged on a continuum from status quo to complete supranationalization, and that different institutions had strategic reasons to converge on a specific point relative to the member states, creating an equilibrium from which no actor had any incentive to diverge.

The second, reacting to the changing voting weights in the Council after the EFTA enlargement (Johnston 1995; Hosli 1993; Widgren 1994), looked at voting power indexes and generated hypotheses about which voting weight configuration gave greater power to member states.

These two quantitative formal model theories shared the view that formal modelling of the relationships was the appropriate and necessary approach to a deeper understanding of the Council of Ministers and the other institutions. Both theories accepted the general assumptions of rational choice: individual choices to maximize utility are the building blocks of social action, each actor maximizes his own expected utility given a set of preferences and choices, preferences must be transitive, the game has one equilibrium from which a rational actor would not have an incentive to deviate unilaterally and the model applies to all people. They also shared a common assumption that empirical validation of the models was of secondary importance to the theoretical and mathematical elegance of the proofs and the primacy of rigorously formulated hypotheses. Although they shared assumptions, these two branches of quantitative formal modelling did not necessarily agree on the methodological validity of each other's approach (for instance Garrett et al.'s (1995) critique of Johnston).

As the institutional configuration of the EU changed with new powers for the Parliament and new member states, scholarship in the rational choice paradigm flourished. One of the visible signs that the formal, rational and quantitative approaches to the EU were gaining adherents was the establishment of a new journal, *European Union Politics*, in 2000. Although the journal claimed to be methodologically neutral, it pledged to pursue scholarship with more 'methodological rigor' and noted with satisfaction in 2002 that, 'the field ... is moving more and more in a scientific direction' (Schneider et al. 2002). In practice, its articles had more quantitative test rational choice models than any other EU journals, but it also engaged these methodological questions at greater length in forum section articles and special issues.

There were also new empirical accounts of the Council of Ministers in Hayes-Renshaw and Wallace (1997), Lewis (1998) and Sherrington (2000), which dissected the informal norms of Council negotiations with great empirical detail, and foreshadowed the promise of more sociological

approaches to the Council. However, little dialogue across the methodologies ensued in the 1990s, with the exception of a minor methodological skirmish: a special issue of the *Journal of Theoretical Politics* in 1999 which debated the merits of the voting power index literature.

The voting power index literature hypothesized that certain countries' power was greater relative to others in the Council based on the necessity of their support in a winning coalition. The arguments were not made empirically, but only as a theoretical statement about how policies were likely to reflect the preferences of those member states which were more often deemed necessary than those which were not. The idea that in a consensus each member state has to give an assent was completely absent. There seemed to be a strong agreement that the mathematics were driving the scholarship and that there was no underlying theory. In an article about Council enlargement and voting weights, Hosli acknowledged, 'of course, it is doubtful that this formula was used as an actual guide to vote allocations in practice – political games and negotiation strategies may still have been influential, determining the distribution we observe in practice. But it is possible to relate the number of votes to population size by mathematical equations' (Hosli 2001). There was an unarticulated assumption of inherent order and no agency in these models that made them impossible to falsify. However, they still looked very scientific and the articles using the voting power methodology continued to be published and cited. Albert's (2003, 2004) critique of this literature is notable for its trenchant analysis of the problems on many levels. One of his main arguments is that voting power index literature is 'either a part of mathematics or of political philosophy, but not of political science' (2004, p. 139; for a rejoinder to Albert 2003, see Felsenthal et al. 2003, and Albert's reply, 2004). He compared the voting power index to a meat grinder: useful, but not an end unto itself. Political science needs meat: causal theories, facts, observed behaviour. These are all absent in voting power index models. It is as though European decision-makers were thoughtfully creating a voting system that was consistent and rational even as evidence of furious debates about voting weights during enlargement negotiations headlined the newspapers, and the EU continued to become more mal-apportioned with every enlargement, having begun as the most mal-apportioned legislature in the world (Rodden 2002). Moreover, the logical predictions of voting power index literature about breakdowns in Council decision-making (for instance, that enlargement makes it more difficult to get a winning coalition) have also not been borne out (Heisenberg 2007 and Mattila and Hagemann, Chapters 2 and 3 in this volume).

With Council transparency reforms, 1996 inaugurated the era of Council disclosure of abstentions and votes against legislative items. These documents were hardly exemplars of copious information but they did support the empirical observation that votes were held only 20 per cent of the time and only on fairly routine and integration-neutral legislation.

For proponents of the power index models, however, evidence of non-voting or consensus was not important: the model simply assumed that, even if one did not observe 'power voting', it formed the foundation for decision-making in the Council because every member knew a vote *could* be called. This assumption, known as the 'shadow of the vote' is one of the biggest differences between the empiricists and the formal modellers. The idea that a consensus is nothing more than a face-saving device for outvoted members is a common view in the context of international organizations (Steinberg 2002). In the EU context, however, this assumption masks one of the biggest exceptions to the international organization bargaining model, and also one of the great strengths of the EU decision-making procedures. The EU member states will not outvote a non-blocking minority if there is a consensus that the objecting member states have special conditions that make it difficult to pass legislation as is. Three major differences between Council practice and the shadow of the vote assumption exist: (1) preference weightings (or 'storable votes', as Casella 2005, Casella et al. 2006 call them) can be used to give one item preference even when a blocking minority exists, (2) peer review of arguments that a non-blocking minority might block an item (not crossing a member state's 'red lines' even when the votes exist to do so), and (3) the non-blocking minority receives compensation for its assent. These differences between the Council decision-making on the one hand and international organizations and national parliaments' decision-making on the other are significant and are arguably the secret of the EU's success as it has enlarged membership and scope (Heisenberg 2007). From the perspective of methodological questions, the assumption of the shadow of the vote is problematic, especially as one wants to look at controversial and significant decisions in the Council not routine questions about maintaining a subsidy for certain agricultural products (where the shadow of the vote may be more applicable).

The lack of empirical validity became the Achilles heel for the formalists in a field which traditionally had been very empirically grounded. Many scholars of the EU dismissed outright the validity and value of these models because of their inherently unrealistic assumptions. The first shot across the bow of the abstract spatial models came from Rittberger (2000), who argued that legislators' impatience with wanting legislative successes modified the standard version of the Garrett and Tsebelis model (Garrett and Tsebelis 1996, 2000, 2001a, 2001b). Rittberger did not explicitly call into question the underlying findings of Garrett and Tsebelis, but rather modified the standard model to explain certain inexplicable features of it and demonstrated its utility with two case studies.

Subsequent challenges to spatial models were generally more pointed in their criticism of the models' conclusions (Hörl et al. 2005). These critics focused their objections specifically on the central assumptions underpinning the models, and explicitly questioned the utility of models constructed without an empirical basis. The most important element of their criticism was the formation and aggregation of preferences in the models. The assumption

that there is a single actor with consistent preferences for greater or lesser integration on principle over all issue areas is simply untenable, according to Hörl et al., and undermines the very core of the models.

One might also fault the models for ignoring that member state preferences are not always transitive (Germany might prefer A to B to C if Greece does not vote for a derogation on one important element, but prefer B to A to C if Greece grants the derogation), that the number of dimensions (usually modelled as two) matters in practice since ideal points depend on other bargains in other issue areas, that there are no weights attached to certain preferences (for instance Germany might not have a strong interest in fisheries policy but will have a strong interest in the recycling of car parts and could trade votes on the basis of preference weights) and that decisions, rules and tastes are not stable over all member states nor over time because of the different issue areas and state interests (for instance the UK was interested in integration in the single market but not tax policy, and was not interested in security cooperation before 1998 but was interested in it afterwards).

The response to criticisms such as these was that theoretical models cannot be falsified by empirical data and these models *qua* models of Council decision-making were valid. This response, however, was unsatisfactory to many and led to attempts to test hypotheses with a new empirical dataset.

The challenge of the 'empirically tested' rational choice models

This was the challenge taken up by the Decision-Making in the European Union (DEU) scholars. This group of enterprising formal model makers decided to test their models with a new dataset which they had created. The dataset was unique and highly labour-intensive: 66 controversial legislative proposals were included and each member state's initial preference was ranked. Subsequently, at least 150 interviews lasting almost 2 hours each were conducted with 125 policy experts to verify the initial preferences of the member states. These experts were primarily affiliated with COREPER and were asked to justify why a certain state had a certain preference. The emphasis on the Council was justified because it reflected the institution where the major policy differences between member states were resolved in negotiations.

The result of this work was a special issue of *European Union Politics* (2004) and the edited book, *The European Union Decides* (Thomson et al. 2006; see also König and Junge (Chapter 5) and Thomson (Chapter 13) in this volume). The contributions made by the book were enumerated by the authors of the introduction:

> The research presented in this book makes three main contributions. First, it provides answers to questions that lie at the core of understanding how the EU works in practice. How are decisions taken in the EU? How

> important are the formal decision-making procedures in defining decision outcomes in the EU? How important is the bargaining that takes place among the actors involved in decision-making? How can the ways in which actors interact be typified best? *These questions are addressed in detail using a combination of theoretically rigorous approaches and attention to empirical detail.* Second, this book provides a unique basis for the study of decision-making in the enlarged EU by analysing decision-making in the period 1999–2001, with an EU of 15 member states. Insights gained from these patterns of decision-making will without doubt be relevant to analyses of the workings of the enlarged EU with 25 member states. Third, *it is an example of how to examine decision-making in a political system using advanced theoretical tools and an appropriate research design.* In this respect, this study is also of interest to readers whose main interests are political systems other than the EU, either sub-national or national systems, or other international organisations.
>
> (pp. 4–5, emphasis added)

The first question was arguably the meat of the book: testing various formal models against each other to see which one was closest to the empirical data the authors generated. The second contribution was the application of those formal models to the EU-27 and projecting decision-making after enlargement. The third contribution was more of a normative statement about how best to study Council decision-making. Implicit in the third part was a methodological critique of existing work which did not abstract from the EU sufficiently to be able to draw on other bodies of knowledge from other systems. Moreover, it implicitly promised that 'advanced theoretical tools' would yield results superior to the less advanced work that had come before. Although the introduction made these claims, the subsequent chapters did not spend an equal portion on the second or third contributions, and so the first contribution is the main feature analysed here.

In general, the biggest methodological problem with achieving satisfactory answers to the questions of how the Council makes decisions is the data problem: we have neither good inputs into models (ideally, measurable and sincere policy preferences of each member state) nor outputs (votes on amendments to proposals on the table by the chair) with which to test the various theories about what goes on in the black box of Council negotiations. The input problem is universal to political science research about preferences. Historians have argued about sincere preferences, and only accurate process tracing, interviews, good case studies, biographies and so on, are agreed-upon methods of establishing ex ante preferences. The measurement of preferences from an ideal point is an additional refinement that mathematical models require, and as such, can introduce a potential bias in the name of standardization and quantification. There is also an ancillary question, posed by Tsebelis (2005) as to whether the models should use sincere preferences or

strategically revealed preferences as their inputs in their spatial models. The economists have evaded this problem entirely by using only revealed preferences (behaviour that can be observed and measured) rather than delving into the consumer or producer's mind. Thus economic theorizing, for example, uses price and quantity as primary variables, while forgoing measures such as quality, which surely factor into economic decisions but cannot easily be quantified. Even survey data methodologies (whose shortcomings are well known and documented) and behavioural economics (which Schneider writes about in his rejoinder to this chapter (Chapter 15)) have some kind of output by which to judge the validity of the underlying model. The Council of Ministers has neither a record of preferences nor a record of actions taken with respect to legislation.

The output problem for the Council is unique to the Council vis-à-vis other legislatures, and makes it more difficult to get objective data: no mandated record of voting, bundling of issues into one bill, or statements on the record exist to justify one's position. Certainly, these things can be reconstructed through interviews or careful process tracing, but it is not as simple as plugging in voting data from roll-call votes as in the normal legislative process of other democracies. An entire subsection of US analysis based on 'roll-call' votes was suddenly unfeasible for use in understanding the Council. Although several studies have tried to find patterns in the 20 per cent of publicized votes or by creating a model that would yield that kind of output (for instance Mattila and Lane 2001; Carrubba and Volden 2001; Mattila in this volume) there remain many methodological problems with the data.

Has the DEU dataset overcome these problems and is its theorizing better for having spent the time and effort to compile a systematic index of preferences to test its models? In science it is always better to have empirical data than to have none. As such, the DEU project is better than all of the formal models by themselves. Does it, therefore, give better answers to questions about decision-making than qualitative models do? The promise of that is far off, with the questions and answers of this study having been answered already by the qualitative scholarship. Summarizing the final chapter titled 'Evidence with Insight: What Models Contribute to EU Research' (Schneider et al. 2006), one discovers the two main conclusions are that (1) formal models which predicted that the EP would lose power when it pushed for co-decision-making power were most likely wrong and the EP continues to have conditional agenda-setting power, and (2) models that emphasize informal bargaining and negotiation that take place before the formal decision-making are superior to models which emphasize formal decision-making constraints or models that mix the two.

Both of these conclusions are hardly new, despite the rigour with which they have been proved. The conclusion that the majority of MEPs did not systematically misperceive their institution's interests is commonsensical, and follows other empirical accounts that the original spatial model was seriously

flawed (Corbett 2000, 2001). Moreover, the conclusion that the Council flouts decision rules when it is important – for example not crossing a member state's political or economic red line despite having enough votes – is elaborated in most empirical analyses of the Council (for instance Hayes-Renshaw and Wallace 1995, pp. 268–9). The DEU conclusion about why cooperative bargaining models are more successful than conflictual bargaining is that 'unanimity appears to be a strong norm in EU legislation even when QMV is allowed . . . This suggests that legal characteristics of the decision-making procedure . . . shape the final outcomes less dramatically than procedural models imagine' (Schneider et al. 2006, p. 304). Compare that to Hayes-Renshaw and Wallace (1997, p. 48): 'there was a heavy reliance on consensus on many topics for functional reasons. In a system which requires that decisions agreed are implemented in domestic law, consensus encourages compliance and an outvoted government might evade compliance.' The qualitative empirical account not only highlights differences between formal and informal decision-making, but also invokes hypotheses about why that might be the case, and what the advantages of this EU aberration might be. Thus, although the authors of the DEU study view this book (Thomson et al. 2006) as the first step in a rigorous, theoretical debate about decision-making, it does not provide any hint as to where those riches lie.

Theorizing with qualitative empirical evidence

The bulk of the chapter has thus far been devoted to describing the shortcomings of quantitative approaches to understanding the Council of Ministers' decision-making process. The final 'square' of the matrix, qualitative empirical analysis, has not been promoted except implicitly as the default when the others fail. Here, some of the relative advantages of good theorizing tested with qualitative evidence will be highlighted. The advantages of studying the Council in this fashion may not necessarily be generalized to other organizations, however, and thus the argument is that it is the specific modus operandi of the Council at present that makes it the superior method in the case of the Council bargaining.

The first reason to prefer qualitative over quantitative information is that there are no good measures for the kinds of things – attitudes, preferences, informal norms, established practice, country history – that are integrally driving the decision-makers in the Council. Could one find imperfect measures for them? Perhaps, but the inherent danger of quantifying these variables is that they inject a measurement error into the model while at the same time giving the consumer of the model a feeling of stronger confidence in the results. Lewis (2000, p. 268) writes,

> What one participant called the 'reciprocal scratching of backs' can take many forms: from concessions and derogations to a kind of self-restraint

> which can facilitate bargains and help to build credit for the future. The deputy of one of the newest member states told me, 'There is now a [national] interest even on things we are indifferent to. So we now say, "What is our interest to support the Dutch here?"'

Because the empirical evidence is readily available to the readers, they can evaluate independently whether or not the argument is credible, how strongly the evidence supports these claims, and what alternative interpretations for that evidence might be entertained. King et al. (1994, p. 56) describe the fundamental goal of inference to be 'to distinguish the systematic component from the nonsystematic component of the phenomena we study'. Empirical qualitative methods give the reader information about how this judgement was made, and where interpretation differences might lie. In quantitative methods, that data is hidden behind a veil of individual interpretation, mathematical standardization and norming, making it difficult to understand where opposite conclusions might come from and what the points of disagreement are.

A second reason why the qualitative method is more appropriate in the Council of Ministers is that there are other actors that have an impact on the Council members (for instance COREPER) that are notably absent from quantitative scholarship because their impact is not constant over member states or issue areas and is therefore difficult to model. A qualitative methodology can make hypotheses about which issues or circumstances lead to a greater role for COREPER and how they use their influence. Similarly, qualitative research can differentiate between issue areas and member state influence because it is not necessarily searching for large generalizations about behaviour. It can make a finding that German compromise on budget items is one of the important catalysts for agreement, but that Germany can be extremely obstructionist in financial issues (and that the other member states will allow that and keep working toward an agreement that is acceptable to Germany). There is not an assumption that consistent member state behaviour is driving work in the Council.

Finally, the proponents of quantitative modelling often assert that qualitative work is not theoretically rigorous or logically coherent. Clearly, there is nothing inherent in the methodology to prevent qualitative methodologies from being theoretically rigorous or logically coherent. (Moreover, there is nothing about quantitative methodologies that make this scholarship inherently 'progressive', for instance Felsenthal et al. 2003.) However, qualitative empirical research can ask and answer policy-relevant questions, once freed from the responsibility of establishing consistent trends governing the behaviour of the ministers in the Council. It can detect anomalies and analyse them to get a more complete understanding of the decision-making process. It can show where the differences to other systems of governance lie and what the trade-offs between them are. It can present counterfactual

alternatives to established decision-making systems to probe the exceptionalism of the Council. At minimum, it can imbue each study with facts and information that will remain with the reader even if the theoretical hypothesis is flawed or unproven.

Are there potential problems with qualitative empirical work? Of course there are! Qualitative empirical work runs the risk of being under-theorized and careless with methodological issues. Because of the dearth of information coming from the Council, it is possible to have interviewer bias, case selection bias, and a myriad of other problems discussed in King et al. (1994). The alternative to bad empirical qualitative work, however, should not be quantitative work with significant measurement error or rationalist models that do not capture essential characteristics of the Council, but instead an insistence on good empirical methods and the augmentation of theoretically-neutral sources of Council information (for instance something like the Ludlow information on Council summits and insider accounts of negotiations which are not explicitly theorizing the nature of relationships between variables but are giving information to those who would theorize across issue areas or actors and institutions). Often the trade-off between descriptive specificity and parsimonious generality is cited as the difference between qualitative and quantitative studies. This trade-off is less valid in the case of the Council decision-making, however, because of the data problems of quantifying preferences and lack of output data mentioned above.

Can there be quantitative studies of the Council that are not problematic? The argument of this chapter has focused almost entirely on the quantification of preferences and the spatial models that authors have devised based on the modelling of abstract preferences. The problem with the existing quantification of preferences has been explained above. If, however, one makes a new dataset, with countable elements and no reason to assume that the validity of the elements is in question (that is, a respondent might be deliberately obfuscating for strategic reasons), it is possible to do data analysis on it (for instance Naurin and Lindahl in Chapter 4 above). It is the quantification of preferences and the absence of a complete record about who supported a legislative act and how this was linked to other deals that is the problematic element in the Council literature, not quantification per se.

Conclusion

This chapter argues that the Council of Ministers' decision-making and negotiation style is institutionally unique and therefore theorizing about the Council should be tested with well-researched empirical case studies using assumptions based on actual Council behaviour rather than via formally prescribed methods. These case studies are superior to formal models which are not tested at all because of the need to have pragmatic policy-relevant

academic work. Academic model building without the empirical 'reality check' is closer to political philosophy than science.

The value of the DEU project and its rational choice model building cum empirical validation is more ambiguous. On the one hand, the hard-won empirical work is useful, but on the other hand the quantification of preferences that comprises the dataset does not add significant value to the overall enterprise of understanding the Council, at least as judged by the first publications of the project. The conclusions do not suggest any radically new insights into Council behaviour.

The idea of rigorously testing to 'make sure' empirical qualitative work is accurate is perhaps a good thing, but it would seem to be of secondary importance to giving answers to new questions or policy dilemmas. On that front, the DEU data and the rational choice institutionalists are fairly mute about current questions of policy and the potential implications of the Treaty of Lisbon:

1. How might more use of the unanimity rule on one-country-one-vote change the decision-making ability of the Council or increase the issue areas that the Council could decide on?
2. What would happen if, following the provisions of the Treaty of Lisbon, the EU moves away from reliance on the six-month rotating Presidency and hence the incentive to cooperate for reciprocity later?
3. What is the role of the COREPER or the Council Secretariat relative to the individual member representatives?
4. Do the new member states behave substantially the same way as the old member states with respect to decision-making?
5. How would we know that decision-making styles have changed or broken down?
6. Why has there not been more recourse to enhanced cooperation in the EU?
7. Should we expect the member states that are dominant in one domain to be dominant in adjacent areas?
8. How do Council representatives interface with national parliaments when preferences conflict?
9. Do member states that are required to account for the votes before a national parliament have a weaker bargaining position relative to those that have more autonomy?

Ultimately, the formal modelling enterprise relies on a conception of human behaviour that is routinized, carefully constrained by institutions and laws, and influenced by a relatively few main motivations. Even in the field of economics, where more of these conditions are met, the field is modifying assumptions and bringing empirical evidence of behaviour which contradicts the rationalist paradigm into its models.

How, then, should we make progress in studying the Council using qualitative tools and methodologies? One of the problems with most of the formal models is the assumption that every legislative act is Pareto optimal in and of itself and that no weights or ties between legislation are considered (one exception to this is König and Proksch 2006, who explicitly model exchanges into the spatial model). Qualitative methodologies can better look at theories of issue area vote trading over a number of legislative acts, and can tie not just specific decisions together but also begin to theorize links between portfolios or issues over time. Understanding which issues are connected by which countries is one way to theorize workings in the Council. Thus painstaking, issue-by-issue information gathering is an unavoidable part of getting data to test theories about decision-making.

A second research area might be to develop hypotheses about what issues matter to which countries and why. Are strong Council preferences for certain legislative items a function of domestic interest group pressures or structural constraints, and under what conditions do the other member states in the Council defer to that interest group or structural constraint? These are examples of theoretical propositions that can be tested empirically with information gleaned from participant interviews, insider accounts and newspaper reports. Small, theoretically-developed understandings of what motivates a specific member state, for example, are not only key to developing a potentially larger theory about the Council as a whole, but also to understanding the cross-Council or COREPER-Council interactions.

Finally, the question set by this chapter is whether the questions and answers about the Council of Ministers that result from rational choice institutionalism are superior, equal or inferior to the questions generated by more empirical theory testing and arguments? Does the veneer of scientific language make sense and really introduce more rigour to the study of the Council, or does it simply dumb down the questions asked and answered? In many of the quantitative studies cited in the bibliography, quantitative model building and testing is equated with 'advanced theoretical tools and an appropriate research design', a 'progressive research agenda', 'rigorous' testing, and 'scientific progress' on understanding the Council. The underlying language of the DEU project is one of incremental movement towards greater understanding of the Council, as though the obstacle to date has been the lack of rigorous testing of the empirical accounts. Yet the conclusions of the project are not revolutionary or counterintuitive, but restatements of earlier qualitative work. The language of the quantitatively-oriented articles, however, extols a paradigm shift that assumes that because we quantify multidimensional variables such as preferences and then test them with sophisticated statistical methods the end result is superior to the extant non-mathematical studies of the Council. I argue that in the case of the Council, progress in understanding decision-making in the EU is better served by credible empirical work, in which the analysis of preferences is less quantified

but more contextualized. Before accusations of 'Luddite' are made, it should be emphasized that I do not believe qualitative studies are always superior to quantitative studies; indeed, for many studies quantitative methods are the better method. However, the question of qualitative versus quantitative methodology should be driven by the data available, and in the case of the Council of Ministers' decision-making, the qualitative methodology is superior. Modelling preferences with limited input or output information is simply not a better way forward in understanding the Council.

15

Neither Goethe nor Bismarck: on the Link between Theory and Empirics in Council Decision-Making Studies

Gerald Schneider

> Experiment.
> Make it your motto day and night.
> Experiment
> And it will lead you to the light.
>
> Cole Porter 'Experiment' (1933)

Introduction[1]

In a spirited attack, Dorothee Heisenberg takes issue with the emerging field of quantitatively-oriented European Union studies in general and the formal modelling tradition in the exploration of Council of Minister decision-making in particular. Drawing on her important article on the 'culture of consensus' (Heisenberg 2005), she argues in Chapter 14 above that rationalist scholarship is incapable of enlightening the wheeling and dealing that characterizes decision-making within the intergovernmental legislative body of the European Union.

Before I delve in this response into the specific complaints by Heisenberg about the imagined and real limitations of rational choice theory and the Decision-Making in the European Union project (DEU), I first position the Heisenberg chapter into the more general discussion in political science about the merits of formal models. To this end, I will distinguish between two possible ways in which we can read her chapter. Given my cultural background, I call these the 'Bismarck' and the 'Goethe' perspectives on the role of theory in political science. While the Bismarckian position advocates artful participatory insights rather than theory-driven empirical research as the way to understand politics, we should, according to Goethe's Mephisto in *Faust* I, privilege empirical experience over theoretical reasoning. As will become explicit in the following, I completely disagree with the first interpretation and would also like to qualify the second one severely. I will then dissect the Heisenberg argument, showing where she is definitively wrong and where she is at least half right.

As the remainder will make clear, my main qualms with the preceding chapter are its mix-up between theoretical and empirical models and the apparent belief that rationalist scholarship necessarily needs to be tested in a quantitative fashion. I will also demonstrate that the 'culture of consensus' that Heisenberg advocates is in perfect line with the rationalist scholarship, as some of the extant bargaining models, which are barely mentioned, explicitly assume that actors have an inherent interest in cooperation. In contrast to Heisenberg's interpretation, bargaining models such as those presented in Thomson et al. (2006), Schneider (2005) or Schneider et al. (2009 forthcoming), have the distinct advantage that they provide clear and testable causal mechanisms. Hence, the competing evaluation of explicit, competing theoretical models, be they mathematical or verbal, is the backbone of the 'normal science' that I and many of my colleagues have been advocating since the mid-1990s and that, given Heisenberg's reaction, still provokes severe misunderstandings among traditional EU scholars. As this chapter will demonstrate, rationalist scholarship has contributed to our understanding of Council of Ministers' decision-making so profoundly that both a Bismarckian and a Goethean counter-revolution would severely hamper scientific progress.

Bismarck versus Goethe: how scientific and theoretical should we be?

In a speech at the Reichstag in 1884 Chancellor Bismarck stated that 'Politics is not a science, like many professors fancy, but rather an art.' It would be naive to assume that such haughtiness has died out among politicians; what is, however, astounding is that many political scientists still have problems with the word 'science' in the designation of their discipline. Heisenberg's essay is, unfortunately, not completely free of the self-flagellistic rhetoric to which a considerable number of political scientists, especially supporters of the *perestroika* movement within the American Political Science Association (for Example, Monroe 2005), still subscribe. First of all, I do not see why we still need to juxtapose 'science' and 'politics' and to suggest that publications in top-tier journals – or at least those authored by what is perceived as the rationalist sect – do not contain any 'real-world' insights. On the contrary, as I will show further below, rationalists have come up with answers to the nine 'current questions of policy' listed by Heisenberg in her conclusion. Quite a number of these policy-relevant insights have been published in *European Union Politics*, the journal I have edited since its establishment in 2000 and the imagined editorial policies of which Heisenberg discusses.[2] Heisenberg notes that the associate editors and I have written 'with satisfaction' that the field is moving into a more scientific tradition and that methodological rigour has gained ground. This remark obviously begs the question as to why happiness over the professionalization of an academic field should be

a sin and what the alternative to methodological rigour would consist of: non-rigour, fortuitousness, or plain incompetence?

The turn to 'normal science' manifests itself in the increasing number of articles with systematic research designs and explicit hypotheses. It reflects, in my view, the need felt by many junior scholars (who, by now, might not be that 'junior' any longer!) throughout the past 15 years to move away from the inconclusive debates over unwieldy topics such as the uniqueness of the European Union. The continued escape into the argument that the EU is a special case and cannot be compared to other political systems leaves the impression that many colleagues still prefer to shy away from conducting systematic and thus comparative research. As any microbiologist would easily confess, every amoeba living on this planet is a *sui generis* being. However, this biological distinctiveness does not incite lab workers to be on first-name terms with all the amoebas they study, tracing their lives and deaths in details that are irrelevant for the question they are posing. Even if there were only one Council decision or amoeba to study, we could examine this case carefully and in a comparative fashion by building up convincing counterfactuals.

Although it might be hard for some diehard postmodernists to believe, even rationalists like myself start out on a research endeavour by posing such practical questions as who gains and loses in Council negotiations, and what are the effects of the deliberation in a particular committee? Like all scholars who try to explain the real-world differences between comparable cases, we need to seek convincing explanations for variances and a method that allows us to test our hypotheses against competing explanations. Any serious research question thus drives us to the development of a theoretical *and* an empirical model which are, and this needs to be stressed, independent of each other. There is, in other words, nothing inherent in rational choice models that would privilege quantitative testing strategies over qualitative ones, as the essay by Heisenberg suggests. Moreover, neither the topic under examination, the training we received as a student nor our preference for a particular approach should guide us in the selection of a research design. The decisive criterion should rather be the nature of the hypotheses that we derived from a theoretical model and that we would like to examine empirically.

Hence, we need to think carefully about the appropriateness of a method for the particular theoretical claim that we would like to advance. If a theory is very strong and leads to a deterministic hypothesis ('If x, then always y'), we can resort to a single-case study to falsify the theoretical claim. In the event that there are many competing explanations and the key claim is probabilistic, we simply need to avoid a situation with 'negative degrees of freedom' where the number of explanatory variables exceeds the number of cases. This means that parsimonious theories can be tested within a very small sample. However, if we possess information on the universe of cases, such as all legislative initiatives deliberated in the Council of Ministers, then it is unreasonable not to compare all these events.

In most instances, we have to satisfy ourselves with a sample of cases. This is what I did in collaboration with colleagues from the Netherlands, Finland, the United States and Germany in the DEU project, the alleged failings of which Heisenberg extensively discusses. As she writes in this context, it is difficult to come up with measures that adequately reflect the complexities of Council decision-making. However, simply to conclude that behavioural output is not a measurable variable reflects a basic lack of confidence in what can be achieved within political science today. The DEU project and related research endeavours amply show that we can obtain reliable information when we ask independent experts what the positions of policymakers in a debate are and, later on, when the decision is made, the location of the final outcome. One obvious problem of such expert interviews is the need to buy into the assumption that the positions reflect to some extent the true preference of a state. As Bailer (2005) convincingly demonstrates, the DEU preferences stand, to a considerable extent, for objective socioeconomic characteristics of a member state and are thus not purely strategically chosen. Furthermore, the claim by Heisenberg that economists measure only objective or revealed preferences is simply wrong, as the trend toward using survey data in this neighbouring social scientific discipline easily confirms – not to mention such revolutionary endeavours as 'behavioural economics' and the attempt to synthesize rational or boundedly rational actor models with the results found in psychological experiments. It should further be noted that Heisenberg misconstrues the way in which we proceeded in the DEU project. In the Thompson et al. (2006) volume, all empirical chapters in which a class of models is tested contain case studies. However, as our conjectures are probabilistic, we use these cases only as illustrations and test our claims by contrasting all cases within our sample of EU decisions.

Heisenberg's reproach that formal models lead to quantitative tests is probably a consequence of an unfortunate mix-up between theoretical and empirical models. As indicated, we need to keep these separate to avoid bias and to encourage attempts to refute our findings. The refusal to engage with tests that are independent of the theoretical model ultimately leads to the development of irrefutable claims and unwieldy research designs, furthering the cynical Bismarckian conviction that political science is an art that cannot properly be tamed.

The more interesting and rewarding interpretation of the Heisenberg chapter follows her desire to see more and better empirical research on the Council of Ministers. I would like to second her in this ambition. Her complaint that formal theorists have often shied away from getting their hands dirty through empirical research and, even if they still engage in some testing, hardly find support for their supposedly grandiose claims has a long history. In his play *Faust* Johann Wolfgang von Goethe lets Mephisto express the view that any science without proper empirical foundation is bloodless: 'Grey, my dear friend, is all theory and green the golden tree of life.'

Most formal theorists would agree that contributions to *positive* political science need some empirical backing which rigorously contrasts the equilibrium predictions with systematic evidence. This is, however, neither the case for *normative* theory, in which the welfare implications of some specific rules are tested against some clearly specified standard like the Pareto criterion, nor for axiomatically derived existence results. Hence, there is no need to 'test' a purely mathematical result such as Arrow's Impossibility Theorem, the arguably most celebrated non-existence statement in formal reasoning. Applied rational choice theory, however, makes claims about the 'real' world, and we need to test the competing claims, including informally advanced hypotheses such as the 'culture of consensus' thesis and the formally derived propositions examined in the DEU project, against each other.

In other words, comparative theory evaluation could easily be extended to theories other than those tested in the DEU monograph and related publications. The only requirement would be that the researchers advancing such alternative theoretical accounts translate their claims into a testable form. Simply to suggest that the DEU project has not led to any new insights fails to recognize what the goal of this multinational research project was. The major aspiration was not to advance new models but to establish the predictive accuracy of existing ones. Heisenberg's claim that we already knew that bargaining is important in the Council thus misses its target, as we were comparing negotiation models against alternatives and establishing that bargaining approaches do better than these other theoretical options. For a proponent of bargaining models like myself, it is obviously nice to hear that this scientifically established result confirms the untested prior belief of Heisenberg that, if the Council moves, it does so through negotiations. Statements such as 'we knew this before', however, simply reflect the unfortunate Mephisto-like tendency to generalize from pure observation. An indication of Heisenberg's empiricist leaning is her favourable quote of Corbett (2001), who, according to her, gave evidence of the allegedly 'flawed' nature of the original spatial model of EU legislation. As has been shown amply elsewhere (for example, Sokal and Bricmont 1998), participatory observation has real limits if the insight is founded on the wrong theory. Hence, a participant might not be able to explain potential outcomes that are not happening or are rare events within a political game if his or her prior experience is that such things as dissent hardly ever matter. Inductivism is exactly also the problem of the metaphor that a 'culture of consensus' rules Council interaction. If we do not advance some causal mechanism as to why unanimous decisions are more frequent than one would expect we cannot move further in our understanding of this particular institution. Most trivially, the 'consensus' could simply be a consequence of the tendency of the Commission to introduce legislative proposals that make a majority of the member states happy. As can be shown fairly easily with a spatial model, if each and every one is far away from the status quo, radical and harmonious change

is possible (Schneider 1997). Another possibility that Heisenberg does not discuss arises from the piecemeal way in which the European Union makes decisions. Hence, the Commission quite frequently simply refuses to initiate legislation to which a majority of the member states would object. If it does, however, dare to introduce a particularly controversial piece of legislation, the chances are great that it is dropped from the agenda early on. Controversial cases thus hardly ever reach the final stage of voting. Finally, as a broad rationalist literature originating in Taylor (1976) and Axelrod (1984) tells us, actors can become more consensual if they know that they are likely to meet more frequently in the future. In a purely formal article on the 'culture of consensus', Carruba and Volden (2001, p. 22) exploit this logic and 'predict consensus to be more common on the most "difficult", or, equivalently, least valuable, legislation'. This counter-intuitive result is in considerable contrast with those studies which treat consensus as a constant or as an assumption rather than a variable that ought to be explained.

A consensus on the 'culture of consensus'?

One of the most problematic aspects of Heisenberg's chapter above is the limitation within the argument of rational choice contributions to the spatial theory of voting and the voting power literature. The latter approach has played only a minor role in the empirical study of Council decision-making simply because the indices which reflect the a priori power or influence of a Council member do not lend themselves easily to systematic tests. They have mainly been used for the calculation of how powerful a state could be after an enlargement round or an institutional reform. Such ex ante calculations are, however, misleading in situations in which no Rawlsian 'veil of ignorance' is lifted and delegates from the member states know what they can expect from the other member states under a new regime. Collaborative research within a particular Council of Ministers, such as the round of the agricultural ministers, has shown that we can predict up to two out of three of the preference configurations (Zimmer et al. 2005). This simply means that we are forced to include preferences in our theories of Council decision-making. What is more, the preferences of incoming member states are easily anticipated by the current members so that we cannot even sensibly rely on such measures to assess the power or influence of the Council of Ministers prior to an enlargement with the help of voting power indices.[3]

The spatial theory of voting is one – but not the only – alternative to the voting power literature. The first contributions were by Steunenberg (1994) and Tsebelis (1994), correcting Heisenberg's claim that the formal modelling tradition in European integration studies has its origins in US political science.[4] It is, indeed, correct to say, as Heisenberg does, that spatial models were only tested systematically some years after these groundbreaking contributions. But it is incorrect to claim that institutions in combination with

preferences only have a marginal influence on Council outcomes. On the contrary, Drüner et al. (2007) show that one of the core concepts used in the spatial theory of voting – the winset – has a high predictive accuracy with regard to the reform capacity of the EU and the duration of decision-making processes. Within the DEU project, the predictive accuracy of the legislative models that were tested was, admittedly, quite weak. The important addition to this qualification is, however, once again that they performed relatively badly *relative* to other models. This relative failure does not make the entire research tradition superfluous as a low predictive accuracy of a model in one context does not necessarily invalidate the usefulness of this approach in other applications. To do so would be equivalent to throwing out an influential and costly weather prediction tool after its failure to predict local conditions in some communities at some time. Proper attempts to evaluate the predictive accuracy of a model refer to the average forecast error or related criteria and not to occasional aberrations that can also be observed in other contexts.

The relatively successful DEU models are all bargaining models, some of them adhering to the cooperative and a few adhering to the non-cooperative modelling tradition within game theory. In my view, bargaining models are exactly the tool that Heisenberg could rely on to substantiate her claim that a 'culture of consensus' governs Council interactions. Most of the formal and informal bargaining models of Council interactions are based on the assumption that a bargain has to be Pareto superior. Hence, all these already developed and potential models of Council interactions, be they based on the Nash Bargaining Solution, the Kalai-Smorodinsky Bargaining Solution or alternative concepts, postulate that a final negotiated outcome will be a compromise.[5] Even if we resort to a non-theoretical model and expect the outcome to be somewhere in the middle of the taken positions, we can assume that an implicit assumption about the cooperative motivations of the actors has been made by the proponent of such a 'causal mechanism'. In other words, we have different notions of what form a consensus could take and if we want to move the 'culture of consensus' from a post hoc observation to a theory with predictive capacity, we need to test which compromise model is the correct one. If we, however, continue to see the 'culture of consensus' as a constant, we can never uncover why we have more compromise in some contests and more dissent in others.

Unfortunately, Heisenberg is not explicit about what she understands as the 'culture of consensus' and what outcome would be predicted on the basis of her implicit bargaining model. The following illustration from a case examined within the DEU project shows that we can come up with very different forecasts of where a compromise is situated in EU legislative negotiations. Figure 15.1 illustrates for the three contested issues of the E-commerce Directive how well different theoretically naive and sophisticated bargaining models are able to explain EU decision-making and that quite different

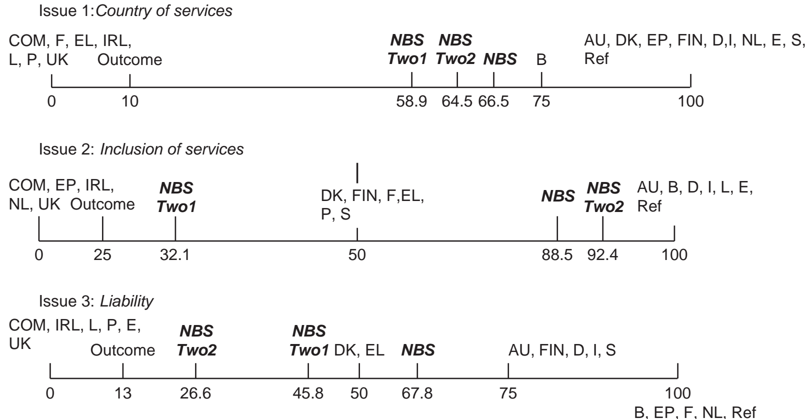

Figure 15.1 Decision-making on three contested issues within the E-Commerce proposal of the European Commission

Notes: I would like to thank Stefanie Bailer for allowing me to draw on our joint work in this figure. *NBS* stands for the prediction of the simple Nash Bargaining Solution, *NBS-Two1* is a two-level game version of it that considers also the power of the EU affairs committee in the member states' parliaments, and *NBSTwo2* takes the EU affairs committee as well as its preferences into account.

Source: DEU data set and Bailer and Schneider (2006).

consensual solutions can be predicted. As in Bailer and Schneider (2006), I distinguish between three theoretical models – a simple Nash Bargaining Model (NBS), an NBS model which only considers the power of the EU affairs committee of the national parliaments and a third NBS model that again takes the power of the EU affairs committee as well as its policy preferences into account. The bargaining range goes from 0 to 100.

The negotiations over the E-commerce Directive show that the predictive accuracy of the competing consensus-oriented bargaining models can differ widely. While on the first issue all three predictions are quite far away from the outcome, the first two-level games offer the most precise forecast on the second issue and the second two-level game on the third issue. The illustrative evidence alerts us to the need to move beyond the 'culture of consensus' metaphor and to explore under what conditions competing operationalizations of consensus do well in predicting real outcomes. The performance of the third institutionalist model shows again that we should not easily dismiss the importance of institutions as a constraint. The concluding chapter to the DEU volume advances the view that we should develop mixed models which 'combine a particular characterisation of an extensive form bargaining game with the procedural voting game played according to legal rules' (Schneider et al. 2006, p. 301). Hence, one particularly promising

way to go in studies of the Council of Ministers is to resort as a first step to the spatial theory of voting, which helps us to detect the sub-set of potential outcomes of a decision-making process. Based on this information, we might want in a second step to resort to a standard bargaining model to predict a unique point as the result of EU legislation.

The potential of rationalist scholarship

This reply has already shown that Heisenberg has misrepresented the past achievements of the rationalist scholarship on the EU to a considerable extent. I will now demonstrate that she also underestimates the potential for future rationalist explanations of Council of Ministers decision-making. Interestingly, she lists in her conclusion a couple of research questions on which, in her opinion, rational choice institutionalists are ‘fairly mute’. A proper reading of the rationalist literature would, on the contrary, have shown that exactly those questions have played a central role in rationalist scholarship so far and are likely to do so in the future.

One-country-one-vote rule

Heisenberg first poses the question of whether returning to unanimity would affect the decision-making capacity of the institution. Of course, such a counter-revolution would have undesirable effects, as many spatial models have shown. The puzzle of whether or not changing majority thresholds would affect the ability of the Council to act is a key consideration in many studies by applied formal theorists, most recently Steunenberg (2002), König and Bräuninger (2004) as well as Schneider et al. (2007). Technically, this literature explores whether the reform of the decision-making structure in the EU or the admission of new member states creates a danger of so-called gridlock. Drüner (2007) shows most convincingly that such fears have to be differentiated. While the 2004 and 2007 enlargements have increased the danger of inertia in decision-making, the risk of decision-making cycles has been further reduced. Heisenberg also asks whether a one-country-one-vote rule would increase the number of issue areas. The relationship between formal integration and the depth of integration is a standard topic in rationalist scholarship. The empirically supported model by Alesina and Spolaore (2003) suggests that more democracy and hence a move towards majority rule should lead to disintegration. This means that Heisenberg’s suspicion that less ambition in constitutional matters could lead to more policy domains being integrated makes sense. However, a formal model by myself also suggests that the relationship between widening and deepening is more involved if, probably in line with Heisenberg, we move to a more complex model of political decision-making (Schneider 2002).

Giving up the rotating Presidency

The Treaty of Lisbon introduces three versions of the Presidency: a full-time President of the European Council for renewable terms of two and a half years; the High Representative as the permanent chair of the Council dealing with external relations; and a version of the rotating Presidency (in teams of three) in most other areas of Council business. Heisenberg asks the question of what would happen to negotiations in the absence of the traditional rotating Presidency. Obviously, such a counterfactual is hard to bolster with solid empirical evidence. The problem is exacerbated by the relatively small number of models that address the power of the EU Presidency directly (Selck and Steunenberg 2004 for an exception). Fortunately, the computer simulations by Kollman (2003), which offer some protestant heresy in the rather catholic formal literature on EU decision-making, give some hints of what the advantages and disadvantages of a rotating Presidency are. The mathematical evaluation shows that the collective utility of a rotating Presidency decreases when new member states join the Council. The rotating Presidency has, however, some collective advantages when the organization has to tackle a problem of medium-level difficulty. As Kollman (2003, p. 71) writes, 'holding constant the number of members of the Council, the relative advantage of the rotating presidents procedure increases and then decreases as the difficulty of the policy problem increases'.

The role of COREPER

I agree with Heisenberg that the Committee of Permanent Representatives is one of the most understudied bodies within the European Union. However, there is some emerging evidence that the preparatory meetings of the member state delegates are not influenced by socialization but rather by institutional considerations (Häge 2007). Hence, also the preparatory meetings of Council decision-making can be explained through the negotiation perspective that is advanced in this chapter.

Old versus new member states

It is still too soon to fully assess how the new member states behave in the enlarged Council of Ministers, although several chapters in this volume include such data (Mattila, Hagemann, Naurin and Lindahl and Thomson). Hagemann notes that no 'new versus old' bloc is apparent, while Naurin and Lindahl in chapter 4 claim to have found a new Eastern dimension in the cooperation patterns after enlargement. Using the DEU dataset and additional interviews, however, my collaborators and I addressed this question in 2004. The answer is that whether we can expect the new member states to behave differently from the old member states depends on the policy area (Dobbins et al. 2004). No member state is strong enough to block the organization in the long run on its own, and, hence, coalition-building remains the key to advancing one's own position in the Council.

Change in decision-making styles

Heisenberg asks how we would know that decision-making styles have changed. Indeed, I do not know any systematic study that traces the usage of particular negotiation tactics over time. Bailer's (2004, 2005) cross-sectional evidence, however, suggests that the way in which states behave largely reflects their attractiveness as coalition partners. Such a study would have to be replicated in order to provide solid evidence over changes in behavioural patterns over time. Some preliminary evidence that the past two enlargements might have changed the interactions in the Council comes from Hagemann in this volume and Hageman and De Clerck-Sachsse (2007b). They show, based on elite interviews, that member states more frequently resort to formal statements to make their point. This enables government 'to affect a sense of the old culture of consensus without at the same time sending a political signal of having deviated from their initial policy preferences' (Hageman and De Clerck-Sachsse 2007b, p. 14). It remains to be seen whether such changes have a more permanent nature

Enhanced cooperation

There has been an intensive normative discussion of whether or not the European Union has reached its 'limits to growth' (for instance Alesina and Spolaore 2003). The related tension between widening and deepening has been one of the key considerations in rationalist scholarship. While some of the models address this trade-off through the lenses of club good theory (for instance Sandler and Tschirhart 1997), others also invoke the costs of decision-making (for instance Schneider 2002) or of increasing social heterogeneity (for instance Alesina and Spolaore 2003) with which an expanding organization has to reckon. This literature also discusses the need to move to more flexible institutional arrangements which are studied from a rationalist vantage point in Kölliker (2005).

Dominance of member states

One of the dangers for any federation is that one state is able to profit more from the organization than other member states. The DEU project has explicitly addressed this topic and established that that there are no absolute winners in Council of Ministers' decision-making across all policy sectors (for instance Bailer 2004), but that a logic of redistribution governs many interactions of this intergovernmental body (Zimmer et al. 2005). The absence of long-term winners in EU legislation could be one of the ingredients for the success of the organization, but we do not possess sufficient systematic information on vote trading beyond sectoral limitations.

Conflicting preferences

We have little empirical knowledge on how 'Council representatives interface with national parliaments when preferences conflict'. However, this question

has played an important role in the principal-agent literature that has come to dominate the study of delegation in the EU (Franchino 2007). The groundbreaking theoretical and empirical work by Franchino exactly points out the conditions under which member states prefer to delegate legislative work to the Commission or to the national parliaments. Moreover, Pahre (1997) and Martin (2000) show how executives can use domestic opposition to bolster the credibility of their demands.

Leeway

Interestingly, Heisenberg takes up the Schelling conjecture or the so-called paradox of weakness in her list of unanswered questions about Council of Ministers' decision-making and asks whether constrained member states are more powerful than less constrained ones. This is exactly the topic that Bailer and Schneider (2006) address in the DEU volume. Based on the two-level game specifications of the NBS model briefly sketched in this article, they reject this important theoretical insight for this decision-making arena, noting that there are ample reasons to suspect that European Council deliberations follow the Schelling logic to a much greater degree than interactions among the Council of Ministers (Schneider and Cederman 1994).

Conclusion

This chapter has discussed some of the objections by Dorothee Heisenberg to recent rational choice scholarship on the Council of Ministers. While I have taken issue with some of her anti-rationalist statements, I would – once again – point out that I fully agree with her that we need better models *and* empirical tests. My US colleague and I, to paraphrase Nobel laureate R. Aumann, also agree to disagree on how we can achieve this lofty goal. In my view, game-theoretic models will play a key role in the future study of the Council of Ministers as their underlying assumption of strategic rationality is well-justified in a world in which elected politicians are forced to represent the interests of their voters at least to some extent and where fiscal temptations often loom large (Zimmer et al. 2005). In contrast to Heisenberg, I welcome the turn towards 'normal science' in EU studies. This development has allowed the discipline to engage in the comparative evaluation of competing theoretical models. It has particularly encouraged the research community to assess what sort of model most accurately predicts the outcomes of Council interactions (Thomson et al. 2006), who the winners and losers of EU decision-making are (Bailer 2004) and whether Council deliberations follow the logic of arguing or bargaining (Franchino 2007).

Obviously, such 'normal science' might be dull at first sight and can certainly not cover all the complexities of Council decision-making; but it is not its aspiration to explain all trivialities, technicalities and banalities. Normal science, like any good science, needs patience – the fortitude to develop

convincing causal mechanisms *and* the endurance in making sense out of empirical reality. If the insights of rationalist scholarship on the Council are trivial, as Heisenberg implies, I have no problem with this because, post hoc, many great and groundbreaking contributions seem small. What is needed is not simple, it is major innovation and risk-taking behaviour that takes us beyond the easy consensus – like the one on the 'culture of consensus'.

In achieving the goal of systematic thinking about the interactions within the Council of Ministers, we can neither follow the Bismarckian interpretation ('political science is an art') nor the Goethean one which privileges experience over theory. We should rather heed the advice of Cole Porter (Porter and Kimball 1983) who, jokingly, called for a (quasi)-experimental approach that will lead us 'to the light'. In my view, the best way to move beyond inconclusive debates about whether qualitative or quantitative work is better in explaining Council decision-making or whether the EU is a *sui generis* being is simply to ask questions that are answerable, develop convincing causal mechanisms and then test them. If we all follow this advice, we will surely no longer debate whether formal models have made any contribution, but will rather ask which model, formal or informal, delivers the best predictions in a particular context. In other words, we need a culture of dissent to understand the imagined or real 'culture of consensus' that allegedly guides Council interactions.

Notes

1. I would like to thank the editors, Stefanie Bailer, Daniel Finke, and Robert Thompson for comments on an earlier draft of this article.
2. Interestingly, Heisenberg is not the only scholar who commented upon the two editorials that Matthew Gabel, Simon Hix and I published in 2000 and 2002. Manner's (2007, p. 90) criticism is particularly pointed. According to him, critical perspectives 'offer the opportunity to escape the normative wasteland and monstrous claims of "normal science" of economist pathologies – that path only leads to tighter straightjackets [sic].'
3. I note the recent attempts by Widgrén and colleagues to integrate preferences into the voting indices. Previous attempts to do so have been hampered by the sensitivity of the model predictions to small variations in the preference assumptions. Whether the new approach has overcome this problem is, to my knowledge, not yet decided. For a more philosophically grounded debate on the new models see Braham and Holler (2005) and Napel and Widgrén (2005).
4. The same year also saw the publication of formal models that were derived at least partly by Europeans, as for instance the predecessor to the DEU research project volume (Bueno de Mesquita and Stokman 1994) and the non-cooperative bargaining models of European Council deliberations by Schneider and Cederman (1994).
5. Butler (2004) and Muthoo (2000) offer accessible introductions to the bargaining literature. See also Muthoo (1999) for a technical introduction and Schneider (2005) for a discussion of how different forms of power may influence the outcome of consensual bargaining.

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