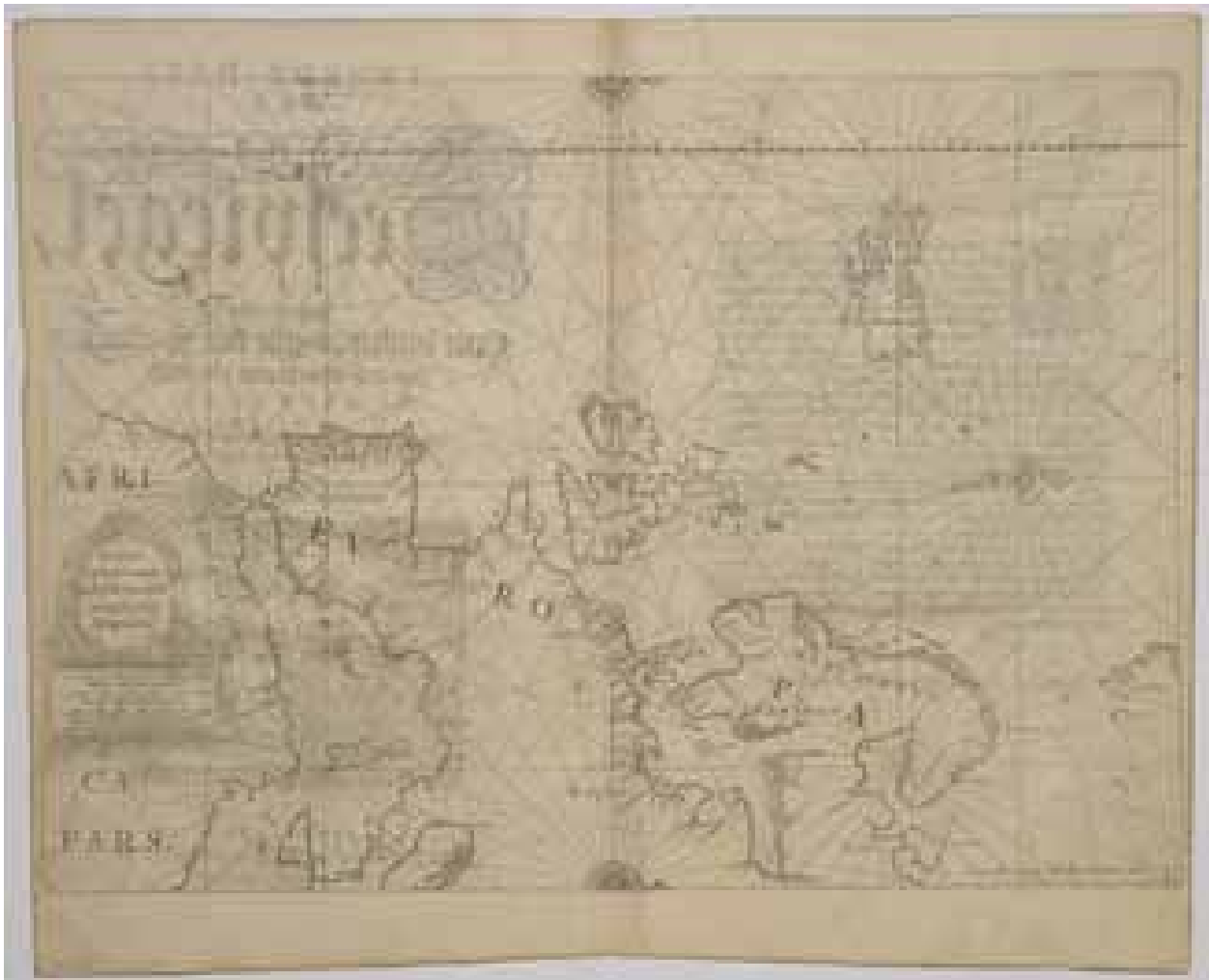


The Impact of Procedure: Analyzing European Union Legislative Decision-Making

Torsten J. Selck



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**The Impact of Procedure:
Analyzing European Union Legislative Decision-Making**

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To my parents

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The legislature is itself a part of the constitution which is presupposed by it and to that extent lies absolutely outside the sphere directly determined by it; none the less, the constitution becomes progressively more mature in the course of the further elaboration of the laws and the advancing character of the universal business of government.

*Georg Wilhelm Friedrich Hegel, 1821,
Philosophy of Right [§298]*

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1 Introduction

1.1 *Aim of the Study*

In July 2001, the European Commission issued a *White Paper on European Governance*. The main objective of the paper was to identify areas of European Union (EU) regulatory activity which, in the eyes of the Commission, had to be reformed in order to make the legislative process more transparent and more effective. A special point of consideration was the task of refocusing the political actors on the so-called *community method*, which is the way by which the EU negotiates and decides upon its legislative measures (European Commission, 2001a). The fifteen heads of state and government of the Member States of the EU had earlier agreed upon signing the *Treaty of Nice* (2001), which amends the existing treaties that form the *primary legislation* of the EU and which lays down detailed rules for policymaking.

There were three major objectives which the Nice Treaty was supposed to fulfill. These were (1) a change in the size and structure of the European Commission, (2) a re-weighting of the votes in the Council of the European Union, and (3) a change of the voting threshold in the Council which would facilitate faster and more flexible policymaking. Of all the issues that had to be discussed during the summit at which the new Treaty was negotiated, the part dealing with a change of the methods of legislative deliberation proved to be the most troublesome because many government leaders feared that reform would result in an effective loss of power for their own country (*The Economist*, 2000a). The reason for the vigorous discussions amongst the European Union leaders during the Nice Summit had to do with the fact that the structure of the legislative process is perceived to have a major impact on resulting legislation.¹ Political leaders understand that changes in the structure of legislative decision-making can affect the outcomes of policymaking.

The focus of attention in this book is to examine the effects of the existing procedural rules of the European Union on the laws that are negotiated. A major point of concern is to shed light on the question of how legislative arrangements in the EU structure the policy process and how they affect the content of new legislation in the Union. Unlike many other political organizations, the institutional evolution of the European Union is far from over. In the spring of 2002, a grand convention to draft a constitution for Europe opened in Brussels. The main objective concerning procedural rules was to simplify them in order to make them more transparent for Europe's citizens and to restructure the legislative powers of

¹ For a classic example of reasoning about the impact of rules on outcomes in a legislative setting, see Madison et al. (1987) [1788].

the institutional actors of the Union to take account of an increased number of players after EU enlargement and accession of ten to twelve countries of Central and Eastern Europe.

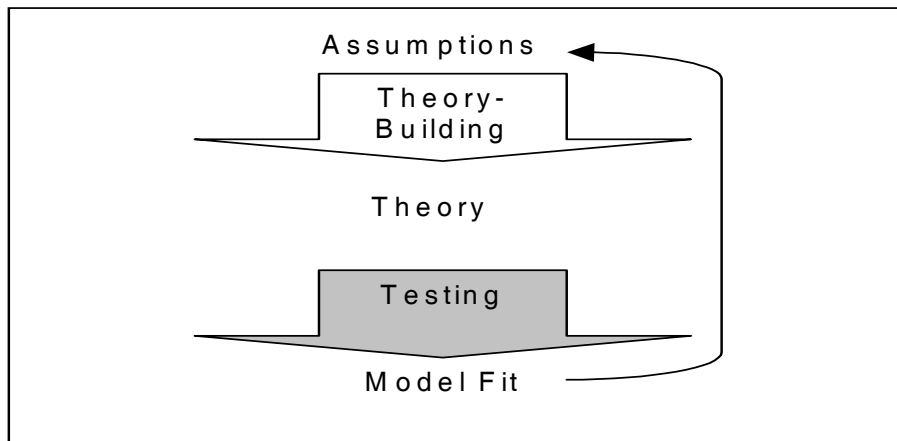
The analysis in this book is about institutions, about their design and about their workings. The focus of attention is the European Union legislative realm. An underlying idea is that if we want to redesign existing institutions by rebalancing decision-making power (Hug, 2003a) or to accommodate new members (Steunenberg, 2001), we have to know how the current arrangements work. To be able to assess the differences between the institutional arrangements of the European Union, I will work with the help of formal game-theoretic models and with quantitative data that is gained from elite interviews supported by content analyses of EU documents. The formal models which I will use were specifically designed to capture the complexities of European decision-making. The data-gathering method used for this study was previously employed for the EU context by Bueno de Mesquita and Stokman (1994). They worked with a more limited number of cases and applied the data for a different class of models. I will also integrate computer simulation into the analysis to be able to compare different model specifications with each other.² The theory which I use in this book is based on the rational-choice approach to politics. In the context of the European Union, this analytical tool has previously been used by Moravcsik (1991, 1997, 1998) and Schneider and Cederman (1994) to model European intergovernmental negotiations. Regarding legislative politics in the Union, a large number of models exist which have been advanced by authors such as Scharpf (1988, 1997), Bueno de Mesquita (1994), Stokman and Van Oosten (1994), Crombez (1996, 1997, 2000), Steunenberg (1994, 1997, 2001), and Tsebelis (1994, 1996, 1997, 2002).

For the current study, I will focus on models which share similar characteristics in explaining the EU legislative process in that they specifically highlight the *procedural aspects* of European Union policymaking. I refer to these models as *procedural models* or *spatial voting models* (Hix, 1999: 56-98, 2004). Tsebelis (2002) uses the term *veto player theory*. Although the procedural models which have been put forward to explain EU legislative decision-making are quite similar in attaching high importance to the structure of the legislative process, they claim to come to different conclusions about EU decision-making (Hix, 1999: 88-94). In this book, the procedural model approach will be empirically tested. After presenting the approach, the models will be compared with each other, and

² The use of computer simulation to evaluate formal models of decision-making has been pioneered by Axelrod (1984) in his account on the iterated prisoner's dilemma. Schelling (1978) is often credited for laying the basis for the approach. Morton (1999) argues for integrating formal modeling, statistical modeling, and computer simulation techniques in political science to improve insight in political processes.

subsequently tested by evaluating their predictions in the light of the actual outcomes of European Union legislative decision-making. Hopefully, at a later stage, the results of this study will feed back into the research process. Figure 1.1 maps out the nature of the research process that will be followed by this book. For this project, I will focus on testing existing theory to evaluate the model fit.

Figure 1.1. Nature of the Research Process



Theorizing about EU policy-making can take on many different forms. Hix (1999) provides an overview on how legislative decision-making and power-sharing works in the European Union. The procedural models that are analyzed in Hix's book rely as one of their primary explanatory elements on the structure of the legislative process. The models try to answer the question how the outcome of legislative decision-making in the EU can be explained as a result of (1) the structure of the legislative process and (2) the preferences of the main stakeholders. These are the *European Commission*, the *European Parliament*, and the *Council of the European Union*, which represents the interests of the EU Member States. To explain legislative politics in the Union by focusing on the structure of the legislative process, a number of procedural models and model refinements and criticisms have been advanced. These include studies by Steunenberg (1994, 1997), Tsebelis (1994, 1996, 1997, 2002), Schneider (1995), Crombez (1996, 1997, 2000, 2003), Laruelle (2002), Moser (1997), Scully (1997a, 1997b), Steunenberg and Dimitrova (1999), and Tsebelis and Garrett (1996, 1997a, 1997b, 1999, 2000, 2001). The main similarity of these voting models lies in their theoretical approach to politics. In the European Union, there are different legislative procedures that relate to different policy sectors. Thus, we can find different models or model specifications which are specifically designed to explain law-making under certain EU procedures. The major difference between the theoretical

accounts is how they depict the way in which the legislative procedures work exactly.

Note that there are other possibilities to model the European Union legislative process than by using voting models. One of these possibilities is to employ *bargaining models*. We might argue that, in order to analyze EU decision-making, the most important feature is not the structure of the legal process, but rather the possibility of actors to link certain issues and trade their votes with one another. A similar argument has been advanced by Stokman and Van Oosten (1994: 105-27). Yet another approach would be to maintain that EU decisions are being made on an issue-by-issue basis and that the most important element is whether an actor can successfully threaten or challenge other actors to comply with its wishes. This claim has been made by Bueno de Mesquita (1994: 71-104). The next section will outline the research questions which this book tries to answer.

1.2 Research Questions

The preceding paragraph served to show the overall aim of this study. In trying to answer the question of the validity of the EU voting models, I will tackle questions which are related to the special features of the EU legal process and the capabilities of the different actors in shaping the legislative outcome in the Union. The following research questions, highlighted in Figure 1.2, will be addressed in this study.

Figure 1.2. Research Questions

Central Question: What is the impact of the European Union's legislative procedures on decision-making outcomes?

Sub-Question 1: What are the differences and the similarities between the existing procedural models which try to model EU legislative decision-making?

Sub-Question 2: How good is the overall explanatory power of the models?

Sub-Question 3: What are the capabilities of the different institutional actors in shaping EU policy outcomes?

The *Central Question* of this book is the overarching one insofar as it is concerned with evaluating the explanatory power of the whole theoretical approach. To answer this question, the predictive power of the procedural models will be compared with the power of a much simpler model. This part of the analysis will provide information on how good the models are in general.

Sub-Question 1 is concerned with comparing the different procedural models and with the hypothesized power of the institutional actors in shaping the legislative bargain. Is it the European Commission that gets its way vis-à-vis the Council (Westlake, 1994)? What is the power of the European Parliament in the legislative process (Steunenberg, 1994; Tsebelis, 1994; Crombez, 1996; Moser, 1996; Rittberger, 2004)? How can we assess the relative power of the Member States in policy process?³ Does the Presidency of the Council have a dominant position in setting the legislative agenda (Wessels, 1991; Westlake, 1994b; Hix, 1999: 66; Steunenberg and Dimitrova, 1999; Kirchner, 1992; Kollman, 2003; Tallberg, 2003)? These questions will be answered by comparing the assumptions of the models and the predictions which they make.

Sub-Question 2 deals with evaluating the predictive power of the existing procedural models. For comparative purposes, a null model will be

³ This question has been addressed by Widgrén (1994, 2002), Hosli (1996), König and Bräuninger (1998), Widgrén and Laruelle (1998), and Berg and Lane (2001).

presented. This model will be based on Duncan Black's (1958) *median voter theorem*.

Sub-Question 3 tries to accommodate the fact that there is not only one procedural model but several of them. One challenge here is to compare the capabilities of the different actors over the procedures. If we move from one legislative procedure to another, how does this move affect the power of the Council vis-à-vis Parliament to influence the resulting legislative measure? Further, what happens if we conceptualize the dimensionality of decision-making in different ways? Can we adequately represent decision-making on a simple issue-by-issue basis or should EU legal negotiations be represented in a higher-dimensional setting?⁴ This question is not so much concerned with comparing the capabilities of the different actors as it is with the assumptions of the models concerning how complex European legislative negotiations are and how many issues are at stake simultaneously.

1.3 The Role of Institutions

How can the outcome of European Union legislative decision-making be explained? Rational choice theory posits that, in order to analyze how outcomes are negotiated, actors' decision-making power has to be taken into consideration.⁵ The political debates which traditionally surround EU intergovernmental negotiations might be considered as casual preliminary evidence for the importance of institutional arrangements for the policymaking process (Moravcsik, 1998). Institutions are considered to be one of the building blocs when trying to analyze decisions in a parliamentary setting. Shepsle and Bonchek (1997: 311) define institutions as *governance structures*. This book will follow their definition. The relevant institutions for EU legislative politics are primarily the Union's legislative procedures which are informed by the *Treaty Establishing the European Community* (EC) and the *Treaty on European Union* (TEU). To a lesser extent, other features that are also contained within the framework of

⁴ Steunenberg (1994, 1997), Crombez (1996, 2000), and Steunenberg and Dimitrova (1999) use single-dimensionality. Tsebelis (1994, 1995), Moser (1997), and Tsebelis and Garrett (2000) use a two-dimensional space. Rittberger (2000) argues for the use of three dimensions. Selck (2004b) tests a procedural model under different dimensionality assumptions and finds that the model predicts better under multidimensionality.

⁵ See Shepsle and Bonchek (1999) for an introduction to analytical institutionalist theory and Shepsle and Weingast (1981) for an account of how rules might affect legislative decision-making.

the *acquis communautaire* are relevant.⁶ Relying solely on the formal procedures as laid down in the Treaties might be insufficient for two reasons. First, legislative procedures might not always fully specify the way in which the political process works. Second, actors might not always comply with rules. Even if there is a clear structure prescribed in a primary legislative source, this does not mean that political actors necessarily follow these rules in detail. This implies that the analysis is based on the integration of both formal and informal institutional arrangements into the modeling process when trying to explain policymaking. As we shall see later on, the procedural models work in such a way that there is still a clear bias for formal procedural arrangements that distinguish this sort of models from bargaining models (Buchanan and Tullock, 1962; Coleman, 1966).

There are several legislative decision-making procedures in the European Union. The most prominent are the *consultation* procedure, which can be traced back to the Rome Treaty of 1951, the *assent* procedure (introduced by the *Single European Act* of 1987), the *cooperation* procedure (also introduced by the *Single European Act* of 1987), and the *codecision* procedure (introduced by the Maastricht Treaty of 1992 and revised by the Amsterdam Treaty of 1997) (Hix, 1999: 60-63). In fact, there exist several more of these rules, but social scientists largely choose to focus their attention on the ones mentioned above. The reason for is that the vast majority of secondary legislation in the EU is generated via the use of the procedures mentioned above.⁷ In order to understand how exactly these different rules might affect the legislative outcome, procedural models conceptualize the different legislative arrangements by using the rational choice approach and by focusing on the structure of decision-making as laid down in the European Union's treaties and secondary rules. The treaties represent the Union's *primary legislation*. They attribute in detail specific roles to the institutional actors in the process which generates EU *secondary legislation*. Note that the institutional changes brought about by the Treaty of Nice are not under consideration in this book. The institutional arrangements put into place by the Nice Treaty were not yet used to negotiate legislation when the research for this book was being conducted. This implies that, by the time of writing, there existed no empirical information yet on how the legislative mechanisms as altered by the Nice Treaty might work.⁸

⁶ The *acquis communautaire* is the whole array of rules which govern the policies and policy processes in the European Union.

⁷ For an overview of all the procedures, see Kapteyn and VerLoren van Themaat (1998) and Craig and De Búrca (1998).

⁸ However, predictions on the likely impacts of the Nice Treaty on EU policymaking have already been made. König and Bräuninger (2000) predict likely coalition patterns in an enlarged Union based on macro-economic indicators.

1.4 Council Voting Rules and Legislative Procedures

The legislative process in the European Union is complex and highly differentiated. Unlike any of the countries which represent the Member States of the EU, and unlike any other democratic polity, a wide range of law-making mechanisms exists in the European Union. The rules that are used to negotiate legislative measures in the EU apply to different policy sectors and have their origin in the different Treaties that form the legal basis for these measures.⁹ Craig and De Búrca (1998: 130) argue: “The distinguishing characteristic of the different legislative procedures is, principally, the degree of power which the European Parliament has in each of these processes. The reasons for the complexity of the Community’s legislative process have their roots in the fact that the European Parliament was given the smallest part to play in the legislative process in the original Rome Treaty. All of the subsequent Treaty modifications have been designed to increase the role of the European Parliament, but to do so in a way which is politically acceptable to the other players in the game.”

The most prominent legislative procedures are the consultation procedure, the assent procedure, the cooperation procedure, and the codecision procedure. Their major differences lie in the exact roles they attribute to the political actors in shaping legislation and in their area of use. The communalities of the procedures is that the same troika of institutional actors is put in charge of legislative deliberation. These three main actors are the European Commission, the European Parliament, and the Council of the European Union.¹⁰

Steunenberg (2001) uses computer simulation and Yataganas (2001) and Tsebelis and Yataganas (2002) employ spatial models.

⁹ The historical evolution of the EU can be traced back to the early 1950s. The legal bases for the different procedures which are currently in force are to be found in the Treaty Establishing the European Community (1997) and the Treaty on European Union (also referred to as Treaty of Maastricht) (1997). See e.g. Moravcsik (2001); Craig and De Búrca (1998: 3-48); and Kapteyn and VerLoren van Themaat (1998: 1-44).

¹⁰ The legal basis for this institutional interplay can be found in Art. 249 EC, which states: “In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission, shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.” Regarding the rationale behind directives, which have indirect effect and have to be transposed and implemented by the Member States, Craig and De Búrca (1998: 108) write: “The Member States of the Community have differing legal systems, some being common law, some civil law, and that even within the latter category there are considerable differences in terms

The matter of interest for this book are the laws of the European Union and how they are made. When we talk about EU legislative instruments, there are different forms which these can take. The EU has at its disposal different forms of legislation. These instruments are *regulations*, *directives*, *decisions*, *recommendations*, and *opinions*. Art. 249 EC lays out the scope of the different measures, stating e.g. that “a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.” For the purposes of this book, it will suffice to focus on regulations, directives and decisions. The main reason for this is that recommendations and opinions have no binding force. A second reason is that recommendations and opinions are not the result of inter-institutional negotiations. Instead, they can be issued single-handedly by the actors involved, often in the process which leads to the negotiation of regulations, directives, and decisions.¹¹

Note that, apart from recommendations and opinions, there are other policy options at the disposal of the European Union policy makers. These other options are *policy guidelines* and so-called *inter-institutional agreements* between the Council, the Commission, and Parliament. According to Craig and De Búrca (1998: 110), these “have been made on topics of constitutional significance such as subsidiarity,¹² transparency, and participation rights”. Recommendations, opinions, and inter-institutional agreements constitute the ‘soft law’ in the Union. These instruments and their effects are not reflected in the models under discussion here. However, the use and the effects of these options might influence the results of the legislative process following the different legislative procedures. The legislative process which leads to the passing of regulations, directives, and decisions follows a complex process which includes two distinct features that vary over the policy sectors for which new legislation is to be negotiated. The first one is the voting rule in the Council of the European Union, the second one is the interplay between the Commission, the

of detail. There are, in addition, variations in the existing political, administrative, and social arrangements, within the Member States, and this exacerbates the difficulty of developing all Community policy through regulations. Directives are a particularly useful device when the aim is to harmonize the laws within a certain area”. Dimitrova and Steunenberg (2001) present a formal model which takes into account the differences of the regulatory environments within the Member States. For an overview on the literature regarding directives and their transposition and implementation, and for an analysis of transposition of EU law in the Netherlands, see Mastenbroek (2003).

¹¹ Note, however, that there are also legal bases which allow for a unilateral issuing of legislative instruments other than recommendations and opinions.

¹² The principle of subsidiarity calls for efficient policy to be made on the lowest political level possible.

Council, and the Parliament. I will proceed by first outlining the voting procedures in the Council.

The Council of the European Union is one of the three most important bodies in the EU legislative decision-making process and represents the interests of the fifteen Member States of the EU. Unlike most other bodies which decide by majority rule, there are two distinct features that differentiate the Council from other organizations in which different countries are represented. These are the voting thresholds which apply for different policy sectors and the different voting weights for the members of the Council. The different Council voting rules were essentially introduced with the *European Atomic Energy Community Treaty* and the *European Economic Community Treaty* of 1957.

In general, the *Treaty Establishing the European Community* (EC Treaty) stipulates for Council decisions to be taken by majority (Art. 251 EC). There are two different explicitly mentioned voting thresholds in the Council. The first, which is also the older one, is *unanimity*. This voting threshold has been around since the 1950s. The second one, which came into force with the Single European Act of 1987, is *qualified majority voting* (QMV) (Art. 251(2) EC). Regarding unanimity, Craig and De Búrca (1998: 142) write: “A requirement of unanimity now generally only applies to politically sensitive topics (e.g. visas, asylum, immigration [Arts. 61-69: Art. 67(1) EC], and some matters concerned with unemployment [Art. 137(3) EC]), to decisions which are of particular importance to the character of the Community (e.g. the accession of new Member States [Art. 49 TEU]), or in circumstances where the Council is seeking to depart from a proposal from one of the other Community institutions.”

For most policy sectors, a qualified majority of votes is required. In total there are 87 Council votes before the May 2004 enlargement. Table 1.1 displays the distribution of these votes between the different Member States.

Table 1.1. Member States' Voting Weights in the Council

MEMBER STATE	NUMBER OF VOTES – EU 15 (ROME)	NUMBER OF VOTES - EU 27 (NICE)
France	10	29
Germany	10	29
Italy	10	29
United Kingdom	10	29
Spain	8	27
Belgium	5	12
Greece	5	12
Netherlands	5	13
Portugal	5	12
Austria	4	10
Sweden	4	10
Denmark	3	7
Ireland	3	7
Finland	3	7
Luxembourg	2	4
<i>Total Votes (EU 15)</i>	87	
<i>Required to Adopt</i>	62 (71.26 %)	
Poland		27
Romania		14
Czech Republic		12
Hungary		12
Bulgaria		10
Slovakia		7
Lithuania		7
Latvia		4
Slovenia		4
Estonia		4
Cyprus		4
Malta		3
<i>Total Votes (EU 27)</i>		345
<i>Required to Adopt</i>		258 (74.78 %) ¹³

In order for a decision to pass the Council when QMV is stipulated, there have to be 62 votes cast in favor of it.¹⁴ This means that 26 votes against a

¹³ The Nice Treaty requires a “triple majority” of 258 votes, plus a majority of the Member States, plus 62% of the EU population.

¹⁴ See Art. 205(2) EC; in some cases, at least 10 Member States have to be in favor of the measure. Kapteyn and VerLoren van Themaat (1998: 400) write: “If the decision is not being taken on the basis of a proposal from the Commission it is ... required that 10 members must vote in favour (this is sometimes referred to as a double qualified majority”.

measure constitute a blocking minority. For example, with QMV as the voting rule, a coalition of France, Germany, Italy, the United Kingdom, Spain, Belgium, Greece and the Netherlands would yield 63 votes and would therefore suffice for a legislative measure to pass in the Council.¹⁵ Note that, under unanimity, abstentions do not prevent the adoption of legal acts (Art. 205(3) EC) for which unanimity is required. Under QMV, however, abstentions are counted as votes against the passing of a proposal.

When legislation is negotiated by the European Union, the Council has two vital roles to play. The first one is to possibly amend a proposal in the legislative process, the second one is to adopt a proposal as new legislation at the last stage of the decision-making process. The major difference between these two legislative roles as regards the voting threshold is that legislation has to be adopted either by unanimity or by QMV. However, for cases of QMV voting, a requirement of unanimity also applies if the Council wants to amend a legislative bill.¹⁶

The voting threshold applies to *intra-Council decision making*. In order for legislation to pass, however, different procedures apply which call for *inter-institutional cooperation*. The different existing procedures were put forward in the wake of the different Treaties. An overview of the procedures and their historical evolution can be found in Craig and De Búrca (1998), Kapteyn and VerLoren van Themaat (1998), and Moravcsik (1998). These procedures will now be discussed.

One of the oldest legislative procedures in the European Union is the *consultation procedure*. Its origins can be traced back to the European Coal and Steel Community Treaty of 1951, which set up a High Authority (which later would become the European Commission), an Assembly (which would later become the European Parliament), and a Council representing the Member States. In 1957, the European Atomic Energy Community Treaty and the European Economic Community Treaty provided for joint Commission-Council decision making with Parliament playing a consultative role. “[A] bare requirement to consult with the European Parliament is all that is required, and the real legislative process is still dominated by the Council and the Commission in these areas. The Council is not therefore bound to adopt the opinion of the parliament in the spheres to which this procedure applies. Particular treaty areas can also stipulate that the Committee of the Regions or the Economic and Social Committee should be consulted” (Craig and De Búrca, 1998: 132). The consultation procedure is not – unlike e.g. the codecision procedure – based only on one

¹⁵ Note that, if compared to parliamentary chambers in nation-states, where usually a simple majority of the members is required (more than 50%), the Council rule of 62 out of 87 votes (71.26%) represents an extremely high voting threshold for secondary legislation.

¹⁶ Art. 250(1). See Craig and De Búrca (1998: 142); Kapteyn and VerLoren van Themaat (1998: 401).

Treaty Article but currently covers several Articles.¹⁷ For a legislative proposal to become law in the European Union under the consultation procedure, the following steps have to be taken: (1) The Commission submits a proposal to the Council and to Parliament.¹⁸ (2) Parliament issues an opinion.¹⁹ (3) The Council may amend the proposal and adopt a legislative act.

The *assent procedure* was instituted with the Single European Act of 1987 in order to strengthen the role of the European Parliament. The procedure covers areas concerning the expansion of Community membership and association agreements with third countries. Assent is covered by the following Articles: Art. 49 TEU on membership of the European Union; Art. 105(6) EC on the functioning of the European Central Bank; Art. 107(5) EC on the European System of Central Banks; Art. 161 EC on measures relating to economic and social cohesion. For a legislative proposal to become law under the assent procedure, the following steps have to be taken: (1) The Commission submits a proposal to the Council and to Parliament.²⁰ (2) The Council can then amend the proposal. (3) Afterwards, the European Parliament may give its assent to the Council.²¹ (4) The Council can then adopt a legislative act, subject to Parliament's assent. Westlake (1994b: 96) argues: "The assent procedure... 'grants

¹⁷ Art. 19 EC on rights to vote and stand in municipal elections (unanimity); Art. 22 EC on citizenship rights (unanimity); Art. 89 EC on state aids (QMV); Art. 93 EC on harmonization of indirect taxation (unanimity); Art. 94 EC on approximation of laws for the functioning of the common market (unanimity); Art. 107 EC on provisions relating to the Statute of the European System of Central Banks (QMV after recommendation from the European Central Bank and unanimity after a proposal from the Commission [Art. 107(5)]; QMV [Art. 107(6)]); Art. 175(2) EC on fiscal measures etc. relating to the environment (unanimity); Art. 67(1) EC on visas, asylum etc. (unanimity); Art. 13 EC on measures to combat various forms of discrimination (unanimity); Art. 128 EC on guidelines for Member States in relation to their employment policies (QMV); Art. 21 TEU on the general direction of common foreign and security policy (no mentioning of voting rule, but unanimity applies.); Art. 39 TEU on police and judicial co-operation in criminal matters (no mentioning of voting rule, but unanimity applies).

¹⁸ In some cases, the Economic and Social Committee, the European Central Bank, the Committee of the Regions, and the Employment Committee referred to under Art. 130 EC also have to be consulted.

¹⁹ In those cases referred to under footnote 33, the bodies mentioned there also have to issue their opinion. In the case of Art. 21 TEU which deals with the common foreign and defense policy, Parliament is not supposed to issue an opinion.

²⁰ In some cases, the European Central Bank or the Economic and Social Committee and the Committee of the Regions also have to be consulted.

²¹ In those cases referred to under footnote 35, the bodies mentioned there also have to issue their opinion.

Parliament ... an absolute power of rejection', albeit no formal mechanism for making amendments".

Like the assent procedure, the *cooperation procedure* was introduced by Single European Act of 1987 in order to increase the influence of the European Parliament in the legislative process. Whereas the assent procedure applies predominantly to Community membership, accession, and association, the cooperation procedure was intended for matters pertaining to the internal market. The cooperation procedure is outlined in Art. 252 EC. After the Treaty of Amsterdam of 1997, the cooperation procedure now applies to only a very limited number of Treaty Articles on Economic and Monetary Union. These are Art. 102 EC on privileged access to Community institutions and public undertakings and Art. 103 EC on liability for commitments and public undertakings.²²

²² For a legislative proposal to become law in the European Union under the cooperation procedure as laid down in Art. 252 EC, the following steps have to be taken:

"Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

(a) The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.

(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position. If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

(c) The European Parliament may, within a period of three months referred to in point (b), by an absolute majority of its component members, propose amendments to the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission. If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

(d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament. The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

(e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission. Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

The *codecision procedure* is the most recently introduced mechanism. It was put into force by the Treaty on European Union of 1992 and modified by the Treaty of Amsterdam of 1997. The procedure applies whenever the Treaty refers to it for the adoption of an act (Craig and De Búrca, 1998: 135). Codecision now already applies to some of the most important legislative measures produced under the EC Treaty (Craig and De Búrca, 1998: 137). The codecision procedure is the most complex of all the existing procedures. Unlike consultation, which consists of one legislative reading, and cooperation, which consists of two, the codecision procedure entails three legislative readings, with the EP and the Council both having the power to amend bills and to negotiate within the framework of a *conciliation committee*, which consists of an equal number of representatives from both institutions.²³

(f) In the cases referred to in points (c), (d), and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.

(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.”

²³ For a legislative proposal to become law in the European Union under the codecision procedure as laid down in Art. 251 EC, the following steps have to be taken:

“(1) Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

(2) The Commission shall submit a proposal to the European Parliament and the Council. The Council, acting by a qualified majority after obtaining the opinion of the European Parliament, if it approves all the amendments contained in the European parliament’s opinion, may adopt the proposal thus amended; if the European Parliament does not propose any amendments, may adopt the proposed act; shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position. If, within three months of such communication, the European Parliament: (a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position; (b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted; (c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

(3) If, within three months of the matter being conferred to it, the Council, acting by a qualified majority, approves all the amendments of the European parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in

Apart from the abovementioned procedures, there are other Treaty Articles which highlight other ways to negotiate policy:

(1) *Commission Acting Alone*: This procedure is based on Art. 86(3) EC. It applies to directives and decisions concerning public undertakings and is only rarely used.

(2) *Council and Commission Acting Alone*: This procedure concerns e.g. aspects of free movement of workers, capital, economic policy, and the common commercial policy.²⁴

(3) *The Exercise of Delegated Legislative Power by the Commission*: The relevant Treaty Article is 202 EC. The procedure applies e.g. to highly regulated areas of Community policy, such as agriculture. The delegation of powers is conditioned on the approval of a committee composed of Member State representatives.²⁵ There are three different mechanisms used for delegating powers:

(3a) *The Advisory Procedure*: Under this procedure, the Commission can take decisions unilaterally and is only consulted by a committee which is chaired by the Commission and made up of representatives from the Member States.

agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

(4) The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.

(5) If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.

(6) Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.

(7) The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council."

²⁴ See e.g. Arts. 26, 45, 49, 55, 57, 60, 96, 99, 104, 133(2) EC.

²⁵ See e.g. Craig and De Búrca (1998: 139) and Kapteyn and VerLoren van Themaat (1998: 390-99). For game-theoretic models of these procedures, see Steunenberg et al. (1996).

(3b) *The Management Committee Procedure*. Under this procedure, if the committee votes against a measure proposed by the Commission, the Commission must communicate this to the Council.

(3c) *The Regulatory Committee Procedure*: Under this procedure, the Commission can only adopt policy if this policy is in accord with the committee. The committee votes with the same system as appertains to the Council.

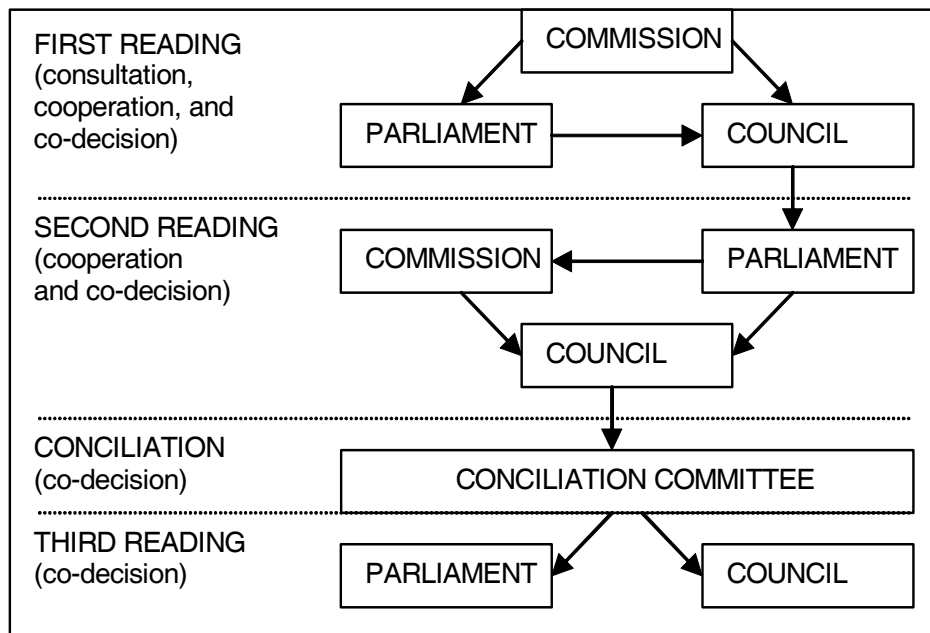
(4) *The Seeds of Legislative Initiative for the Parliament: Art. 192*: This Article lays out the possibility for Parliament to request the Commission to make a legislative proposal. Craig and De Búrca (1998: 141) write that “the European Parliament may, acting by a majority of its members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing the Treaty”. According to Kapteyn and VerLoren van Themaat (1998: 409), this is a very ‘proactive’ Treaty Article.

(5) *Legislative Initiative and the Council’s Use of Art. 208*: A somewhat similar mechanism as the one specified in Art. 192 exists for the Council. Craig and De Búrca (1998: 141-41) argue: “This is not a procedure for the enactment of legislation as such, but it is a mechanism whereby the Council can adopt a more proactive role in the initiation of the legislative process. Under this Article the Council may request the Commission to undertake any studies which the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals... The Council has not infrequently made use of this Article to give very specific instructions to the Commission concerning action which it, the Council, believes to be desirable. When this occurs the Commission will, at the very least, feel a strong pressure to bring forward legislation of the type suggested by the Council.”

(6) *Concertation Procedure*: This procedure is based on a Joint Declaration of 4 March 1975 between the Presidents of the Parliament, Council and Commission. It applies to acts of general application with appreciable financial applications. Further, according to Kapteyn and VerLoren van Themaat (1998: 426), “their adoption must not be required by virtue of existing acts”.

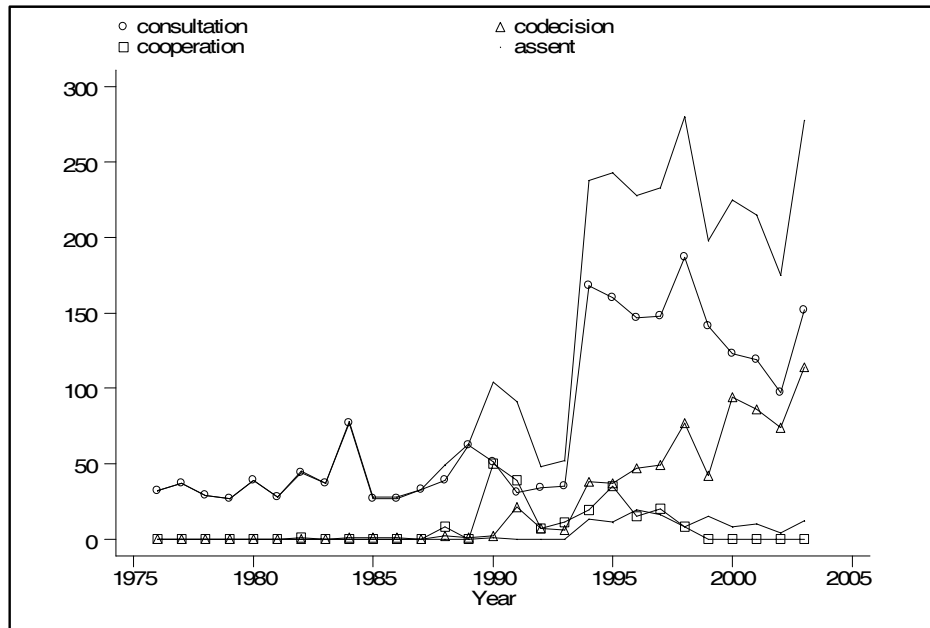
The previous section gave an extensive overview of the many different legislative procedures at the disposal of the European Unions law-makers. Figure 1.3 summarizes the EU legislative process.

Figure 1.3. The EU Legislative Process



After having summarized the existing EU legislative procedures, I will now briefly highlight the actual use of the existing procedures. Figure 1.4 displays the development of the use of the legislative instruments, as measured in the number of documents exchanged between the institutions in the legislative decision-making process from 1976 to 2003. The upper curve displays the total number of documents. The graph depicts a large increase around the first half of the 1990s because of the large amount of internal market legislation that was supposed to be negotiated by the end of 1992. The other curves relate to consultation (o), cooperation (□), codecision (Δ), and assent (.) procedure.

Figure 1.4. Volume of Legislative Documents*



* 1976-2003. Calculated with data from *PreLex*. Note that the data reflect the references indicating the year of the issuing of a proposal and the legal base under which it has finally passed or lapsed.

During the period displayed, the consultation procedure was utilized most often. The cooperation procedure was introduced by the coming into force of the Single European Act in 1987. Since peaking in the early 1990s, the use of this procedure has been decreasing over time. Currently, the procedures which are by far most often used are the consultation procedure and the codecision procedure (European Commission, 1999, 2000, 2001b, 2002c, 2003).

Note that there have been changes made to the legislative procedures in the wake of the Nice Treaty, which was signed on 26 February 2001. Concerning the provisions for the legislative process, these changes relate to a new formula for the calculation of a qualified majority in the Council and more qualified majority voting.²⁶ I will abstain here from analyzing the new procedures since the procedural provisions of the Nice Treaty are not being used yet and because of the fact that there is no experience with the new arrangements.

After having outlined the Council voting rules and the legislative procedures which apply, I will now focus on presenting the rationale behind using game-theoretic models that try to explain EU decision-making.

²⁶ For an analysis, see e.g. Steunenberg (2001) and Tsebelis and Yatağan (2002).

1.5 *The Use of Models*

Throughout this book, the European Union legislative process will be analyzed with the help of formal game-theoretic models. Apart from the objective to test existing theory, the choice for this approach has been made in order to be able to precisely assess differences in the effects of procedures on policy outcomes (Hug 2003b). Morrow (1997: 6) presents the argument for using models in the following way: “The primary advantage of formal modeling is the rigor and precision of argument that it requires. Writing down an argument formally forces the modeler to decide precisely what the assumptions of the argument are.” Morton (1999) argues that formal models can fruitfully be employed to evaluate causal patterns in data when the implications of those models can directly be confronted with data. The models which I will test in this book assume full rationality and complete and perfect information. Note that there also exist formal models that relax these assumptions. Schneider and Cederman (1994) present a model of EU intergovernmental negotiations which is based on incomplete information. They reason that a decision outcome is contingent on the credibility of an actor’s threat to pull out of EU treaty negotiations.

The game-theoretic approach is a combination of what actors want in combination with the possibilities they have. Plott (1991) sums these elements up in his ‘fundamental equation of politics’:²⁷

INSTITUTIONS x PREFERENCES => OUTCOMES

Institutions are the governance structures that actors are assumed to find as given when engaging in a decision-making process. Note that these institutions themselves can be the subject of debate, depending on the analytical focus of the analysis. Studies that e.g. deal with the intergovernmental negotiations which take place in the EU might analyze the structure of the legislative decision-making process as the *outcome* of a decision situation (Moravcsik, 1991; Schneider and Cederman, 1994; Carrubba and Volden, 2001).

The second class of factors that are of major importance in rational choice theory are actors’ *preferences* over outcomes of policy-making processes. These preferences are channeled by institutional arrangements. Institutions are assumed to dictate the structure of the game (Ostrom and Walker, 1997: 42-5). The models that are under review in this book are accounts of legislative politics in the European Union. They share common features in that they focus their attention not so much on the bargaining

²⁷ See also Riker (1980) and Ostrom (1986).

elements of the decision processes but more on the voting process derived from the procedural basis for deliberations.

The voting processes in the EU differ with respect to the policy sectors that are being negotiated. When it comes to negotiating the free movement of workers in internal market legislation, the mode of decision-making is codecision, allowing for the European Parliament to ‘codecide’ together with the Council. If, on other hand, harmonization of indirect taxation in the internal market is on the agenda, the mode of decision-making is consultation coupled with a unanimity requirement in the Council, formally leaving Parliament only the possibility to delay legislation, but not providing it with the power to amend or to block a bill.

1.6 Current Empirical Evidence

Kramer (1986) once asserted that doing theory is relatively easy; it’s learning whether it is true that is hard. For the different legislative procedures in the EU, there exist a number of models which all try to explain the processes at work and to predict the outcomes of decision-making. The models rely on the same set of input factors—the preferences of the Commission, Parliament, and the Member States and a characterization of the legislative procedures. They differ mainly with regards to the precise role of the actors in being able to shape the legislative outcome. When we are confronted with different stories that try to explain a certain empirical phenomenon, we want to be able to judge which of the different accounts is more valid. Concerning the procedural models that were framed to better understand the legislative processes in the EU, the testing record is scarce.²⁸

Current testing can be differentiated along two basic lines. The first line includes studies that rely on a large number of cases or on a few extremely important ones, e.g. cases that were deemed extremely important by Parliament and where the EP was able to get its amendments passed. The second line distinguishes between qualitative and quantitative studies. Qualitative studies are usually in-depth analyses of processes. Some of the qualitative studies on EU policymaking are guided by rational choice theory (e.g. Hubschmid and Moser, 1997).²⁹ Quantitative studies codify empirical information into numerical estimates to (1) make different cases easier to compare by using scaling techniques and (2) facilitate the use of statistical

²⁸ Hix (1999: 94-6, 2004) provides an overview.

²⁹ These studies can be referred to as *analytic narratives* (Bates et al., 1998).

analyses. Table 1.2 provides an overview of the existing empirical studies on EU legislative decision-making.³⁰

Table 1.2. Overview of Current Empirical Evidence

	QUANTITATIVE ANALYSES	QUALITATIVE ANALYSES
SMALL- <i>N</i> STUDIES (COMPARATIVE CASE AND SINGLE CASE)	Bueno de Mesquita and Stokman (1994), König and Pöter (2001)	Earnshaw and Judge (1993), Judge et al. (1994), Golub (1996), Jacobs (1997), Hubschmid and Moser (1997), Rittberger (2000)
LARGE- <i>N</i> STUDIES (STATISTICAL DESIGNS)	Westlake (1994a), Earnshaw and Judge (1995, 1997), Judge and Earnshaw (1994), Miller (1995), Corbett et al. (1995), Hayes-Renshaw and Wallace (1997), Golub (1999), Kreppel (1999, 2002), Kreppel and Tsebelis (1999), Tsebelis and Kalandrakis (1999), Schulz and König (2000), Tsebelis et al. (2000), Mattila and Lane (2001)	

The studies by Earnshaw and Judge (1993), Judge et al. (1994), Golub (1996), Jacobs (1997) and Rittberger (2000) focus on cases of successful negotiations by the European Parliament especially under the cooperation procedure. Earnshaw and Judge (1997) detect a general increase of accepted EP amendments under cooperation. Judge et al. (1994) detect an increased influence of Parliament in the area of environmental legislation. Hubschmid and Moser (1997) use Moser's (1994) analysis. This analysis forms an extension of Tsebelis' (1994) spatial model of the cooperation procedure. Rittberger (2000) challenges Tsebelis and Garrett's characterization of the codecision procedure on the grounds that they might oversimplify the *European issue space* by merely focusing on two dimensions. The advantage of these studies is that they describe in detail the policy process

³⁰ I exclude Bueno de Mesquita and Stokman's original models (1994) because they disregard the role of the Commission and the European Parliament and merely focus on the Member States.

that led to a particular decision. Perhaps even more importantly in the light of testing procedural models, they use as a major explanatory element the preferences of the institutional actors in their empirical accounts.

The analyses by Westlake (1994a), Earnshaw and Judge (1995, 1997), Judge and Earnshaw (1994), Miller (1995), Corbett et al. (1995), and Hayes-Renshaw and Wallace (1997) are based on descriptive and explanatory statistics of EU legislative decisions under the different procedures. A special point of attention is devoted to the rate of successful parliamentary amendments. Golub (1999) and Schulz and König (2000) focus on the decision-making speed under the different procedures as an indicator for the efficiency of law-making on the European level. One major advantage is that these analyses are based on a large number of cases. This makes the results more general and less sensitive to the intricacies of single-case research by avoiding *overfitting*.³¹ The major disadvantage in the design is, however, that the findings have to remain unexplained in the light of the preferences of the different institutional actors as intra-Council conflict is not being modeled. Mattila and Lane's (2001) paper is a step in the right direction in that they use a large-*n* design and disaggregate empirical information on the Council. To this end they use data on the Council voting records. They find that Council voting is frequently unanimous and infer that intra-Council decision-making is less conflictive than the procedural models literature would expect it to be.

Another line of research takes as their unit of analysis parliamentary amendments. Kreppel (1999, 2002), Kreppel and Tsebelis (1999), Tsebelis and Kalandrakis (1999), and Tsebelis et al. (2000) use explorative statistical techniques like regression and dimension-reducing methods. They show that the legislative procedure that is being used to negotiate a certain proposal correlates highly with whether the EP amendments are passed. They conclude that the EP has a major impact on legislation under the cooperation procedure. One advantage of the approach is that information on EP amendments is easily publicly available. Therefore, the analysis can be based on an extraordinary large number of cases.³² However, there are some shortcomings associated with this method. One problem of this approach is that political conflict in the Council will not be highlighted as much as the procedural model literature would need them to be for adequate testing. The institutional structure of the EU legislative process is quite complex. Methods like regression analysis leave no space for such

³¹ Kennedy (1999: 307) defines overfitting as matching the data so well that the model reflects peculiarities of the data set rather than the general underlying specification. Tabachnick and Fidell (1996: 12) argue that "if there are too many variables relative to sample size, the solution provides a wonderful fit to the sample that may not generalize to the population, a condition known as overfitting".

³² Tsebelis et al. (2000) use about 5.000 parliamentary amendments for their analysis.

complexities when no information can be used on intra-Council politics.³³ Further, the use of standard statistical techniques does not follow in a straightforward manner from the formal voting models. The use of regression might not reflect the true processes at work and might contradict certain assumptions of the theory (Achen, 2002).

König and Pöter (2001) move the analysis a step further towards the models which were originally constructed to explain differences in legislative outcome and political influence. They use the methodology which was advanced by Laver and Garry (2000) to track down the positions of actors in a decision process. The authors use information on four case studies on the cooperation procedure and find no major difference in the explanatory power of different procedural models. König and Pöter proceed by first calculating the expected outcome of the models on an issue-by-issue-basis. They then present graphical approximations of the solutions in a two-dimensional space. This analysis uses quantitative information of actor positions in a spatial setting. Bueno de Mesquita and Stokman (1994) use micro-level data on actors positions to test bargaining models. The empirical information which they use was generated with the help of expert interviews. The data represents policy positions of the fifteen EU Member States.

The methodological problem with many of the abovementioned studies is that they either focus their attention on increasing the number of cases or on an adequate representation of preference configurations. So far, no study manages to satisfactorily integrate both elements. This study tries to improve on existing model testing by combining micro-level information on actor preferences with an increased number of cases.

1.7 Plan of the Book

To provide answers to the abovementioned research questions, I will proceed in the following way.

Chapter 2 highlights some important procedural features of the European Union legislative process by comparing them with the Constitution of the United States. The *Federalist Papers*, and in particular the passages about the effects of legislative institutions on policy outcomes, are applied to the European Union legislative context to describe the particular functions of the different EU actors in negotiating legislation.

In *chapter 3*, the existing procedural models are presented and their differences and similarities are discussed. The chapter argues that it is necessary to empirically put these models to the test with the help of

³³ Tsebelis et al. (2000) employ a dummy variable to indicate the type of legislative procedure.

quantitative research designs. Such research designs should account for political actors' different policy preferences and integrate empirical information with procedural models of EU policymaking.

Chapter 4 uses a simple procedural model to predict decision outcomes in a changing political context, such as when an organization includes more members or when it changes its primary decision rules. Using computer simulation techniques, this chapter evaluates how the number of decision-makers in an organization, the decision rules, and the dimensionality of decision-making interact to produce political outcomes.

In *chapter 5*, the bargaining success of the Netherlands and Belgium on the EU level is analyzed. The section presents a quantitative research design and data set which not only serves to illustrate how close the different political actors are to the final policy outcome, but which can subsequently be used to test the procedural models of legislative decision-making.

Chapter 6 employs the data set that was introduced in chapter 5 to test different procedural models in terms of their predictive accuracy. Distinguishing between actors' *power* and *luck* as key elements to bargaining success, the chapter presents and empirically evaluates different model specifications that are based on the existing literature on European Union policymaking.

In *chapter 7*, a procedural model is confronted with a simple null model to analyze the empirical success of the procedural modeling approach. Departing from the models' theoretical assumptions, the chapter formulates expectations on relative model success for different configurations of issue salience for political actors.

Chapter 8 summarizes the results of the study. I conclude by outlining strategies for future testing designs of procedural models on European Union legislative decision-making.

2 Conceptualizing the European Union Legislative Process: Some Insight from the *Federalist Papers**

2.1 Introduction: European Integration's Past and Present

This chapter links the discussions which are currently centering around the future design of the European Union legislative process to modern constitutional political theory as exemplified in *The Federalist Papers*. I argue that, to better understand the European Union policymaking process, analysts are well advised to consult the Federalist's *objectives* as well as its *method of reasoning*. Considering institutional design in general and legislative decision-making in particular, I show that Jean Monnet, one of the principal architects of modern-day Europe, perceived the early developments which lead to the Treaty that established the European Coal and Steel Community of 1952 as an unprecedented process. However, although the European Union is novel indeed and not a state in the traditional sense, the dialogue in Europe would benefit from a more constitutionally oriented assessment of the potential effects of the Union's institutional arrangements on legislative outcomes. Modern constitutional theory can provide the basis for this assessment. Without assuming the Constitution of the United States for itself, the European debate on legislative design would be enriched by looking back at the Federalist's reasoning.

There is a common saying that goes somewhat like this: Nowadays, most things get usually invented in the United States, time passes, and later on one will find every conceivable item, from fashion trends to consumer products, also in Europe. For more than fifty years now, a debate is taking place which, at first sight, appears to be genuinely European and without historical precedent. It is the debate on whether or to what extent political power is to be shifted from the level of the European nation states towards the level of a common polity, the European Union (EU).³⁴ In the history of Europe, there is no comparable incident of a voluntary loss of sovereign state power.³⁵

* I would like to thank Paul Nieuwenburg and Theo Toonen for helpful comments on this chapter.

³⁴ Note that the term *European Union* did not legally exist before the entering into force of the Maastricht Treaty in November 1993. However, for the purposes of this paper, I will also use the term when referring to the early period of the integration process.

³⁵ However, it should be pointed out that there have been earlier periods of joint economic policymaking. See e.g. the Belgo-Luxembourg Economic Union of 1922.

Although constantly being reshaped for more than half a century, the European project is still in the making. In December 2000, the European Heads of State negotiated the Nice Treaty which is envisioned to prepare the Union for institutional reform and for territorial enlargement, a process which is technically referred to as deepening and widening of the Union. Ten states from Central and Eastern Europe have joined the club in May 2004, and the EU is busying itself with extending its decision making powers towards policy sectors that are not yet under its auspices.

To guarantee both future legitimacy as well as decision making efficiency, institutional reform is once again under consideration (European Commission, 2002a). A European Convention under the chairmanship of the former French President Valéry Giscard d'Estaing was being held with the specific aim of considering possible changes to the Union's treaties and the working methods after enlargement (Financial Times, 2002).

The declared objectives of modern European integration are both political as well as economic. In the beginning, there was the need to pacify the continent and avoid further bloodshed by controlling German industrial production and to more effectively organize the market for the coal and steel sectors of the French Republic and of the Federal Republic of Germany. Half a century later, policymakers reach out to integrate monetary and fiscal matters, defense policies, and domestic security and asylum. They have also territorially enlarged the Union by integrating ten countries of Central and Eastern Europe in 2004.³⁶ The regulatory framework of the Union is based on a body of legislation that currently stands at more than 85.000 pages.

How can these developments be analyzed in both analytical as well as in normative terms? In which way can we explain what happened and give advice on how to shape the structure of the Union for times to come? In the course of this paper, I will argue that the classics of modern political philosophy, and especially *The Federalist Papers*, provide a solid starting point for the analysis. Both classical theories highlighting the causal mechanisms of decision making as well as their methods of reasoning allow us to compare different institutional arrangements and can thus form the basis for departure.

Throughout the course of this paper, I will limit myself by focusing on classics of modern political philosophy and refrain from citing the works of political theorists from ancient Greece and Rome.³⁷ The primary reason for doing so—apart from the necessity to historically limit the analysis—is that the modern classics can be conceived to be more conducive for this

³⁶ These countries are Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, the Czech Republic, and Slovenia. Bulgaria and Romania, and possibly Turkey are supposed to join at a later stage. See Financial Times (2001, 2004).

³⁷ *Modern* indicates theorists who wrote after the beginning of the Italian Renaissance, i.e. about the early 1400s.

particular type of analysis. Whereas the moderns, such as Machiavelli, Hobbes, Locke, and Montesquieu, appear to focus on the formulation and aggregation of conflicting interests, theorists in ancient Greece and Rome were more concerned with finding ways to enhance society's virtue (Cartledge, 2000: 11-2; Tsebelis and Money, 1997: 17).

I particularly focus on Madison, Hamilton, and Jay's Federalist Papers (1987 [1788]) as 'the theory behind the American Constitution', since this work can be regarded as a landmark of modern constitutional theory. The question of how appropriate it is to link the American experience to the current European development has been debated before by, amongst other, Weiler (1999), Siedentop (2001), Habermas (2001), and Howse and Nicolaidis (2002). Much scholarly work has been devoted to comparing differences and similarities concerning the historical conditions and the political context, while a comparison of the legislative process in the light of constitutional theory has not yet received much attention. Moser (1999) and Tsebelis (2002) compare the effects of different institutional arrangements, such as the ones used in the EU and in the US, on policy outcomes. They use a certain class of game-theoretic models, so-called spatial models, to highlight differences in the effects of a range of legislative procedures. A comparison of the distinct legislative processes of the two systems in the light of classical political theory, however, is largely absent. It is precisely such a comparison which is important. Legislating is one of the most central domains of the European Union—as it is for any polity. An analysis of the legislative process with the help of constitutional theory will therefore further our understanding of what the European Union currently represents. This again will contribute to sharpening our understanding of how—if at all—it might be reformed.

I will proceed as follows. First, I will briefly recall the history of the Treaty establishing the European Coal and Steel Community, which represents the first one of a series of treaties and treaty amendments in the history of modern European integration. This will demonstrate why, at large, the EU legal process has shown some resistance to being analyzed with the help of theoretical notions and methodological tools which were invented to track down and to improve upon the workings of the constitutions of nation-states. Second, I will report on the Federalist Papers as the authoritative theory on the Constitution of the United States. I show that it is not so much the political context around the negotiation and the ratification of the American Constitution but rather the method of reasoning as conducted by the Federalist which can be applied to a better understanding of the European Union legislative process. I outline certain constitutional features and their hypothesized effects as elaborated by the Federalist and show how they apply both to the United States as well as to the European Union. I conclude that the design of a future European Union should not only be based on the ideas and knowledge gained from the

organization's workings during the past fifty years, but that policymakers and policy analysts should reflect on the canon of ideas and experience accumulated by earlier political theorists to successfully shape the future of Europe.

2.2 Legislative Design in the European Union

There were attempts to politically integrate the European continent even before the end of World War Two. The English Quaker William Penn (1693) appears to have been one of the first to state the case for a European Parliament and for the end of the 'state mosaic' in Europe (Craig and De Búrca, 1998: 7). The modern process of European integration, however, only gained momentum in the early 1950s with a declaration that was issued by the French foreign secretary Robert Schuman which aimed at integrating the coal and steel production of France and Germany. The declaration, which was drafted by Jean Monnet, led to the negotiation of the Treaty establishing the European Coal and Steel Community (ECSC), which was signed in April 1951 in Paris. The participants—not only France and Germany but also Italy and the three Benelux countries—agreed to establish a common market in coal and steel and provided for institutions to administer production and distribution. At first, four institutions were set up. These were a High Authority, made up of nine independent appointees of the six Member State governments, to be the main executive institution with decision making power and responsibility for implementing the objectives of the Treaty; an Assembly consisting of national Parliaments' delegates with predominantly supervisory powers; a Council made up of one representative of each of the national governments, with both a consultative role and a limited range of decision-making powers and the task of harmonizing the activities of the Member States and the High Authority; and finally a Court of Justice, to interpret and apply the different Treaty provisions. Since the High Authority could adopt binding decisions by a majority, it was effectively already a supranational authority. However, its influence was countered by the Council in some areas.

Monnet's original plan was for decision making power to solely rest within the High Authority, which was the forerunner of the European Commission. In his plan, there was no room provided for other institutions which would contribute to shaping joint policies. The inclusion of other bodies to be added into the decision process was in essence a political compromise between the negotiating parties and not something desired by Monnet, the architect. Both the structure of the ECSC as well as the powers that were exercised by its institutions entail many compromises and ambiguities. Monnet's original plan was for a sovereign High Authority, but the Benelux countries, drawing on their experience with a customs union,

insisted that this body should be overseen by the governments acting through a Council of Ministers. The Common Assembly's powers of monitoring and control were to be exercised over the High Authority, not over the Council. It was the French government that had made acceptance of a High Authority a condition of taking part in the discussions on the plan to set up the ECSC. In the Consultative Assembly in the Council of Europe, Conservatives had put forward an alternative proposal that would have brought the institutions of what became the ECSC under the auspices of the Council and to a large extent reduced their supranational character. This idea, however, attracted little support, and the six founding Member States of the Treaty signed the Paris Treaty in April 1951.

The ECSC was the first of three European Communities that were to come. The Paris Treaty of 1951 was followed by the Treaties of 1958 which established the European Economic Community (EEC) (Treaty of Rome) and the European Atomic Energy Community (which was also signed in Rome): "The balance of power between the High Authority (later named the Commission after the 1965 Merger Treaty) and the Council was different under the ECSC Treaty from the later EEC Treaty, with a stronger supranational element, and a weaker intergovernmental element, given the dominant position of the High Authority. The greater level of detailed policy in the ECSC Treaty as compared with the EEC Treaty was another possible reason for the enhanced role of the executive High Authority. The self-financing capacity of the ECSC through levies on coal and steel production added to its independence and autonomy. The assembly had relatively few powers, being mainly advisory and supervisory, although it could in extreme circumstances require the resignation of the High Authority"... (Craig and De Búrca, 1998: 9).

The first European Community started off with an institutional setting that already included the legislative organs which also coexist within today's Union. However, in 1952, the High Authority enjoyed considerably more power than the Commission does today—and Monnet himself did not even provide for other institutions. The reason why he disregarded the possibility for other political bodies to take part in the policy-process is that he did not perceive the development in the light of building a polity, but rather as a process of administration and a strive for efficiency, a development that is not so much political but more technical in nature.³⁸ Political representation was therefore not an issue for Monnet. Also, he regarded the development leading to the ECSC as an unprecedented process

³⁸ "Monnet, who drew up the original plans on which the ECSC was based and who subsequently served as the first President of the ECSC High Authority, has been categorized as a functionalist, whose preferred approach to European integration was to proceed sector by sector, and who favored elite supranational institutions over more political bodies such as the Assembly or the Council" (Craig and De Búrca, 1998: 10).

which could not be compared with earlier developments in Europe or in the United States.³⁹

Throughout the second half of the last century, there have been a series of treaty revisions and amendments which were designed to alter and to improve on the original legal framework of the ECSC.⁴⁰ It was the Maastricht Treaty of 1992 which established the formal notion of European Union and by doing so departed from the notion of European Community. The new treaty with its call for “ever closer Union” almost institutionalized the idea of constantly integrating more political powers of the European states. Since the ratification of the Treaty establishing the ECSC in 1952, the organization has been in a continuous process of institutional reengineering.⁴¹

The latest of a series of Intergovernmental Conferences was concluded in December 2000 with the signing of the Treaty of Nice which is aimed at paving the way towards widening the EU to countries of Central and Eastern Europe (See European Commission, 2002b). In order to prepare the Union’s institutional structure for enlargement, one of the Treaty’s main objectives was to reweigh the Member States’ votes in the Council of the

³⁹ Monnet argued that in order to establish a “...new method of common action, we adopted to our situation the methods which have allowed individuals to live together in society: common rules which each member state is committed to respect, and common institutions to watch over the application of these rules. Nations have applied this method within their frontiers for centuries, but they have *never yet been applied between them*” (italics provided by this author). After a period of trial and error, this method has become a permanent dialogue between a single European body [the European Commission] responsible for expressing the view of the general interest of the Community and the national governments expressing the national view [in the Council of Ministers]. The resulting procedure for collective decisions is something quite new and, as far as I know, *has no analogy in any traditional system*. It is not federal because there is no central government; the nations take their decisions together in the Council of Ministers. On the other hand, the independent European body proposes policies, and the common element is further underlined by the European Parliament and the European Court of Justice” (Monnet, 1963). For a discussion of Monnet’s ideas in the light of democratic theory, see Featherstone (1994).

⁴⁰ Apart from the Treaty of Rome and the Treaty establishing the European Atomic Energy Community, these were the Merger Treaty of 1965, the Treaty of Luxembourg of 1970, the Treaty of 1975, the European Elections Act of 1976, the Single European Act of 1986, the Treaty on European Union of 1992 (Maastricht Treaty), the Treaty of Amsterdam of 1997, and the Treaty of Nice, which entered into force on 1 February 2003.

⁴¹ One controversial idea, produced jointly by the German chancellor Gerhard Schröder and the French President Jacques Chirac, is to have an elected President of the Council for a time period of five years and thereby to depart from the mechanism of a Presidency which rotates every six months amongst the fifteen member states (Financial Times, 2003).

European Union.⁴² The Nice Treaty was barely two months old, and there were plans for another Intergovernmental Conference:

“[T]he White Paper on Governance which the Commission will present in 2001... will seek to bring together various proposals in a coherent manner with a view to ensuring that our institutions... function more clearly, more responsibly, and in a more decentralized way... Certain elements of the White Paper could help clarify the responsibilities and contribute to the wide debate launched by the Nice European Council prior to the next revision of the Treaties in 2004” (European Commission, 2002).

The debate on how to shape the Union’s future design does not usually receive the level of attention which one could expect when analyzing the formal decision making powers which the organization has at its disposal. One of the less frequent instances which created more than the usually rather limited amount of attention by both committed ‘Europhiles’ as well as declared opponents of further integration was a speech which was given by the German foreign secretary Joschka Fischer in May 2000. In his speech, Fischer laid down his vision of a future European Union. He advocated a more “federalist” structure than the currently existing one, possibly with a directly elected President of the European Commission.⁴³ He also proposed giving the European Parliament two chambers—one representing the European nation states, and one representing the Union’s population as a whole:

“Question upon question, but there is a very simple answer: the transition from a union of states to full parliamentarization as a European Federation, something Robert Schuman demanded 50 years ago. And that means nothing less than a European Parliament and a European government which really do exercise legislative and executive power within the Federation. This federation will have to be based on a constituent treaty... I am fully aware of the procedural and substantive problems that will have to be resolved before this goal can be attained. For me, however, it is entirely clear that Europe will only be able to play its due role in global economic and political competition if we move forward courageously. The problems of the 21st century cannot be solved with the fears and formulae of the 19th and 20th centuries... In my opinion, this can be done if the European parliament has two chambers. One will be for elected members who are also members of their national parliaments. Thus there will be no clash between national parliaments and the European parliament, between the nation-state and Europe. For the second chamber a decision will have to be made between the Senate model, with directly-elected senators from the Member States, and a chamber of states along the lines of Germany’s Bundesrat

⁴² The Nice Treaty requires a “triple majority” of 258 votes in the Council, plus a majority of the Member States, plus 62% of the EU population.

⁴³ The President of the Commission is currently appointed by the Heads of State and Government of the member states.

[upper house]. In the United States, every state elects two senators; in our Bundesrat, in contrast, there are different numbers of votes” (Fischer, 2000).

This “federalist” view of how to shape the EU infuriated particularly the French, but other countries, like the United Kingdom, were uneasy as well (Védrine, 2000). The German foreign secretary later backed off and declared that he was merely stating his personal views.

The question arises how one is to conceptualize the European development in order to navigate the future course for integration and institutional change—or for consolidation of the present state of affairs. The early developments and particularly the views held by Monnet show that Europe’s principal architect did not perceive the original blueprint as one which belongs in the tradition of state-building. Fischer’s idea of giving Parliament a second chamber, on the other hand, seems to indicate a radical departure from current institutional arrangements in order to make the Union more state-like.

It has been argued that some of the most influential figures which surround the political integration of Europe see this process as without precedent. Note, however, that there were theorists and practitioners of integration which were inspired by and who compared the early stages of the European venture to the developments which led to the ratification of the American Constitution. One of the most influential thinkers, Altiero Spinelli, who served as Commissioner and later as a Member of the European Parliament, felt inspired by Madison’s federalist ideas. Spinelli vigorously campaigned for far-reaching reforms of the Union’s early institutional arrangements.

To prepare the ground for comparing between the American and the European experience, I will proceed by briefly recalling the developments in the United States which led to the signing of the Constitution. Special attention will be paid towards outlining the functions of the institutional arrangements for legislative decision making in the United States Congress. This will serve the purpose of clarifying in what ways a comparison of the reasoning in the US with the one which is currently taking place in Europe can be useful.

2.3 Legislative Design in the United States

The ratification of the Constitution of the United States between 1787 and 1790 appears to be one of the few incidents in modern history in which existing political entities—in this case the thirteen states that subsequently united—voluntarily transferred substantial parts of their decision-making power to a superior political level. The negotiation and ratification process was by no means easy (Grofman and Wittman, 1989: 173-4; Cahn, 1989: 620-3). The purpose of the Federalist Papers, which today are considered to

be one of the most authoritative interpretations of the American Constitution and the ‘theory behind the Constitution’, was to convince the people of the state of New York to vote for the unification of the American states and for the signing of the constitutional treaty. Written between October 1787 to May 1788 under the pseudonym ‘Publius’ by James Madison, Alexander Hamilton, and John Jay, the Federalist Papers provide a discussion about why the thirteen American states should unite and form a union, and how the decision making and administrative processes of the new polity should be structured.

Many of the people who—prior to establishing the US—lived in the thirteen states during the second half of the 18th century realized that there were sound reasons for political unification. In addition to sharing a common language, many of the American colonists shared a common British heritage and had fought for their political independence from Great Britain. There were also convincing political and economic arguments for integrating. The main problem was how to engineer a common polity which was characterized by stability of the commonwealth itself, by both a high level of representativeness of not only the people as a whole but also of the individual states itself, and by efficiency and durability of the policies that were to be introduced on the new federal level. The existing political structure, represented by the Articles of Confederation, proved for the Federalist and for many other Americans to be inefficient and inherently unstable.

Publius’ method of reasoning is characterized by a clear elaboration of the distinct effects of the future Constitution on legislative and administrative outcomes. For comparative purposes, the Federalist does not only take into account the inductively derived effects of the institutional features of the existing constitutional arrangements of the thirteen American states. Broadening the basis for empirical analysis, Publius also considers the workings of constitutions that range from modern European nation-states back to the polities of ancient Greece, Carthage, and Rome. But the authors of the Federalist did not only work with this inductive method by comparing a large number of constitutions with each other and then trying to identify the institutional arrangements which supposedly lead to some desired result in terms of the average legislative outcome.⁴⁴ After establishing the necessity of unification, Publius provides a detailed outline of the deductively derived potential effects of the envisaged constitutional mechanisms of policymaking.⁴⁵

⁴⁴ The method is *inductive* insofar as it draws heavily on empirical information in order to find regularities. It does not so much recur towards axiomatic assumptions about human behavior or about fictitious or real *states of nature*, as earlier political theorists such as Thomas Hobbes (1651) and Baruch Spinoza (1670) did.

⁴⁵ For example, in order to demonstrate that the states would be externally stronger if they united, Hamilton writes in paper no. 15: “Are we entitled by nature and

Having argued for political unification, the Federalist turns towards specific constitutional arrangements. Concerning the procedural mechanisms for legislating, the two most salient and novel features which were proposed by Madison, Hamilton, and Jay are (a) a territorially-based two-chamber system and (b) the inclusion of the executive power into the process of law-making. The founding fathers' principal concern was not to provide the argument for government where no state existed before, since each of the thirteen States already had its own legislature.⁴⁶ Neither did they have to put much effort into stating the original case for a separation of powers, since this point had been made before and the necessity to do so was well understood by their contemporaries. If nothing else, the proponents as well as the opponents of the new constitution were united in their wish to effectively control government.⁴⁷

The political philosopher who is lauded extensively by the Federalist is Montesquieu. This is grounded in the fact that the Federalist copies from him the idea of a two-chamber legislature. However, Madison, Hamilton, and Jay do so on grounds which are different from the ones that were advanced in Montesquieu's seminal work on constitutional theory, *The Spirit of the Laws* (1997 [1748]). His reasoning was inspired by the wish to give to the nobility of the French ancien régime an over-proportionally high share of the decision making power. Montesquieu wanted to prevent the nobility being outvoted by the higher number of citizens, which would have eroded their power base.⁴⁸

compact to a free participation in the navigation of the Mississippi? Spain excludes us from it."

⁴⁶ The theoretical argument *for the state* had earlier been advanced in works such as Hobbes' *Leviathan* (1997) [1651] and Spinoza's *Theologico-Political Treatise* (1997) [1670].

⁴⁷ It is supposedly for this reason that writers such as John Locke, who emphasized the need for separating the executive from the legislative branch of the state, do not occupy a central position in the Federalist Papers.

⁴⁸ "In a state there are always persons distinguished by their birth, riches, or honors: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty would be their slavery, and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have therefore in the legislature ought to be proportioned to the other advantages they have in the state; which happens only when they form a body that has a right to put a stop to the enterprises of the people, as the people have a right to oppose any encroachment of theirs.

The legislative power is therefore committed to the body of the nobles, and to the body chosen to represent the people, which have each their assemblies and deliberations apart, each their separate view and interests" (Montesquieu, 1997 [1748], Book XI, ch.6; *Of the Constitution of England*).

Publius adopts Montesquieu's idea of bicameralism, albeit with a different reasoning.⁴⁹ Whereas Montesquieu's argument is essentially class-based and principally concerns actors' voting share, Hamilton, Madison, and Jay put forward a territorially oriented, federalist reasoning: in paper number 39, Madison outlines:

"The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly from the people... The proposed Constitution, therefore,... is, in its strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national."

The remainder of this chapter will present the principal legislative mechanisms of the US Congress and their functions as discussed by the Federalist. I will then show in which ways some of these mechanisms can be considered to apply to the existing procedural mechanisms of today's European Union as well.

2.4 Decision Making in the United States and in the European Union

In the Federalist Papers, there is a distinction between the national and the federal levels of government, and, in the American Constitution, the units representing both levels, i.e. the individual States as well as the Union as a whole, are political actors in the legislative process (paper no. 39). The reasons for distinction are twofold. On the one hand, in order to secure the votes of the States in the ratification process, the Constitution had to provide for sufficient representation of the smaller with regard to the more populous States in the envisaged decision making processes.⁵⁰ On the other hand, The Federalist argues in favor of stability of the legislative measures which are to be passed, i.e. resistance to rapid change over time. Therefore, the Constitution draws upon the stability-inducing as well as the representational properties of a two chamber-system by increasing the

⁴⁹ "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives" (Constitution of the United States, Art. I, Sec. 1).

⁵⁰ Recall that the American Constitution represents a *contract between the states*. For a detailed analysis of the ratification process (Grofman and Wittman, 1989: 173-4).

number of veto players (Selck, 2004/2005, Tsebelis and Money, 1997).⁵¹ In paper no. 63, Madison talks of the “necessity of some institution that will blend stability with liberty” and argues that, in order to balance the two, the “concurrence of separate and dissimilar bodies is required in every public act”.

All legislative bills in the US political system originate in Congress.⁵² However, in order to pass a law, not only both chambers of the legislature, but also the executive power of the government, i.e. the President, is involved:

“Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his objections to the House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it” (Constitution of the United States, Art. I, Sec. 7.).

The primary reason for involving the executive in the legislative process appears to be its stability-inducing character. In paper no. 73, Publius considers “the mischiefs of inconstancy and mutability in the laws, which form the greatest blemish in the character and genius of our governments”.

Another vital element in the legislative decision making mechanisms in the United States is the possibility of overruling the executive. Legislative bills which command majorities in both Houses of Congress but get vetoed by the President return to the legislature for reconsideration:

“If after... reconsideration two thirds of that house shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill” (Constitution of the United States, Art. I, Sec. 7.).

The reason behind introducing the option of a veto to be overruled

⁵¹ Interestingly, when considering the American Constitution, Alexis de Tocqueville does not seem to attribute much weight to the separation of chambers. He writes: “The members of both houses [of Congress] have been chosen from the same class and appointed in the same way, so that the activity of the legislative body is almost as quick and as irresistible as that of a single assembly” (Tocqueville, 1997: 723 [1835]).

⁵² Note that every bill for raising revenue has to originate in the House of Representatives (Art. I, Sec. 7).

by an increased vote share is outlined by Alexander Hamilton in paper no. 73:

“It is to be hoped that it will not often happen that improper views will govern so large a proportion as two thirds of both branches of the legislature at the same time; and this, too, in defiance of the counterpoising weight of the executive. It is at any rate far less probable that this should be the case than that such views should taint the resolutions and conduct of a bare majority.”

The American Constitution provides for a number of mechanisms which were in principal designed to not only produce good laws but also to render the majority of the people incapable of too rapidly changing existing policies and of dominating the minority. In paper no. 10 Madison writes that the “mischiefs of faction” have to be controlled.⁵³ Therefore, the architects of American ‘integration’ copied Montesquieu’s thoughts on bicameralism and adapted them by stressing the territorial rather than the class-based character to fit it to their respective needs. They further fine-tuned legislative decision making by including the executive into the process, equipping it with veto power, and allowing for it to be overruled by increasing the threshold for Congress to pass legislation.

The European Union, unlike the American political system, has, from its early beginnings in the 1950s until the negotiation of the Nice Treaty in 2000, witnessed a series of dramatic institutional changes. Most of these changes were intended to redesign the structure of legislative decision making and to change the inter-institutional balance of power in the Union. The role of the European Commission in the legislative process of the EU has gradually been diminished over time, while the role of the Council, and later on the role of the European Parliament, has been strengthened.⁵⁴ The legislative procedures in the EU are, primarily as a result of the several treaty changes and amendments, much more numerous than they are in the

⁵³ In marked contrast to the Federalist, Jean-Jacques Rousseau’s *Social Contract* tries to seek a remedy for societal faction-building not by controlling its effects but rather by fighting its origins: “[W]hen factions are formed, partial associations at the expense of the whole, the will of each of these associations becomes general with regard to its members, and particular with regard to the State... It matters... that there be no partial societies in the state” (Rousseau, 1997: 431 [1762]).

⁵⁴ A strengthening of the Council of the European Union took place as a result of the Treaties establishing the European Economic Community and the European Atomic Energy Community. A strengthening of the European Parliament had principally been achieved by the Single European Act, the Treaty on European Union, and the Treaty of Amsterdam. For a detailed discussion of the EU legislative process, see Selck (2003, 2004), Hix (1999: 56-98) and Craig and De Búrca (1998: 129-43).

United States or in any other nation state.⁵⁵ However, this phenomenon should not obscure the fact that there are many functional similarities between the United States and the European Union which facilitate a comparison of the two political systems.

For a legislative measure to be passed in the European Union, it needs the support of at least the Council, which represents the interests of the Member States of the Union. With regard to its legislative and representational function, the Council can be compared to the American Senate, which represents the interests of the territorially differentiated units of the United States.⁵⁶ Increasingly, in order to pass new legislative measures in the EU, the support of Parliament is also required. The European Parliament of today, which is directly elected by the citizens of the European Union, represents the territorial equivalent of the House of Representatives in the United States.

As to the process of legislating itself, there also exist common features between the two systems. A discussion of the possible effects of these features on legislative measures in the United States can be found in the Federalist Papers. Just as in the American political system, the European Union also knows the principle of overruling the executive with an elevated voting threshold. In the American case, it is the Presidential veto which can be overruled by two-thirds majorities in both chambers each, the House and the Senate. In the European Union, a legislative proposal issued by the European Commission and representing the Union's executive power may only be amended by a unanimous vote in the Council during what is called the consultation procedure. Likewise, under the cooperation procedure, a veto issued by the European Parliament can only be overruled by Council unanimity. Under the codecision procedure, which is the most recently introduced of the three procedures, the necessity of a higher voting threshold that has to be reached to overcome a veto ceased to exist. However, under this legislative procedure, the European Parliament and the Council of the European Union, the two 'chambers' of the Union, each have veto power over legislative bills. The power of the Commission only consists of presenting the initial proposal to the two chambers.

As in the United States, the executive power of the European Union is playing its part in the legislative process; however, the roles regarding legislative initiatives are effectively being reversed. Whereas the American President has the power to stop the process (Constitution of the United States, Art. 1(7)), the European Commission commences it (e.g. Art. 37(2) EC for consultation, e.g. Art. 105(6) EC for assent, Art. 251 EC for

⁵⁵ Depending on they are categorized, the number of procedures can range from six (Craig and De Búrca, 1998: 129-42) to twenty-two (European Commission, 1995).

⁵⁶ Note, however, that in the American Senate, the members are elected by the people of each state, while the Council members, just like in the German political system, represent the governments of each particular member state.

codecision, Art. 252 EC for cooperation; Craig and De Búrca, 1998: 53-4). As demonstrated earlier, the fact that the Commission is initiating the process can historically be derived from the institution's assumed technical expertise as well as from Monnet's original desire to 'keep politics out' of the decision making process.

Using the Federalist's terminology, a comparison of the legislative system of the European Union with that of the United States shows that the former can be conceptualized as a highly federalized political entity, in the sense that considerable decision making powers rest within the Union's federal upper chamber, the Council of the European Union. For both polities, in order for the legislature to overrule the executive, elevated thresholds can apply. In the United States, the percentage switches from a simple majority in both chambers to two thirds in both chambers. In the European Union, for the Council to amend a Commission proposal, the majority requirement changes from roughly five sevenths of the total vote to unanimity. Since the threshold is much higher than in the United States, it more strongly reinforces legislative stability on the one hand, and the federal dimension on the other hand.⁵⁷

2.5 Conclusion: Understanding the European Union Legislative Process

The creation of a European polity which assumes vital parts of the sovereign powers of a fair share of the continent's nation states is a process which can be considered to be novel indeed. In Europe, there has never been a similar voluntary shift of sovereign power to a supra-political level. However, this does not imply that analyzing institutional arrangements and contemplating constitutional reform have to start from scratch.

Entering the discussion on the European Union's future from the classical angle of how legislative arrangements affect common policies, the EU can be considered to be a highly federalized polity, with a strong bias for the legislative status quo and with considerable decision making power resting within the Council. This upper legislative chamber represents the Member States as the Union's distinct territorial units, a level to which Madison, Hamilton and Jay would refer as the federal level. Considering this perspective, the legislative arrangements of today's European Union can be compared with any other present and past institutional arrangement. The distinction between territorially differentiated units allows the

⁵⁷ Note that, under *qualified majority voting* in the Council of the European Union, the member states have different voting shares (Art. 205(2) EC), whereas in the American Senate, every state has two Senators with one vote each (Constitution of the United States, Art. 1(3)).

application of classical political theory equally well to the decision making structures of the Constitution of the United States as well as to the treaties governing the European Union. More than that, it might also help by providing a frame of reference for European institutional reform.

The European Union possesses a set of working institutions which are experienced in the process of negotiating binding legislative measures for the Union's Member States. Applying the Federalist Papers, I argued that the European Union might be conceived as a highly federalized entity in the sense that the territorial units have a major say in the legislative process. This might indicate that a future European constitution does not have to create new legislative institutions by abolishing the Council and by creating a second parliamentary chamber in its place, as has been envisaged by the German foreign secretary Fischer (2000). Instead, the Council of the European Union can be regarded as representing the first chamber of the European Union's bicameral legislature, with the European Parliament representing the second chamber at the national level. A lessening of the power of the Council in this reading would lead to diminishing the influence of the federal dimension and to a strengthening of what Madison, Hamilton, and Jay referred to as the national dimension, i.e. the European Parliament.

The European Union, for the first time in its history, is embarking on the process of drafting a formal constitution. In terms of institutional analysis that might give advice on how to frame a new constitutional founding treaty for the Union, political leaders and academic scholars can access a large array of theoretical and methodological tools about the workings of political bodies. The point might seem rather obvious, but its implications are not merely about semantics. They are about a clear recognition of the European Union's current state of affairs. An important implication is that a mere lessening of the power of the Council and a strengthening of the European Parliament, while leading to a new inter-institutional power distribution, does not automatically result in a more democratic and more legitimate European Union. A tentative response to Siedentop's (2002) question "Where are our Madisons?" might be, before looking out for new ones, to not forget about the Federalist's original reasoning. While the European and the American experiences clearly differ in important aspects from one another, there are similarities which facilitate comparison and which can help in framing the debate for the European Union.

3 The European Parliament's Legislative Powers Reconsidered: Assessing the Current State of the Procedural Models Literature^{*}

3.1 Procedural Models of European Union Legislative Decision-Making

The previous chapter introduced the European Union legislative process by comparing it with policy process in the United States. I argued that the EU can be viewed as a parliamentary system with two legislative chambers, the Council and the Parliament. Depending on the exact legislative procedure to be used, the institutional actors might have different capability levels when it comes to influencing European policies.

This chapter maps out the state of affairs of the academic literature which uses procedural spatial voting models to explain legislative decision-making in the European Union. Employing Tsebelis' (1994) article in which the author models the Union's cooperation procedure and using it as a reference point, I show that there is no clarity yet as to which of several existing procedural model specifications yields the most convincing results. I conclude by suggesting how the current situation could be improved, and that procedural modeling might be integrated with other rational choice theory for a better understanding of the ongoing evolution of the policymaking instruments in the European Union.

How can the outcome of European Union legislative decision-making best be explained? Rational choice institutionalism departs from the assumption that, in order to analyze how EU secondary legislation is created, decision-making power as laid down in the *Treaty Establishing the European Community* and the *Treaty on European Union* has to be taken into consideration.⁵⁸ The political debates in Nice, which surrounded the intergovernmental negotiations that were supposed to prepare the Union for further Treaty revision and to redesign important aspects of the Union's institutional setting, might be considered as preliminary evidence for the importance of formal rules in the European Union's decision-making process.

In December 2000, the Nice intergovernmental conference was terminated, culminating in a new European Treaty. Its main objective was to redefine the existing treaties to provide for greater efficiency in the light of

^{*} Published in *Politics* (2004). I would like to thank the anonymous reviewers for their constructive comments.

⁵⁸ See Shepsle and Bonchek (1997) for an introduction to analytical institutionalist theory, and Shepsle and Weingast (1981) for an account of how rules might affect legislative decision-making.

EU Eastern enlargement. The debates resulted in a more frequent use of the *codecision procedure*, in a reweighing of the Member States' formal voting shares, and in reorganizing the structure of the European Commission (Cottrell, 1999; *The Economist*, 2000b). The most prominent of the European Union's current primary legislative instruments are the so-called *consultation* procedure, the *assent* procedure, the *cooperation* procedure, and the *codecision* procedure. In fact, there exist several more of these rules, but most analysts chose to focus their attention on the ones mentioned above. The reason for this is supposedly the fact that the vast majority of secondary legislation in the EU is generated via the use of the procedures mentioned above.⁵⁹

In order to understand how exactly these institutional arrangements might affect the EU legislative process, procedural spatial voting models have been put forward which focus on a stylized representation of the policy-process in the European Union. These models try to conceptualize the different legislative arrangements by integrating rational choice theory with an interpretation of the structure of decision-making as influenced by the treaties of the EU. The treaties represent the Union's *primary legislation*. They attribute in detail certain roles to institutional actors in the process which generates European *secondary legislation*, such as EU regulations, directives, and decisions. One of the first articles to employ procedural modeling in trying to explain EU legislative decision-making was put forward by Tsebelis (1994). The aim of the paper was to assess the European Parliament's legislative powers under the cooperation procedure. In his article, Tsebelis attributes substantial powers to Parliament which—under certain conditions—he considers to be able to submit a take-it-or-leave-it proposal to the Council of the European Union and thus to exercise substantial influence in the area of lawmaking. Concluding, the author regards Parliament to be a *conditional agenda-setter* in the European Union legislative process.

Tsebelis' article presents a model which essentially focuses on the last stage of the cooperation procedure. The procedure, which was established by the Single European Act of 1987, was intended to strengthen the role of Parliament in its interaction with the Union's other institutional actors, the Commission and the Council, to produce new legislation. An important characteristic of the model is that the author does not present a formal account of the preceding stages of cooperation. For the last stage, he assumes that Parliament offers to the Council a legislative proposal which this body can either accept or reject with a qualified majority (62 out of 87 votes), or amend it with unanimity. Over the last years, all of the major decision-making procedures of the EU were subject to being modeled with

⁵⁹ For an overview of all the procedures, see Kapteyn and VerLoren van Themaat (1998) and Craig and De Búrca (1998).

the help of the procedural model approach. Figure 3.1 presents an overview of the different models.

Figure 3.1. Procedural Models of EU Legislative Decision-Making

PROCEDURE:		CONSULTATION	ASSENT	COOPERATION	CODECISION/ MAASTRICHT	CODECISION/ AMSTERDAM
Distinctive feature:	Source:					
<i>Definition of Actors</i>						
Council as unitary actor	Laruelle (2002)	x		x		x
<i>Role of the Commission</i>						
Commission as gate-keeper	Steunenberg (1994)	x		x	x	
Commission as weak agenda-setter	Crombez (1996, 1997)	x	x	x	x	
	Moser (1996, 1997)			x		
<i>Role of the Council of Ministers</i>						
Council as agenda-setter	Garrett (1995), Tsebelis (1997), Schneider (1995)				x	
Council as veto player	Crombez (1997; 2000), Tsebelis and Garrett (2000)				x	x
<i>Role of Parliament</i>						
Parliament as conditional agenda-setter	Tsebelis (1994)			x		
	Crombez (1997)				x	
	Crombez (2000)					x
	Steunenberg (1997), Scully (1997a, 1997b), Rittberger (2000)				x	
Parliament as agenda-setter	Crombez (2000), Steunenberg (2000)					x
Parliament as veto player	Steunenberg (1994)			x	x	
	Crombez (1996), Tsebelis and Garrett (2000)			x		

The *consultation procedure* was analyzed by Steunenberg (1994) and Crombez (1996). The difference between them is that, while Crombez assumes that the Commission has to submit a proposal if the Council asks it to do so (*agenda-setting power*), Steunenberg assumes additionally that the

Commission has the power to withhold bills (*gate-keeping power*). Laruelle (2002) presents a unique theoretical account of this procedure by integrating both legislative versions, qualified majority and unanimity, into one model. She assumes that the Council acts as a unitary actor, thus regarding decision-making in the European Union as an inter-institutional rather than an intra-institutional process. Only one model exists for the assent procedure. It was put forward by Crombez (1996) and focuses solely on the unanimity version. Assent's qualified majority version so far has not received any attention by procedural modelers. Apart from Tsebelis (1994), several other models were designed which focus on the *cooperation procedure*. These are the ones by Steunenberg (1994), Crombez (1996), Moser (1996, 1997), and Laruelle (2002). The main difference in assumptions concerning these analyses is that, whereas Tsebelis focuses on the last stage of the process, the other theorists also focus on the preceding parts of cooperation. The different designs result in attributing substantial power to the European Commission, whereas in Tsebelis' model the Commission is per definition powerless. For the *codecision procedure*, there exist two legislative versions. The first or Maastricht version was replaced by the second one with the enactment of the Treaty of Amsterdam. The first version received attention from Steunenberg (1994, 1997), Garrett (1995), Tsebelis (1997), Schneider (1995), Crombez (1997), Scully (1997a, 1997b), and Rittberger (2000). As for the second version of the codecision procedure, there exist analyses by Laruelle (2002), Steunenberg (2000), Crombez (2000), and Tsebelis and Garrett (2000). Although the differences in modeling for the new version of codecision are less pronounced than for the cooperation procedure, distinctions remain. Laruelle again assumes the Council to be a unitary actor, Crombez considers the Commission to be obliged to propose legislation as the Council demands it to do so, and Rittberger adds actor impatience and a higher dimensionality of the issue space.

3.2 *Competing Approaches*

Each of the existing procedural models of European Union legislative decision-making represents an attempt to explain the legislative outcome. So how do we know whether some model is better than some other model?⁶⁰ In order to find out, a starting point is to distinguish between formal and non-formal theory. Formal theory in this context is represented by rational choice models that are accompanied by an analytical solution. Let us focus

⁶⁰ This chapter assumes that a comparison of different models regarding their explanatory power is a primary objective of social science research (King et al., 1994: 19-23; Van Evera, 1997: 17-21).

on Tsebelis' (1994) model in order to clarify the point. The author offers of model of complete and perfect information for the final legislative reading, including a solution. The model factors are the ideal positions of the EU Member States, of Parliament and of the Commission, and the position of the *status quo*, i.e. the current situation at the time that the negotiations start. With the help of the model, for any given legislative proposal that is negotiated under the cooperation procedure, access to information on the players' ideal positions and to the position of the status quo would suffice to predict a legislative outcome to the game. Therefore, if one were to possess information for a real-world legislative decision situation in the EU, it would be possible to calculate the predicted outcome.

Currently, three other formal procedural models of the cooperation procedure exist. These models were advanced by Steunenberg (1994), Crombez (1996), and Laruelle (2002). For these models, granted that one would know the policy positions and status quo, it should be possible to predict an outcome as well. Additionally, the model advanced by Moser (1996, 1997) is comparable in terms of its assumptions with the work advanced by Tsebelis and other authors because it builds on the same set of input factors. Moser's model, however, does not provide a solution. Solving these models analytically or numerically would therefore be equally possible. Apart from advancing new models that compete with Tsebelis' work, the literature also offers direct criticisms against the conditional agenda-setter model and more generally against Tsebelis' theoretical approach. Moser (1996, 1997) and Hubschmid and Moser (1997) suggest that, since the model of the cooperation procedure exclusively focuses on the last stage, it represents an inadequate characterization of this process. They claim that Tsebelis' account is invalid because it leaves out the Commission's power to turn down parliamentary amendments. Corbett (2000: 377) in particular criticizes Tsebelis' (1997) assertion that the European Parliament's influence is more limited under the codecision procedure than under cooperation. He claims that Tsebelis disregards empirical information that was gained from the workings of the different procedures over the years. Rittberger (2000) directs his criticism not so much against the model of the cooperation procedure but rather against the overall theoretical framework of which the 1994 model constitutes but one account. In his view, another issue dimension of European Union legislative decision-making should be added to Tsebelis' analyses, resulting in three dimensions of political conflict rather than two. Furthermore, he suggests that actors' impatience—the desire to get a quick deal and the resulting necessity to compromise—is of crucial importance for understanding European Union legislative decision-making.

3.3 *Getting the Record Straight*

To judge which kind of theory explains a class of empirical phenomena best, competing models' predictions should be judged in light of empirical evidence (Achen, 2002). For the existing models of the cooperation procedure, a test of the predictive power of the models against each other would be technically feasible.⁶¹ What about the other concerns that were raised regarding Tsebelis' theory?

As for Moser (1996, 1997) and Hubschmid and Moser (1997), it should be pointed out that leaving out the Commission's part in the modeling is not necessarily problematic. Modelers always choose to highlight certain features and to leave out others which are deemed less important. Take e.g. Parliament's formal say in the consultation procedure. Although the EP has the right of being consulted and might possibly use this power to delay legislative negotiations, procedural modelers chose to overlook this part of the decision-making process. A similar argument could be constructed for Garrett's (1995) model of the codecision procedure which assumes that the Council submits the final proposal to Parliament. Since the treaties do not specify that the right to draft legislation lies solely with the Council Presidency or any other Member State but with the Council as a whole, modelers have to make choices about how to conceptualize the process. Modeling the process of deliberation in the European Union in one particular way and thereby specifying the model's game sequence naturally varies over the models. Sticking too closely to the words of the treaties, on the other hand, might not guarantee for accuracy in theorizing.

As outlined above, a distinction can be made between formal and non-formal procedural models of European Union politics. Generally speaking, the advantages of formalizing a model lie in an increased ability to detect inconsistencies in assumptions and in deriving stable equilibria which represent analytical solutions to games. For Moser's (1996, 1997) model of the cooperation procedure, we might expect solutions that are quite close to the ones which would be predicted by Steunenberg (1994) and Crombez (1996). Due to the models' similarities in assumptions, it should be possible to compare the models either via *comparative statics* or with the

⁶¹ The only paper which advances a comparative testing design for procedural models has been put forward by König and Pöter (2001). Focusing on four legislative proposals negotiated under the cooperation procedure, the authors find that the models proposed by Steunenberg (1994), Crombez (1996), and Moser (1996, 1997) predict marginally better than the one by Tsebelis (1994).

use of computer simulation in order to assess how different they are in terms of their predicted outcomes.⁶²

Rittberger (2000) suggests that actor impatience is of major importance for explaining European Union decision-making. Although this proposition might be correct, there exists no solution to his model. Therefore, predicting an outcome and comparing it with the predictions of the other procedural models and with some real-world decision outcome is not possible. Furthermore, even if we would find that Rittberger's theoretical account of EU decision-making yields better results than the approach advanced by Tsebelis, his model comes with the cost of added model complexity due to a larger number of input factors. For quantitative applications, this problem is well-known and evaluated with methods such as comparing *nested models*.⁶³ However, although the problem of model comparison is as important for game theory as it is for statistical models, it has so far not received much attention.⁶⁴

Corbett (2000) advances the argument that Tsebelis' work can be considered to be refuted by empirical evidence. Quoting several statistically oriented studies on the performance of the European Union's legislative procedures, he concludes that the assertion which states that under the cooperation procedure Parliament has substantial powers at its disposal—Tsebelis' dictum of the 'conditional agenda-setter'—is wrong. Tsebelis' own empirical testing, in which the author analyses about 5,000 parliamentary amendments in order to validate his findings, does not convince Corbett of the model's validity (Tsebelis et al., 2001). And neither should it. One problem with this testing strategy is that it rests on the contention that the dependent variable for testing these models should be the likelihood of adoption of a parliamentary amendment into new legislative measures. Spatial theory, on which the procedural models rest, is based on an *n*-dimensional issue space, inside which by definition the outcome of a social choice process—if it can be identified—will be located (Hinich and

⁶² The method of comparative statics provides general statements about the equilibrium outcome to a game-theoretic model. On the use of computer simulation in the area of procedural modeling, see Steunenberg et al. (1999). For an application to EU legislative politics, see Steunenberg (2001). For an introduction to the technique, see Gilbert and Troitzsch (1999).

⁶³ Comparing nested models answers the question which one of two statistical models is preferable: a certain model A which predicts better than another model B but relies on more independent variables, or model B whose predictive power is more limited than model A's, but is more parsimonious. In order to judge which model is better, tests 'punish' the more complex model A by calculating a trade-off between the benefit of A's greater explained variance on the one hand and the disadvantage of a greater number of independent variables on the other hand (Kennedy, 1998: 78-93).

⁶⁴ An exception is Morton (1999).

Munger, 1997). Models which have an analytical solution might therefore better be tested by using quantitative data that corresponds closely to the original model design. This, however, implies that an indicator for an actor's political success in shaping the legislative bargain is not whether an amendment passes, but how close the final policy outcome is to the ideal position of that player (Bueno de Mesquita and Stokman, 1994).

A final thought should be spent on the dimensionality of the issue space of the procedural models. Some of them were designed for one-dimensional issue spaces (Steunenberg, 1994; Crombez, 1996; Laruelle, 2002), and some for two-dimensional spaces (Tsebelis, 1994, 1997; Tsebelis and Garrett, 2000). Rittberger (2000) argues that three dimensions would be appropriate. An important task for developing testing strategies is to find out about the dimensionality of the 'real' decision space of European Union politics.⁶⁵ This triggers the problem of how to empirically measure 'space' to be able to confront it with theory. Most of these questions have already been addressed in theoretical terms, but have not yet sufficiently been put to the test by employing a model-guided empirical research strategy.

3.4 Conclusion: Challenges

Remedying the shortcoming of existing model testing, three domains of the research process can be identified, all of which have to be taken into consideration in order to further progress in understanding European Union legislative decision-making. These domains are *theory comparison*, *data collection*, and *theory testing*.

To *compare theory*, the models themselves have to be comparable and should be evaluated regarding both their assumptions as well as their predictions. This is only possible if the input factors for the models are not too divergent from each other. Model comparison could be facilitated by comparative statics and by computer simulation techniques.

To *collect data*, analysts have to specify which issues exactly are politically contentious in the context of European Union legislative decision-making and how they might be measured. The required variables for the models are actors' policy positions and the position of the status quo, and not the likelihood for amendments to survive the legislative negotiation process.

⁶⁵ Note that the dimensionality for model testing purposes should follow deductively from the formal model, e.g. by assuming logrolling or package deals (Buchanan and Tullock, 1962), and not inductively from regularities in data. For the use of inductive applications such as dimension-reducing techniques, see Mattila and Lane (2001) and Kreppel (2002).

To *test theory*, the models' predicted outcome over a sufficiently large number of cases should be compared with a measure for the real policy outcome to judge which model performs best.

This book is an attempt to remedy the abovementioned problems. For future research, it might also be desirable to integrate procedural models with other models that are based on the rational actor approach, such as bargaining models.⁶⁶ Such a testing design might present a more complete picture of the European policy process by comparing the effects of formal decision-making structures with the effects of other salient features, such as logrolling. Further, a more accurate procedural modeling of the codecision procedure's increasingly important *conciliation committee* might present avenues for future research.

To be able to demonstrate that some particular model of European Union policymaking is better than some other model, analysts should focus more on the methodological aspects of testing theories of decision-making. Only then will it be possible to show whether certain aspects of the more recent EU literature are superior to others. Currently, no model exists which could legitimately be characterized as representing a better characterization of the European Union's legislative process than some other model does. Integrating theory with quantitative applications is a promising way to get ahead in evaluating the strengths and weaknesses of the procedural approach for European Union legislative decision-making.

⁶⁶ Potential candidates might be Bueno de Mesquita's and Stokman's (1994) bargaining models which have already empirically been applied in the area of EU legislative decision-making.

4 Veto Players, Decision Rules, and Issue Dimensionality: The Effects of Institutional Change on Organizational Decision-Making*

4.1 Introduction

Chapter 3 outlined different procedural models of EU legislative politics. It demonstrated that there is no consensus yet as to how well these models can explain EU policymaking and which one of them might work best.

This chapter confronts the procedural model approach with computer simulation. It attempts to model the effects of institutional change on the flexibility of organizational decision-making with the help of *structure-induced equilibrium* (Shepsle, 1979). More specifically, I focus the flexibility of decision-making as a function of the number of actors in an organization, the decision rule, and the dimensionality of the decision. Employing a combination of game theory and computer simulation techniques, I show that for higher-dimensional issue spaces the number of actors in an organization has a relatively low effect on organizational inertia under simple majority rule and even under two-thirds majority. Under unanimity, a situation in which a committee consists of many actors is characterized by a high degree of inertia. However, to predict flexibility, at least as important as institutional arrangements and the number of veto players is the dimensionality of negotiations as conceptualized by the dimensionality of the policy space.

Stability is important for an organization. But so is flexibility in decision-making. Finding the right balance between the two can be considered to be paramount for organizational efficiency. As organizations change by taking on new members into the decision-making structure or by changing the rules for negotiating new policy, so do the outcomes of decision-making. In a recent monograph on political institutions, Tsebelis (2002) demonstrates that the number of veto players, i.e. the number of actors within an organization that are endowed with the power to block decisions, has a substantial effect on whether new policies can be agreed upon or whether the organizational status quo prevails.

To explain organizational stability, research into group decision-making has focused on solution concepts such as the *yolk*, the *uncovered set*, the *Copeland winner*, the *von Neumann-Morgenstern externally stable solution set*, and the *minmax set* (Schofield et al., 1988). One of the most dominant lines of research is the one that looks for *structure-induced equilibrium*. Such an equilibrium occurs in case of imposed limitations on

* Forthcoming in *Homo Oeconomicus*. I would like to thank Manfred J. Holler plus the three anonymous referees for their pointed comments.

choice by the existence of a decision-maker who acts as an agenda-setter. This actor is assumed to present to an organization a proposal under the closed rule, a so-called take-it-or-leave-it proposal. This solution concept is a prominent one in comparative politics. In recent years, e.g. almost all formal models of European Union legislative decision-making have made use of the concept (Hix, 1999: 88-94).

This chapter uses computer simulation techniques and applies them to structure-induced equilibrium (Shepsle, 1979). The objective is to infer hypotheses on the effects of institutional change on organizational decision-making flexibility. I focus on the effects of change and the nature of the decision situation in terms of dimensionality in relation to flexibility. I proceed in the following way. In the second section, I present a simple overarching model based on Shepsle's solution concept. The third section outlines the method which I use to generate hypotheses. Section four presents the results and section five concludes.

4.2 A Simple Model of Decision-Making

In order for an organization to change its policies, game theoretic models assume that actor preferences and institutional arrangements such as the price mechanism or a certain decision rule are of central importance (Kreps, 1990: 3-6). Institutions are assumed to 'channel' preferences by specifying the strategies which actors in a decision situation have at their disposal. In their classical outline of constitutional political economy, Buchanan and Tullock (1962) demonstrated that the size and the structure of an organization are important institutional factors which affect decision-making. More recent papers also link organizational stability to the dimensionality of the issue space (Riker, 1982, 1986; Schofield et al., 1988). In this chapter, I use the concept of structure-induced equilibrium to show how institutional arrangements can affect policy outcomes in terms of a change of the distance between current policy and some new policy.

Shepsle (1979) introduced the concept of *structure-induced equilibrium* which allows for stability in n -dimensional spaces for non-cooperative sequential models of complete and perfect information. In their simplest form, the models work in the following way. Assume a game composed of two players, an agenda-setter a , and a voter v , so that $N = \{a, v\}$. Assume further a binary choice procedure $C(x, y)$ which determines the choice between alternatives. The space of alternatives is a subset R of a one-dimensional Euclidean space. Both $a, v \in N$ have a complete, transitive preference relation, $\leq_{a,v}$, defined on all $x, y \in R$. Preferences are assumed to be single-peaked and symmetric. The organizational *status quo*, which is defined as the current policy or as the

“cumulation of historical decisions” (Shepsle, 1979: 33), is denoted as $x^0 \in R$. Based on the assumption symmetry, the voter’s reversion point to the status quo is given as $r(x^0)$. The equilibrium outcome is denoted as x . Figure 4.1 presents the analytical solution to the game.

Figure 4.1. General Solution to the Two-Player Game in One Dimension

- 1 . If $a \leq x^0 \leq v$, then $x = x^0$.
- 2 . If $v \leq x^0 \leq a$, then $x = x^0$.
- 3 . If $a \leq v \leq x^0$ and $a \leq r(x^0)$, then $x = r(x^0)$.
- 4 . If $a \leq v \leq x^0$ and $r(x^0) \leq a$, then $x = a$.
- 5 . If $x^0 \leq v \leq a$ and $r(x^0) \leq a$, then $x = r(x^0)$.
- 6 . If $x^0 \leq v \leq a$ and $a \leq r(x^0)$, then $x = a$.
- 7 . If $x^0 \leq a \leq v$, then $x = a$.
- 8 . If $v \leq a \leq x^0$, then $x = a$.

Eight scenarios denote the prediction. For inequalities 1 and 2, the equilibrium outcome of the game equals the status quo. This means that, whenever the two players are on opposite sides of the status quo, policy change will not be possible. For the six other inequalities, change away from the status quo is feasible. The outcome to the game is based on a non-linear function with the other model factors as elements.

In the example given above, voter v is a veto-player. I proceed by demonstrating what happens to the model outcome if we change model parameters concerning the number of players and the dimensionality of the issue space. I will construct a numerical example. Assume a case with two dimensions of conflict and three players. Two of the players, denoted v_1 and v_2 , are conservative voters in an organization, such as shareholders or parliamentarians. Player a is an agenda-setter, assumed in this case to be relatively progressive on both issues in relation to the voters. Assume the following values for the position of the status quo x^0 and for the ideal positions of the three players on dimensions x and y of the issue space:

Status Quo x^0 :	$\{x = 0, y = 0\}$
Voter v_1 :	$\{x = 10, y = 0\}$
Voter v_2 :	$\{x = 0, y = 10\}$
Agenda-Setter a :	$\{x = 100, y = 100\}$

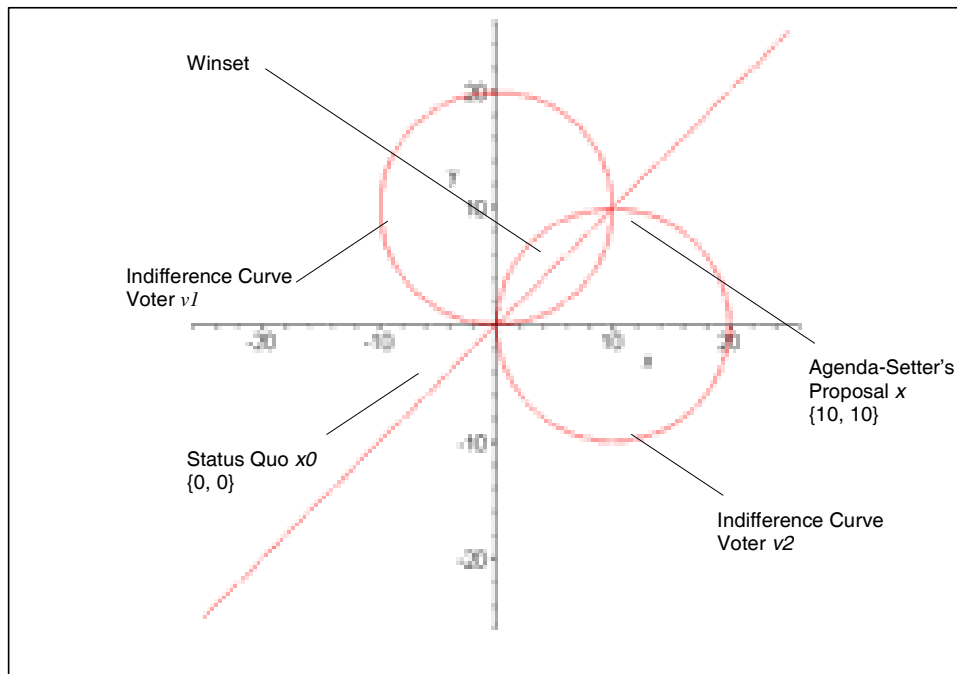
The game works sequentially and can be solved by backwards induction. It consists of two stages. In the first stage, the agenda-setter submits a proposal to the two voters. These two players then decide by unanimity on whether to approve or to veto the proposal. If one were to assume two single-dimensional spaces instead of one two-dimensional space, there would always be one of the two voters whose ideal position on one of the two issues would be located right on the position of the status quo point. These players have formal veto power due to the unanimity voting rule in the organization. In two one-dimensional spaces, the unanimity *winsets*, the common sets of the two acceptability sets of the voters v_1 and v_2 , would then be empty. The predicted outcomes on the two issues would therefore be $\{x = 0, y = 0\}$. Accordingly, the status quo would be preserved on each issue.

However, one two-dimensional space instead of two one-dimensional spaces would result in a very different set of possible decisions which could be accepted by the two veto-players. In two dimensions, the functions representing the relation of the voters' circular indifference curves to the status quo would be defined as

$$\begin{aligned} \text{Indifference curve } v_1 : & \quad x^2 + y^2 - 20 * x = 0 \\ \text{Indifference curve } v_2 : & \quad x^2 + y^2 - 20 * y = 0 \end{aligned}$$

We can now locate the point which belongs to the unanimity set of the two-player organization and which minimizes the distance between the set and the ideal position of the agenda-setter. This point would represent the agenda-setter's strategic proposal x which would be accepted by the two voters. The point can be found by locating the line that has as its elements the ideal position of the agenda-setter and the point which belongs to the common set of the two voters and which minimizes the distance between this set and the agenda-setter's ideal position. Before calculating the result, I will present the solution graphically. Figure 4.2 displays the graph.

Figure 4.2. Numerical Solution in Two Dimensions



Due to the specific preference configuration of the two voters and of the agenda-setter, the predicted outcome will be located on the diagonal $y = x$. The predicted outcome to this particular game would be $\{y = 10, x = 10\}$ since it is located within the winset and at the same time it represents the closest point to the agenda-setter's ideal position.

The numerical example differs from the analytical setup in Figure 4.1 concerning the number of actors within the organization and concerning the dimensionality of the issue space. The decision rule was held constant. Note that for the two-player-committee setup, the decision rule does not matter for any majority. In the example, change away from the status quo was still possible, but the added number of players had to be substituted by a higher-dimensional issue space in order to make the new policy possible.

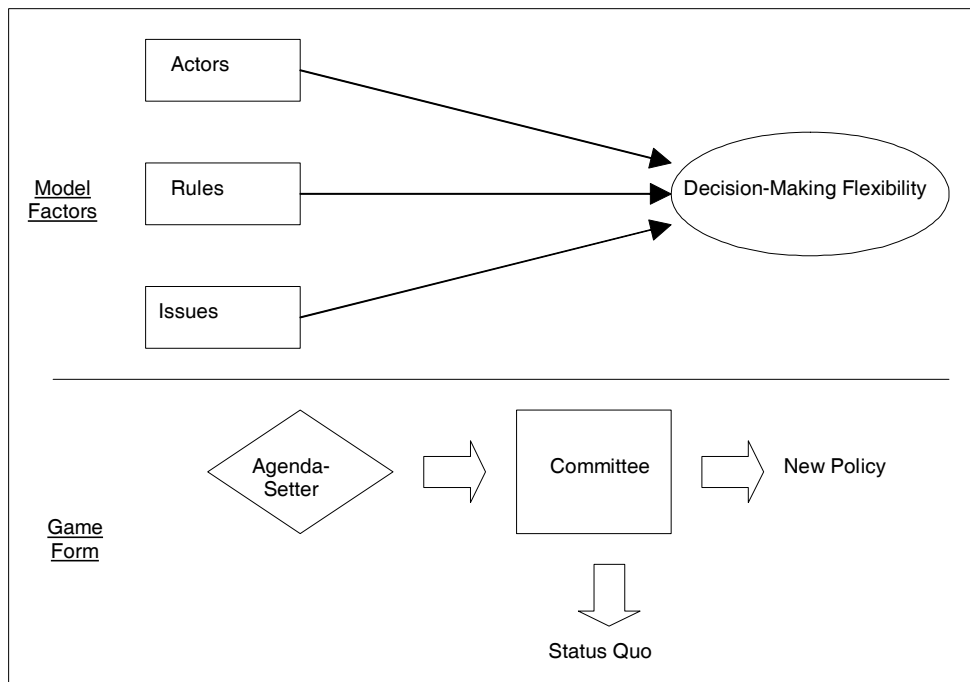
4.3 Method

The predictions of game theoretic models can either be compared analytically, with the help of comparative statics, or computationally, with the help of computer simulation techniques (Morton, 1999: 50-4). Due to the increasing complexity of the models with a move to higher-dimensional

spaces, more players, and variations in the decision rule, the latter approach will be chosen for the purposes of this chapter.

I conceptualize the decision-making flexibility of an organization as the average Euclidean distance between the status quo x_0 and the new policy x . The model factors which influence flexibility are the number of actors in an organization, the voting threshold, and the dimensionality of the issues space. Dimensionality is not related to institutional change. It does, however, affect the equilibrium outcome of spatial models and will therefore be considered (Schofield et al., 1988). Generally, the move from one-dimensional to higher-dimensional spaces results in increased possibilities to move the outcome by departing from the status quo (Riker, 1982, 1986). The model works again in two steps. It starts with a strategic move by agenda-setter a . Voters $\{v_1, v_2, v_3 \dots v_i\}$ of a committee can then vote the bill up or down. Figure 4.3 presents the model setup.

Figure 4.3. General Setup for the Simulations



To analyze the potential for change under a certain decision-making procedure, analysts have used so-called *power indices*. This method has been used extensively for evaluating the relative power of e.g. the European Commission, the European Parliament, and the Council of the EU under the different legislative procedures of the organization (Holler and Owen, 2001). Based on the concept of minimum winning coalitions, it attributes

capability scores to actors in a decision process. The scores are based on these actors' formal voting rights. Since under the European Union's codecision procedure both the Council and the EP have veto power, a power share of ½ can be attributed to both the Council and Parliament, with a further distinction between the different voting weights of the Council members to be able to reach a qualified majority in this organization.

Steunenberg et al. (1999) have put forward a method which measures the differences in the outcomes of various models that are based on structure-induced equilibrium. They label this method the *inertia index*. The index is based on a standardization of players' abilities to influence policy with reference to a so-called *dummy player*, an external observer who has no decision-making power in the game. Since the external observer is by definition a powerless player, this configuration allows for an indication of the absolute positions of players in a policy game. This is achieved by controlling for whether an actor is simply lucky in the sense that coincidentally the outcome is rather close to her preferred position or whether the equilibrium outcome is actively influenced by this player's power.

The inertia index is calculated in the following way. Let $\Delta_{x^0}^\pi$ be the expected distance between the equilibrium outcome of a game with the game form π and the status quo. Let Δ_d^π be the expected distance between the equilibrium outcome and the dummy player. Following Steunenberg et al. (1999: 349), the index I reflecting the inertia of a game can then be defined as

$$I = 1 - \frac{\Delta_{x^0}^\pi}{\Delta_d^\pi}$$

The index is located in the interval $\{0,1\}$ and decreases with the average distance of the equilibrium outcome of the game to the status quo. As the inertia index increases, decision-making flexibility goes down.

Information on the predicted outcomes of different model specifications can be gained by conducting the computer simulations. The simulations are based on a computer program called *WinsetXD*, which was developed by Bernard Steunenberg. It can be used for extensive form games of perfect and complete information for which solutions can be determined by backward induction.

The simulations are based on the following assumptions. First, I reduce the policy space to a finite number of possible positions. The total number of positions for each dimension is set to 100 in the analysis. Second, I assume that all actors' preferences as well as the location of the *status quo*

are uniformly distributed.⁶⁷ Finally, I have taken a random sample of 1,000,000 cases from all possible policy states. These policy states consist of different orderings of the preferences of all the actors involved and of the status quo. The actors in the analysis are the agenda-setter and the members of the committee. With regard to the randomly determined policy states, the ideal points of all players may, but need not, differ from each other and, for some players, from the status quo. The sample of policy states is used to determine the distance between a player's ideal point and the equilibrium outcome for different models. In other words, 1,000,000 simulation runs for each model are being conducted. I calculate aggregate numerical solutions for the one-, two, and three-dimensional setting. The decision rules under consideration are simple majority, two-thirds majority, and unanimity. The number of committee members ranges from 1 to 10.⁶⁸

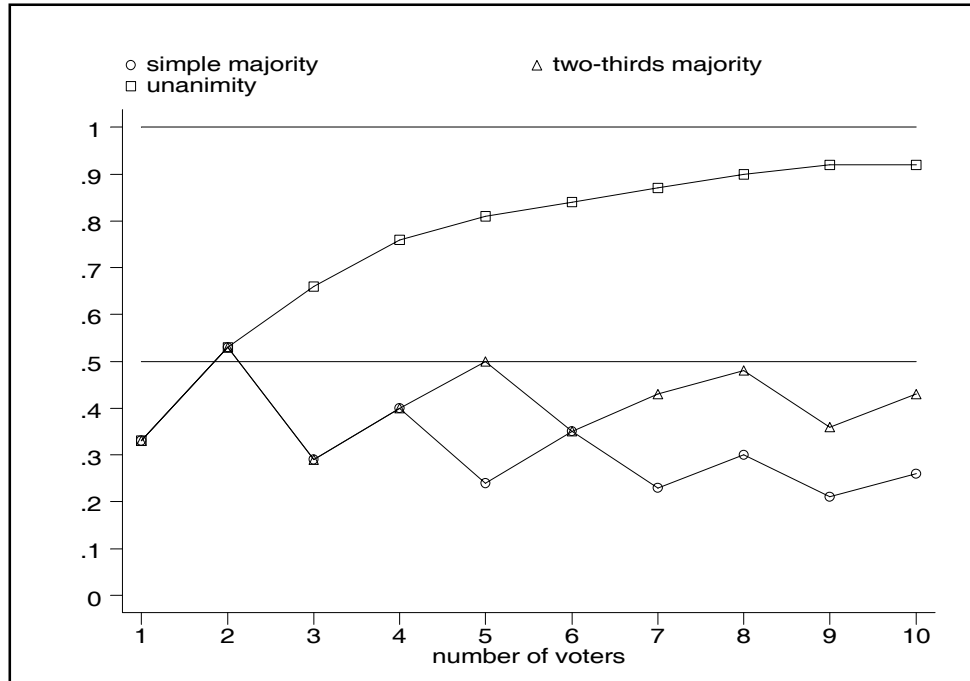
4.4 Results

The first scenario was run under the assumption of single-dimensionality. The inertia index was calculated for simple majority, for two-thirds majority, and for unanimity. The number of players in the committee was successively changed from 1 to 10 with 1-player changes for each computation. The results are presented in Figure 4.4.

⁶⁷ I base the assumption of a uniform preference distribution on the stated objective to assess the differences in the models over many different policy states. I also conducted a sensitivity analysis by calculating simulation runs with normally distributed preferences. These calculations yielded outcomes similar to the results gained from uniform distributions.

⁶⁸ Note that the choice of number of actors and dimensionality was influenced by computational considerations. The voting thresholds follow arrangements like boards of directors in a firm or the United States Congress. Unanimity is the decision rule for certain policy sectors of the European Union.

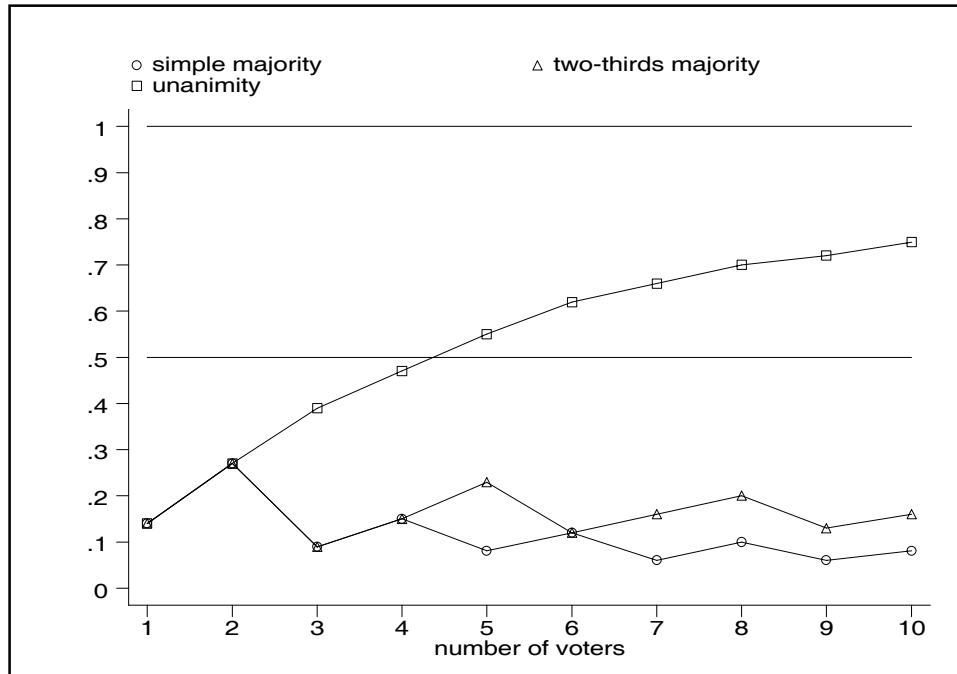
**Figure 4.4. Effects of Institutional Change on Inertia:
One Dimension**



The graph shows how inertia is influenced by institutional change in one dimension. Under unanimity, as a function of an increasing number of players, inertia increases with a marginal decrease to about 0.9, a level under which the average policy change is very small. The graphed results for simple and two-thirds majority follow a zigzag course around 0.3 for simple majority and around 0.4 for two-thirds majority.⁶⁹ The index shows no increase with more players deciding in the organization. I proceed by moving from the one-dimensional to the two-dimensional setting. The results are depicted in Figure 4.5.

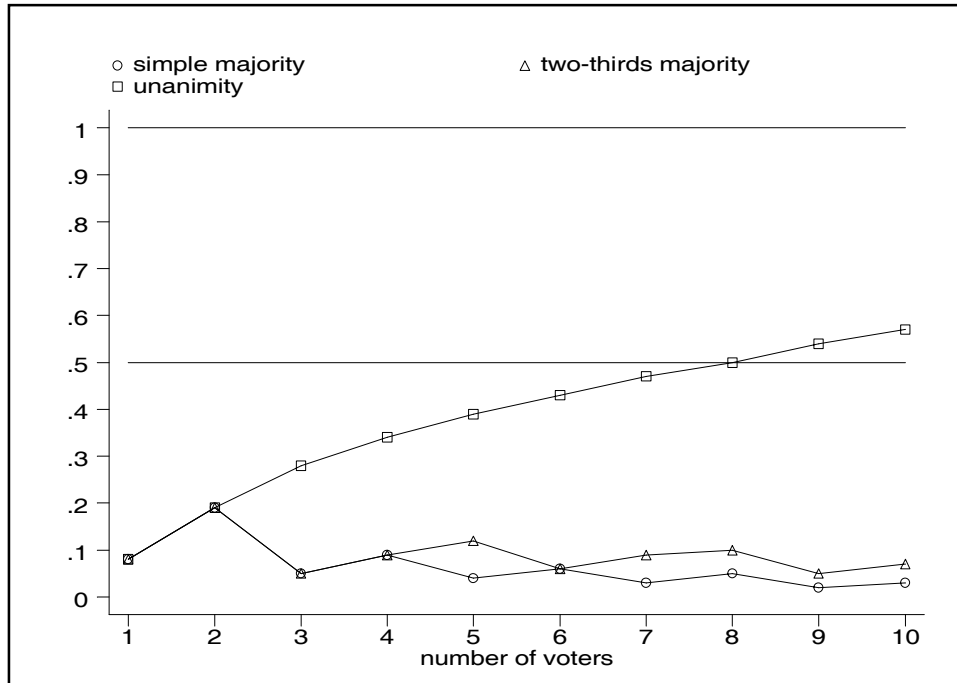
⁶⁹ The zigzagging is an artefact which results from changing from odd to even numbers.

**Figure 4.5. Effects of Institutional Change on Inertia:
Two Dimensions**



The trend for the index estimates follows roughly the one-dimensional setup. A difference, however, is that the index score for the two-dimensional setup is generally lower than for the one-dimensional case. While the unanimity score for the 10-player committee in one dimension is 0.92, in two dimensions it is 0.75. For two-thirds majority it is 0.43 and 0.16, and for simple majority it is 0.26 and 0.08. Also, in the two-dimensional setup, the relative difference between simple and two-thirds majority in relation to unanimity is smaller than in the one-dimensional case. The last step is to compute the index in three dimensions. The results are presented in Figure 4.6.

**Figure 4.6. Effects of Institutional Change on Inertia:
Three Dimensions**



The inclusion of yet another dimension again affects the index in a negative way. The ratios for all three institutional arrangements are lower than they were in the last case. And again, the relative distance between simple and two-thirds majority grew smaller. When comparing the unanimity scores for all three dimensionality scenarios, it becomes evident that an inertia level of 0.5 is reached in one dimension with two voters, in two dimensions with five voters, and in three dimensions with eight voters. Under simple majority and even under two-thirds majority, inertia is only weakly influenced by the number of actors in the organization. This result holds for the setups in one, two, and three dimensions.

4.5 Conclusion

In this chapter I used the concept of structure-induced equilibrium (Shepsle, 1979) to simulate the effects of institutional change on the flexibility of decision-making in organizations. Experimenting with the number of players and with the voting threshold, I found that the interaction of both factors has an influence on the policy outcome. The question arises what the simulation results tell us about the effects of institutional change in the real world, such as on decision-making in the European Union. This

organization is currently embarking on a major institutional change.⁷⁰ Ten new Member States from Central and Eastern Europe are expected to join the organization in 2004. To be able to accommodate the diverging interests of the players in an enlarged Union, EU decision-makers have agreed upon changing the voting threshold.⁷¹

The analysis in this chapter lends some support to the desirability of adjusting decision rules following a change in the number of actors in a decision structure. However, an even more important factor in predicting the degree of an organization's decision-making flexibility is the dimensionality of the political issue space. It follows that a crucial task for analyzing real-world decision-making would be to not only focus on institutional arrangements but also to focus on the dimensionality of decision-making within organizations. The reason behind this necessity is that the higher the dimensionality of the issue space, the less it matters how many actors there are who might try to obstruct change or how high the voting threshold actually is. Institutional arrangements and the number of veto players (Tsebelis, 2002) are important for organizational decision-making. But in order to explain organizational decisions, they are merely two factors out of many, and, as this analysis has shown, there might be equally important ones.

⁷⁰ For empirical analyses of EU decision-making flexibility, see Golub (1999) and Schulz and König (2000).

⁷¹ For a detailed discussion on the hypothesized effects of the treaty changes, see Felsenthal and Machover (2001).

5 The Bargaining Success of the Netherlands and Belgium in the European Union: Some Empirical Evidence*

5.1 The Netherlands, Belgium, and European Policy

The previous chapter presented a simple analytical framework to evaluate the effects of parameter changes on model predictions. It focused on the different predictions gained by changing the number of voters in a committee, the decision rule, and the dimensionality of the issue space.

This chapter presents the *Decision-making in the European Union* (DEU) data set and uses it to determine how successful the Netherlands and Belgium are in the area of European Union legislative decision-making. After reviewing the literature on the two Member States' EU policymaking strategies, a research design is presented which incorporates information on the preferences of the different EU political actors for 70 recent EU legislative decisions. The findings of the analysis are that, first, the preferences of the Netherlands and Belgium are not very different from each other and that, second, the respective success rates of the Dutch and the Belgians in the area of EU policymaking is similar and rather high. Possible avenues for future research are mapped which might improve analysts' understanding of the link between domestic policy formation and the decision process on the European level.

How well do the policies of the European Union correspond with the preferences of its Member States? As in other EU countries, there is a lively debate in the Netherlands and in Belgium going on which centers around the question of how the preferences of these two countries overlap with the policy outcomes on the European level and how successfully the two states' representatives negotiate (Den Boer et al., 1998; Hanf and Soetendorp, 1998; Pijpers, 2000).⁷² Both countries can be regarded as *middle-sized* in the group of the currently fifteen members. They each have five votes in the

* Presented at the workshop *Europeanization: The Impact of European Politics on Belgium and the Netherlands* at the 2003 Annual Meeting of the Dutch and Flemish Political Science Associations, May, Dordrecht, The Netherlands. I would like to thank the organizers and the participants of the workshop for useful comments.

⁷² Debates on the roles of the Netherlands and of Belgium in the context of EU policymaking and the *Convention on the Future of Europe* (<http://european-convention.eu.int/>) feature in the national media of the two countries (e.g. *NRC Handelsblad* in the Netherlands and *De Financieel Economische Tijd* or *La Dernière Heure* in Belgium). Practitioners and academics (e.g. the *Clingendael Institute* in the Netherlands and the *Royal Institute for International Relations* in Belgium) are also involved in analyzing policy performance.

Council of the EU and a similar number of Members of the European parliament (31 for the Dutch versus 25 for the Belgians).⁷³ Some analysts expect these two states to align when it comes to renegotiating their vote share vis-à-vis the larger states in the Council of the EU in the context of the current European constitutional convention. In the process of legislative decision-making, however, one also finds the hypothesis that the EU Member States might negotiate along a line of 'North versus South' or of 'net-contributors versus net-beneficiaries'.⁷⁴

In order to evaluate both Member States' *preference patterns* as well as their benefit from EU membership in terms of policy fit, an analysis of how closely European policies match the preferences of EU countries is of central importance.⁷⁵ Different methodologies have been used to analyze the success of decision-making on the Brussels level. Van den Bos (1991) uses a two-stage model and data on 75 decisions taken by the Council of the European Union to analyze Dutch decision-making strategies. Concerning the relative influence of the Netherlands, he finds that there are "few clear results" (1991: 184) in terms of who wins and who loses. He summarizes the EU policy-process as a collective process of "give and take". Hosli (1999) uses *voting power analysis* and Soetendorp and Hosli (2001) integrate this technique with a comparative case study design. They find Dutch bargaining success in two of four cases researched cases.

For Belgian civil servants, Dierickx and Beyers (1999: 198) find that "they perform as well, sometimes even better than other civil servants in the working groups". Mattila and Lane (2001: 45) use Council voting data from 1995-1998 and multidimensional scaling techniques to produce a two-dimensional plot of the *European policy space*. In their plot, the Netherlands and Belgium appear to have rather different voting records, with Belgium being more 'mainstream' vis-à-vis the other Council members and the Netherlands somewhat more extremist.

In this chapter, I will present empirical evidence on the bargaining success of the Netherlands and Belgium in the area of European Union legislative decision-making for 174 conflictive issues. For this study, bargaining success will be defined as the *difference between an actor's policy position and the policy outcome*. The next sections will outline a research design. Section two presents existing theoretical studies on the topic. Section three and section four outline the selection of cases and the selection of experts for the data-gathering. Section five outlines the method of expert interviewing that has been used. Section six summarizes the data

⁷³ Note that this number has changed with the entering into force of the *Nice Treaty*.

⁷⁴ See Garrett, 1992; König and Bräuninger, 2000; Mattila and Lane, 2001. For an overview, see Hix, 1999: 269-77.

⁷⁵ Note that this chapter focuses on *regulatory aspects* and disregards *financial redistribution*.

set used for this study, and section seven presents the empirical findings. Section eight concludes by summarizing and interpreting the results in light of possible new research strategies.

5.2 Bargaining Success: Bargaining Power and Centrist Policy Preferences

In order to evaluate the relative Dutch and Belgian bargaining success rates at the level of European Union legislative decision-making, one important qualification is in order. While negotiation success can be regarded to be partially influenced by an actor's bargaining capabilities, it might also be based on the sheer luck of complementarity of one's own preferences with the preferences of a decisive majority in a group of decision-makers. This important axiom was already recognized by Machiavelli (1997: 47) [1532] who wrote that "I judge it to be true that fortune is the arbiter of one half of our actions, but she still leaves the control of the other half, or almost that, to us." Modern political scientists, especially adherents to the rational-choice approach to politics, take the combination of power and preferences as the building block to theorizing political phenomena (Barry, 1980a, 1980b; Plott, 1991). The next paragraphs summarize existing work on the bargaining power and possible preference patterns of the Netherlands and Belgium.

Hosli (1999) and Soetendorp and Hosli (2001) present formal models, so-called *voting power indices*, of EU decision-making. These models provide information on the Member States' formal decision-making power. Note that in all of these models, no matter which index and resulting computational procedure is being used, the power of the Netherlands in all these models equals that of Belgium since their vote share in the Council of the EU is equal.⁷⁶ The same holds for a group of bargaining models which were advanced by Bueno de Mesquita and Stokman (1994, 55). Hosli (1996), under the assumption of a single 'Benelux bloc', calculated that Belgium, the Netherlands, and Luxembourg would be pivotal in 14.5% of all possible cases of EU decision-making. While a Member State's voting power in the Council can be considered to be an important factor in understanding EU politics, other factors might matter as well (Milner, 1997). Specifically, the domestic context might be important in determining a state's effective bargaining power (Putnam, 1988; Tsebelis, 2002).

A major distinguishing element between the Netherlands and Belgium is the degree of the two countries' *federalization*. While the Netherlands can be characterized as a relatively unitary state, Belgium is to

⁷⁶ For a detailed discussion of power indices and their application to the EU, see Holler and Owen (2001).

a large degree federalized, with Flanders and Wallonia as major political entities on the sub-national level.⁷⁷ In an analysis of the structure and the process of the three Benelux countries in preparing and implementing EU legislation, Beyers et al. (2000: 83) write that “the distinction between the Netherlands and Belgium seems to be derived from the very different state structures of both countries. In comparison with the Netherlands, Belgium is characterized by extreme cleavages, and so needs its highly complex state structure, with both formal and informal devices.”⁷⁸ Employing Tsebelis’ *veto player theory* and confronting it with interview data on Belgium and Sweden, Beyers and Trondal (2003) hypothesize that the increased number of actors with formal or informal veto power in Belgium might lead Belgian civil servants to act rather independently and to take on “supranational” roles in negotiating EU policy.⁷⁹ A similar interpretation would result from employing the *principal-agent approach* to politics (Moe, 1980) to the study of Belgian and Dutch EC policymaking.

The notion of veto players might in fact lead one to suspect that the Belgian position might be relatively strong due to a smaller *winset* of the Belgian negotiators—Schelling (1960) talks about the ‘paradox of weakness’. Assuming, on the other hand, the existence of several principals with possible conflicting policy goals (Ferejohn and Shipan, 1990; Ferejohn and Goldstein, 2002)—in our case the different sub-national entities in Belgium—might lead to the hypothesis of more agent discretion on behalf of the Belgian civil servants and decreased Member State bargaining power due to conflict of interest and fragmentation in the decision-making process. We would then expect the effective bargaining power exercised by Belgium to be less than the power of the Netherlands, a position which is bolstered by case-study evidence presented by Bursens (2002: 592) in which the author concludes that “the consecutive Belgian state reforms... and the ongoing administrative reform... have been negotiated and elaborated from a purely domestic or managerial agenda, without taking into account the implications for the Belgian functioning within the European political arena”.⁸⁰

Since bargaining success, the proximity between a Member State’s ideal position and the policy outcome, is not only influenced by bargaining

⁷⁷ Kerremans and Beyers (1998) provide an overview.

⁷⁸ Beyers (1998) and Bursens (2002) analyze the federal character and resulting problems of the Belgian political system. Beyers and Dierickx (1997) evaluate communication networks of civil servants in the Council.

⁷⁹ For a comparative analysis of Sweden with the other two Scandinavian Member States, see Selck and Kuipers (2005).

⁸⁰ Kassim (2003: 97) argues that each of seven “co-equal” governments in Belgium, “the federal government, Wallonia, Flanders, and Brussels, and the French, Flemish, and German communities” effectively command veto power in EU affairs.

power but also by proximity to a decisive coalition, in order to predict whether the Netherlands or Belgium might be better off from new EU policy measures, it might help to outline likely coalitional patterns between the EU Member States, the Commission and Parliament. Note that most studies on the role of the Member States in the European policy process focus either on intergovernmental bargaining over EU Treaty revision (e.g. Moravcsik, 1991; Schneider and Cederman, 1994) or on elite interviews and public opinion research or news coverage (e.g. de Vreese, 2001; Bursens, 2002). Studies predicting likely patterns of EU Member State coalitions in the day-to-day policy process are largely nonexistent.⁸¹ Exceptions are the work of König and Bräuninger (2000), Mattila and Lane (2001), and Mattila (2003).

In order to analyze possible outcomes of European Union eastern enlargement on policymaking, König and Bräuninger (2000) use macro-economic data on Member States' gross domestic product, their unemployment levels, and the relative size of the countries' agricultural sectors. Using dimension-reducing techniques, they produce two-dimensional plots of likely coalitional patterns. In their plots, both the Netherlands and Belgium appear to be rather centrally located relative to the other states. This, however, might partly result from a statistical artefact by having included the Central and East European accession countries into the plot.

Mattila and Lane (2001) work with Council voting records to predict coalitional patterns. For data from 1995 to 1998, they compute a probability of 2 percent for the Netherlands to vote against a legislative bill. The corresponding number of 0.7 percent for Belgium is more in line with the other members. They continue their analysis by using multidimensional scaling techniques. They present a plot in which the Netherlands seem to have rather extremist preferences compared to Belgium. Mattila (2003), for an extended time period ranging from 1995 to 2000, reports an average half-year count of 2.3 negative votes in the Council for the Netherlands compared to Belgium which again appears to be more 'mainstream' with only 0.8 negative votes on average. In sum, whereas the decision-making process in Belgium might be conceptualized as more decentralized and fragmented than it is in the Netherlands, Belgium's position in the Council of the EU appears to be somewhat closer to a majority of Member States than the Dutch position. These two factors, power and preferences, might work in different directions for the two Member States under consideration in this study. Due to the scarcity of existing empirical studies, it might

⁸¹ This also holds for work on the "European political space", in which EP party manifestos, but not Member States' policy preferences, are usually analyzed. See Gabel and Hix (2002).

suffice to have these factors identified. The rest of this chapter will serve to empirically evaluate the success rates of the two countries.

5.3 *Selection of Cases*

To be able to produce empirical regularities for researching EU decision-making, we need a sufficiently large number of cases and sufficient variety between the cases. For the selection, we define a case as a *legislative proposal* that prepares a new or amended legislative act, i.e. a regulation, a directive, or a decision. Three criteria were used. These were (1) the type of legislative procedure to which a case was subject, (2) the time period in which a case was negotiated, and (3) political salience for the actors.

(1) For the analysis, we only used cases that were negotiated under the *consultation* and the *codecision* procedure. Cooperation is currently very rarely used. We also disregard *assent* to focus on the changes in outcomes between only two procedures while at the same time employing information on a sufficient number of cases.

(2) To have enough cases in the database and to have more reliable information, we decided to focus on very recent cases of EU decision-making. We assume that the more recent the negotiations, the easier it is for experts to recall events. This had implications for the time period we could cover. We selected Commission proposals that were discussed in the Council in the period from January 1999 to December 2000.

(3) A Commission proposal was included if at least five lines of text were devoted to it in the European Union daily newspaper *Agence Europe*. This excluded proposals that were simply listed as one of the points on the agenda of a Council meeting, with no substantive reference to the proposal.

Note that the selection of cases was also confined to proposals that did not change their procedural basis after the *Amsterdam Treaty* came into effect in May 1999. On this date, the legislative procedure changed for a number of Commission proposals that had been introduced earlier and were still pending on that date. For example, some proposals were introduced under the cooperation procedure, and changed to the codecision procedure. We opted for not including these proposals in the selection. Inclusion of proposals whose legislative procedure changed would have made the application of models of the decision-making process problematic. It could have raised the possibility that the poor performance of a model could be attributed to uncertainty caused by changes in the procedure, rather than the power of the model. Therefore, the decision to select proposals only if their procedure did not change restricted the number of proposals which were available for inclusion in the selection.

The research strategy resulted in a sample of 70 legislative proposals. 66 of these resulted in a new legislative measure by the end of the

data-gathering period. Four cases had either been aborted or were still pending. Note that the design implies that the Commission proposals which are included in the selection are not a random sample of European legislation. A random sample would have resulted in the selection of many technical proposals on which there were hardly any differences in the decision outcomes that were preferred by the actors involved. Such proposals do not offer adequate opportunities to test and possibly refute alternative models. If all the actors want the same thing, then this would also be the model prediction, and supposedly the actual outcome of the policy process. Including such cases would have resulted in test results that would be biased in favor of the models.

5.4 Selection of Experts

To acquire empirical information on the negotiations concerning the 70 legislative proposals, expert interviews were conducted. In total, 150 interviews were held with 125 experts from the Council, the Commission, the European Parliament, and interest groups. The interviews lasted about 100 minutes on average. Note that 125 interviews is a rather conservative estimate of the number carried out in the research project. It includes only those interviews that related directly to the Commission proposals under investigation. It does not include many interviews that were conducted at the selection stage, to identify Commission proposals that were suitable for our study, i.e. Commission proposals on which there was at least some minimum level of controversy. The experts were selected because they had outstanding knowledge of the decision situations under investigation. Usually, they participated in the negotiations.

The largest proportion of experts was affiliated with the permanent representations of the Member States. Civil servants from all fifteen Member States were interviewed. Usually, these were the desk officers responsible for representing their state in the Council discussions. A small number of experts were affiliated with the European Parliament and with interest groups. Due to their institutional location, these individuals are often not well placed to provide detailed information since they are not well informed about intra-Council negotiations. The Council bias in our selection of experts reflects the view that an analysis of EU legislative decision-making needs to examine the interactions within the Council. Although we include the Commission and the EP as actors in the analysis, decision-making within these institutional actors falls outside the scope of this study. In preparation for the data collection, many more experts from the European Parliament were contacted by phone and fax. When the nature of the questions was stated, and in particular when it was made clear that the expert would need an overview of all actors involved in the decision

situation, most parliamentarians indicated they did not have access to the information required. We also found that potential interview partners from interest groups were often not able to provide detailed information on the legislative negotiations. Table 5.1 provides an overview of the institutional affiliations of the interview partners which were selected for this study.

Table 5.1. Institutional Affiliation of Experts

Commission	Member States	Council Secretariat	European Parliament	Interest Groups	Total
31	69	9	4	12	125

5.5 Interview Process

To acquire comparable information over a sufficiently large number of cases, we used a standardized technique (Merton, 1947). The interview technique used for this project relies on expert judgments (Seidler, 1974; Kumar et al., 1993) and has previously been applied to political decision-making situations by Bueno de Mesquita, (1999, 2002), Bueno de Mesquita and Stokman (1994), Stokman et al. (2000), and Torenvlied (2000).⁸²

After the cases have been selected and interviews have been arranged, the interviewer tries to find as much information as possible regarding some particular legislative proposal. Textual sources include *Agence Europe*, the Commission proposal, and all other official documents, including the Council minutes and documents from the working groups.⁸³ For only a small minority of highly politicized cases, it is possible to find information in newspapers which cover EU legislative affairs, such as the *Financial Times*. Before the interview, researchers make a pre-specification of the main elements which might have been contested amongst the negotiators. Note that, theoretically, there could be a very high number of such contested elements. In practice, however, both researchers as well as experts perceive EU legislative decision situations as consisting of only a limited number of such elements, usually between one and five (Stokman et al., 2000, 133). The elements are assumed to be independent from each other, i.e. the position of an actor on some political question is not

⁸² Allas and Georgiades (2001) outline a possible commercial applicability of the method.

⁸³ Unlike other official EU legislative documents such as the Commission proposal, reports by the EP, the Council's common position, or the final legislative act, the documents from the working groups are not available on the *Europa* server or published in the *Official Journal of the European Communities*. To acquire these documents, researchers have to request them via the Council General Secretariat (<http://register.consilium.eu.int/>).

necessarily associated with that actor's position on some other question. These independent contentious elements are referred to as *issues*.

During the interview, experts are asked to specify a list of all the main issues within one legislative proposal. The criteria for the issue specification can be summarized as follows:

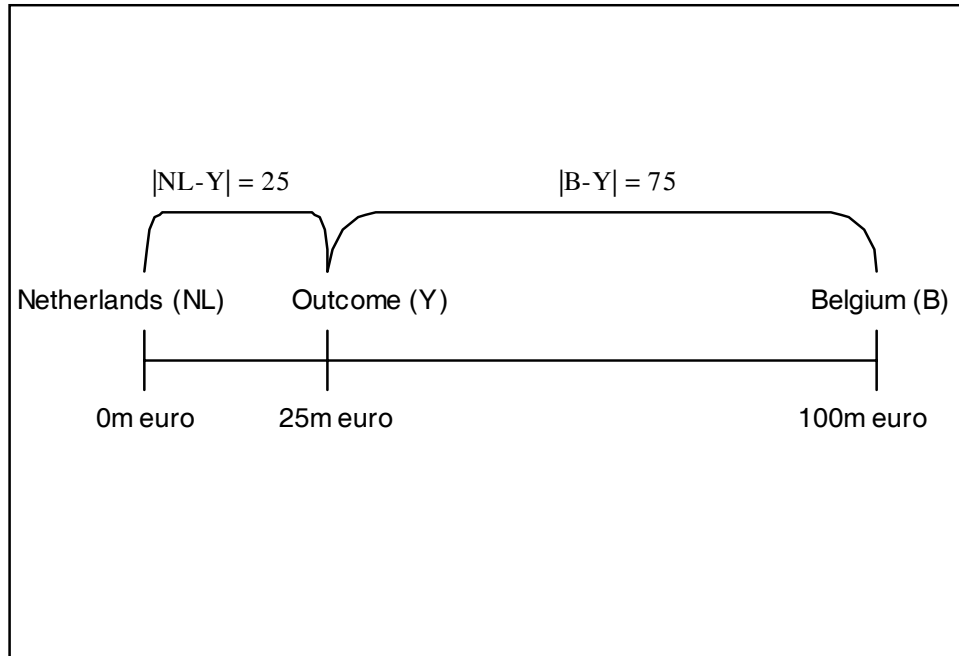
(1) The most basic criterion is that at least some of the actors involved in the decision-making must take different positions on each issue. If the actors take the same positions, there is no political problem to be analyzed.

(2) The points on the issue continuum must be defined in terms of the alternative decision outcomes regarding the issue. These decision outcomes may be supported by one or more of the actors involved, or may be possible compromise outcomes.

(3) The issues must be defined as one-dimensional continua, on which the actors can be placed in order to represent the possible decision outcomes they favor. The requirement of the specification of a *limited* number of issues is in itself a useful exercise, because it helps the researchers and experts to distinguish between the main points and subordinate ones. The number of issues required varies between decision situations.

After having specified the main issues in a certain legislative proposal, the following procedure is used for each issue. The expert is asked to indicate the position of the legislative status quo and the ideal policy positions of the actors which they *initially* favored *after the introduction of the proposal and before the Council formulated its common position*. The actors are the European Commission, the European Parliament, and the fifteen Member States. The status quo is the situation that would prevail in case no new legislative measure would be negotiated. The expert is asked to name the two most extreme of these variables and place them on the extreme ends of the issue continuum. The two extreme positions are normalized and indicated as *0* for the most conservative and *100* for the most progressive position. Afterwards, the variables for these positions and for the position of the policy outcome are placed on the issue scale. The values are attributed on the basis of *political distance* between the positions. Figure 5.1 presents an example with two players, the Netherlands and Belgium.

Figure 5.1. Specification of Positions



Assume that the Netherlands (NL) and Belgium (B) have different preferences on how much money to allocate to a new EU project. The policy positions of the actors are “0m euro” or “no money” in case of the Netherlands, and “100m euro” in case of Belgium. Assume further that the eventual policy outcome on the EU level (Y) is 25m euro. Since the difference between the policy preference of the Netherlands and the outcome is 25 and the difference between the Belgian position is 75, the bargaining success of the Netherlands for this particular issue is higher than the bargaining success of Belgium. Note that, without explicitly focusing on any particular theory of decision-making, the EU policy outcome might be considered a result of the negotiations among at least all the Member States, the Commission, and Parliament. The fact that the outcome of EU policymaking is located closely to some particular Member State might be grounded partly in the decision-making power of this actor, but partly also in the sheer luck of being close to what would have happened anyway.⁸⁴

The method of expert interviews attempts to generate *quantitative estimates* for policy preferences. These preferences might concern decision situations that are already more quantitative in nature, such as ‘amount of money’ or ‘level of emission standards’, but this does not have to be the case. We also used the interview method to quantify distances that relate to

⁸⁴ Barry (1980a, 1980b) distinguishes between *power* and *luck* which, taken together, constitute *success*.

rather ‘qualitative’ problems such as the scope of regulation or the degree of regulatory harmonization in the EU. The most extreme positions on a policy issue are coded as “0” and “100”. The data is normalized to make the estimates more comparable.⁸⁵

5.6 Summary of the Data

The data set includes information on the policy preferences of the Commission, of Parliament, and of each of the fifteen Member States for different policy issues. The expert interviews resulted in generating 174 policy issues for the 70 legislative proposals contained in the data set. The average number of issues per legislative proposal is about 2.5. Table 5.2 presents a categorization of the frequency of the number of issues over all the proposals.

Table 5.2. Number of Issues

NUMBER OF ISSUES	FREQUENCY	PERCENT
1	14 (14 proposals)	8.05
2	52 (26 proposals)	29.89
3	57 (19 proposals)	32.76
4	24 (6 proposals)	13.79
5	15 (3 proposals)	8.62
6	12 (2 proposals)	6.90
<i>Total</i>	<i>174</i>	<i>100.00</i>

The table shows that the most frequent amount of issues was two. This was the case in 26 of the 70 proposals. The next most frequent number was three issues per proposal. This was the case in 19 proposals. Only five proposals had five or six issues.

The proposals in the data set are based on the codecision and the consultation procedure, both with qualified majority and unanimity threshold in the Council. Table 5.3 summarizes the 174 issues grouped by procedure and voting rule.

⁸⁵ Note that in the example given above, the data do already fit the 0-100 scale.

Table 5.3. Legislative Procedure and Council Voting Rule

	COUNCIL VOTING RULE		
LEGISLATIVE PROCEDURE	Qualified majority voting*	Unanimity	<i>Total</i>
Consultation	55	44	99
Codecision	63	12	75
<i>Total</i>	<i>118</i>	<i>56</i>	<i>174</i>

* Includes one proposal with two issues which was decided by consultation and qualified majority plus as least 10 Member States in favor.

The table shows that there is a fair amount of variation between the four different institutional arrangements. Note that only 11 issues, representing five legislative proposals, were negotiated by codecision and unanimity. Although this situation is not ideal from a comparative point of view, it reflects the fact that this combination of EU procedural arrangements is not very common for all EU legislative decision-making. It applies mainly to the right of residence and migration of workers (Hix, 1999: 63-74).

Besides the desire that a sufficient number of cases decided under both consultation and codecision are represented in the data set, there is also variation between the policy sectors. We operationalize this concept by reference to the sectoral structure of the Council of the EU. Table 5.4 displays the different sectoral Councils that negotiated the policy issues in the data set.

Table 5.4. Issues per Sectoral Council

COUNCIL	FREQUENCY	PERCENT
Agriculture	40	22.99
Culture	7	4.02
Development	4	2.30
ECOFIN	15	8.62
Employment	4	2.30
Energy	2	1.15
Fisheries	13	7.47
General	14	8.05
Health	5	2.87
Internal Market	38	21.84
Industry	3	1.72
Justice and Home Affairs	15	8.62
Social	3	1.72
Telecom	3	1.72
Transport	8	4.60
<i>Total</i>	<i>174</i>	<i>100.00</i>

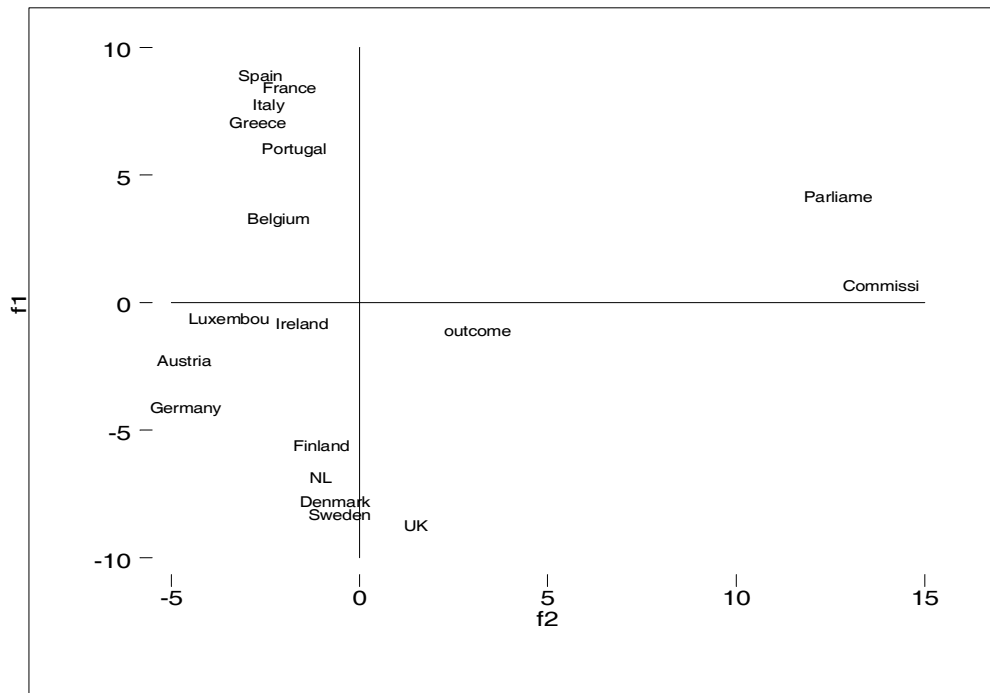
A predominant number of 78 issues were decided by the Agriculture Council and the Internal Market Council. 96 issues were decided by all other sectoral Councils taken together. This distribution might be affected by only including so-called *hard law* instruments with binding legal effect (regulations, directives, and decisions). Had we also included *soft law* instruments, i.e. recommendations and opinions, and possibly also *policy guidelines* and *interinstitutional arrangements* which are based on different modes of deliberation amongst the EU actors (Craig and De Búrca, 1998: 105-10), the number of issues decided by e.g. the Development Council or the Social Affairs Council might have been higher.

5.7 Results on Bargaining Success

Bargaining success is defined as the difference between an actor's preferred policy position and the policy outcome on an issue. We will first attempt to find an underlying pattern of actors' policy preferences for the 174 issues. *Principal-Component Analysis* (PCA) will be used to try and reduce the different policy issues that are contained in the data set into a two-dimensional solution displaying patterns of conflict among the EU actors and the difference between the actors and the outcome. Dimension-reducing techniques have been used previously to map out a possible EU decision space and to detect patterns of coalitions between actors (e.g. König and

Bräuninger, 2000; König and Pöter, 2001; Mattila and Lane, 2001; Kreppel, 2002; Tsebelis, 2002). Figure 5.2 presents a two-dimensional plot of the positions.

Figure 5.2. PCA Plot of Policy Positions and Policy Outcome



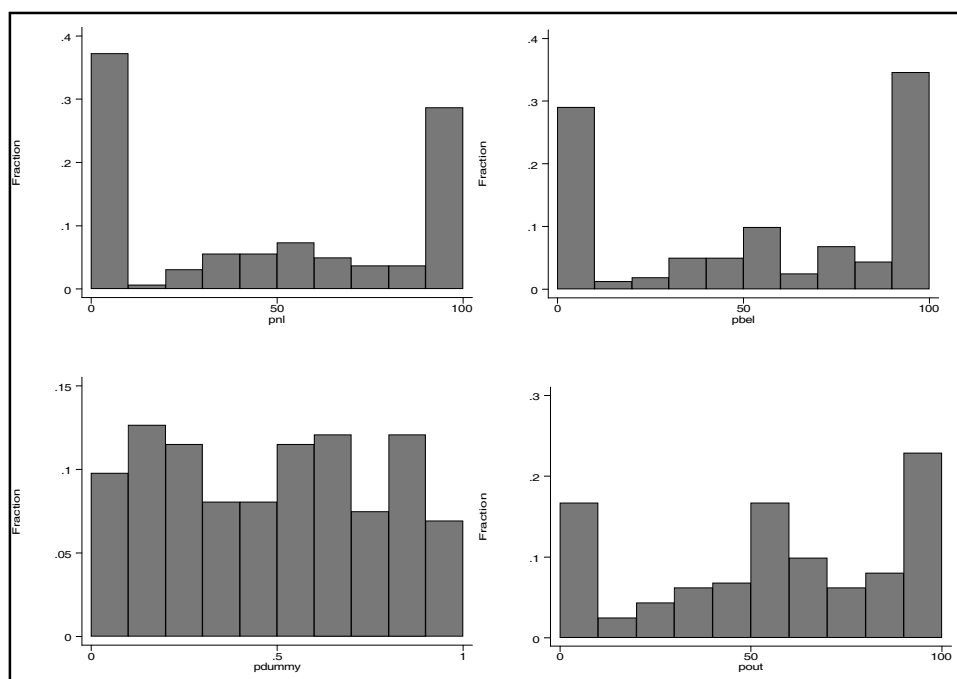
The Figure displays two factor scores $f1$ and $f2$ of the first two resulting components of a PCA for the data set. There appears to be a distinction between ‘North and South’ or ‘net contributors and net beneficiaries’, and between the Council members on the left side and the Commission and Parliament on the right-hand side. The outcome is centrally located and the positions of the Netherlands and Belgium appear to be rather different from each other but equally close to the outcome. The problem with the PCA example is that the two scores which make up the axis for the graph are responsible for less than 40% of the overall variance in the data set.⁸⁶ This

⁸⁶ A *scree plot* indicates a change of slope after the third factor score, which means that three factors would be needed to summarize the data reasonably well. However, all the *eigenvalues* are higher than 1 which casts doubt on the use of dimension-reducing techniques for the data set.

means that the PCA plot is a rather inadequate means for summarizing the bargaining success of the players.⁸⁷

The next step will be to first analyze the preference distributions of the Netherlands and Belgium, and the distribution of the EU policy outcome for the data at hand. To improve comparability of the estimates, an *external observer*, or *dummy*, will be added to the analysis. The external observer is by definition powerless. The preference distribution of this player is assumed to be *uniform*, which means this player wants as often an outcome of, say, 20 as an outcome of 50, 60, or of 100.⁸⁸ Figure 5.3 presents graphs of the four variable distributions.

Figure 5.3. Ideal Position of the Netherlands and Belgium, of the Observer, and of the Legislative Outcome



The four cells present the ideal position of the *Netherlands* (*pnl*) at top left of the graph and of *Belgium* (*pbel*) at top right, the position of the *external observer* (*pdummy*) at bottom left, and the position of the *outcome* (*pout*) at bottom right. The three variables for the Netherlands, Belgium, and the

⁸⁷ Thomson et al. (2004a) apply multidimensional scaling techniques to the DEU data set. They also only find weak support for a two-dimensional policy space on the EU level.

⁸⁸ In practice, the distribution is not quite uniform because of the limited number of cases. It would tend to become more uniform the more cases there would be included in the analysis.

policy outcome display a tendency for the left and the right extremes of the 0-100 continuum. Although the mean of the outcome variable is the most central one with 53.93, even here the actual value is 50 in 27 cases, but also 0 in 27 cases and 100 in 28 cases. The Netherlands with a mean of 45.94 appear to be somewhat more ‘conservative’ than the Belgians with a mean of 53.36.

To detect the proximity between what the Dutch and the Belgians want and what they get eventually, we will use correlation and average issue-per-issue-distances. Table 5.5 presents the results.

Table 5.5. Correlation Matrix and Average Distances*

CORRELATION				
	Netherlands	Belgium	External Observer	Policy Outcome
Netherlands	1	0.41 (<i>N</i> = 160)	-0.12 (<i>N</i> = 164)	0.19 (<i>N</i> = 154)
Belgium	-	1	-0.09 (<i>N</i> = 162)	0.16 (<i>N</i> = 152)
External Observer	-	-	1	0.02 (<i>N</i> = 162)
Policy Outcome	-	-	-	1
DISTANCES				
	Netherlands	Belgium	External Observer	Policy Outcome
Netherlands	0	28.84 (<i>N</i> = 160)	45.83 (<i>N</i> = 164)	37.15 (<i>N</i> = 154)
Belgium	-	0	53.18 (<i>N</i> = 162)	35.59 (<i>N</i> = 152)
External Observer	-	-	0	53.56 (<i>N</i> = 162)
Policy Outcome	-	-	-	0

* Both a *t*-test and a Wilcoxon signed-rank test show that the differences between the success rates of the Netherlands and Belgium are statistically not significant (*t*-test: *p* = 0.5518; Wilcoxon test: *p* = 0.4079).

First note that the correlation coefficient between the Dutch and the Belgians is quite high with 0.41.⁸⁹ The average distance between the two is

⁸⁹ Recall that the value could lie anywhere between -1 and $+1$. Focusing on France and Germany, who are traditionally seen as partners in the EU policymaking process, Selck and Kaeding (2004) report a correlation coefficient of only 0.22

28.84.⁹⁰ This finding contradicts the apparent claim that was derived from the Principal Component Analysis and that signaled a rather large difference between the positions of the two states. It also casts doubt on the existence of a *net-contributor-versus-net-beneficiary* divide in EU legislative decision-making.

As to the policy distances between the actors to the outcome, we will focus first on the record for the external observer. The average issue-per-issue distance between the observer and the policy outcome is 53.56. The respective correlation coefficient is 0.02, reflecting both this player's complete lack of power as well as the assumed uniform preference pattern. The correlation coefficients for the Netherlands and Belgium with the outcome are 0.19 and 0.16, with average distances of 37.15 for the Dutch and 35.59 for the Belgians. The empirically recognizable difference between these two players is minimal. Statistically, the differences are not significant.⁹¹

5.8 Conclusion

Policymakers on the European level have an interest in evaluating the benefits of EU membership, both in terms of net financial transfers as well as in terms of the policy fit between their own position and the resulting bargain on the Brussels level. This chapter tries to shed some light on the relative success of the Netherlands and Belgium in achieving their desired policy outcome on the EU level. Using empirical information on 70 recent EU legislative decisions, it was found that the policy preferences of the Dutch and the Belgians are to some extent similar. Concerning the question of relative bargaining success, the results show that the rates for the two states are almost the same.

Currently, there exist almost no quantitative empirical studies on the negotiation success of the different EU Member States and how this success is affected by domestic factors. For the purposes of this study, in terms of measurement the Member States have been treated as unitary actors. While analytically useful in determining the national policy position on the European level, future work might address the question what the specific

between these two countries, who are traditionally thought of as allies in EU decision-making.

⁹⁰ I also computed the percentage of issues for which the two players are located on opposite sides of the eventual outcome. This is the case for only 34 of 160 issues, or 21.25%.

⁹¹ Note, however, that the significance tests might have been affected by the small number of cases and by the skewed variable distributions. The correlation estimates are probably lower than in the real population due to the fact that only politically contentious cases have been included.

policy preferences *within* the Netherlands and Belgium are with regard to EU policy and how different sub-national positions are aggregated to form the 'national position'. Such work might build on the existing theoretical work on *two-level games* that was pioneered by Schelling (1960) and Putnam (1988) and on empirical evidence on policy-formation in the Netherlands and in Belgium (Van den Bos, 1991; Bursens, 2002). A similar data-gathering design as the one that was utilized in this study might then be applied to improve our understanding of Member States' bargaining success.

What do the tentative results gained from the present study imply for the roles of these two Member States in the EU policymaking process? The fact that the correlation between preferences and outcomes is positive and relatively high is good news and should provide ammunition for committed *Europhiles* in both countries. For comparative purposes, the two countries' coefficients were compared with the 'performance' of an artificially constructed and per definition powerless player. This exercise indicated that the correlation with the EU policy outcome is rather high. The two countries are quite successful given the fact that there are thirteen other Member States in the EU plus the Commission and Parliament which all form part of the European legislative process. Future intergovernmental conferences will undoubtedly witness the usual level of interstate bargaining among the European countries for an increased vote share in the Council. Countries with equal vote shares in this decision-making body, such as the Netherlands and Belgium in the pre-Nice European Union configuration, will try to increase their relative decision power. At current measure, it was found that the two countries seem to perform equally, and reasonably well.

6 Between Power and Luck: The European Parliament in the EU Legislative Process*

6.1 Introduction

Chapter 5 introduced the data set which will now be used for model testing. Taking Barry's (1980) question "Is it better to be powerful or lucky?" as a starting point, this chapter tries to answer the question how influential the European Parliament is in the EU legislative process. We assess the proximity between what the Parliament wants and what it eventually gets and whether this is the result of its own power or the similarity between its position and the positions of other EU actors. The empirical analysis using different models of legislative decision-making shows that the European Parliament has been rather influential under codecision, while it has been 'lucky' for most legislation negotiated under the consultation procedure. Differentiating between capabilities and preferences, and therefore between 'power' and 'luck', remains crucial in explaining political outcomes.

What is the impact of the European Parliament on EU legislative decision-making? The views on this issue differ since the power of Parliament also depends on the authority it has under the various legislative procedures. While some of these procedures do not require any involvement on behalf of Parliament (legislation is based on a decision of the Council of Ministers that had been prepared by the Commission), others command that Parliament has to be offered the possibility of advice (the consultation procedure), consent (assent procedure), or amendments and direct negotiations with the Council in the case that views differ (codecision procedure). In his work on the cooperation procedure—the predecessor of the codecision procedure—Tsebelis (1994) suggests that Parliament has a rather substantial impact on the possible outcome since it could release favorable amendments to a qualified majority of Council members. Since Council members could only change a proposal by unanimity, introducing amendments would provide Parliament with 'conditional' agenda power. Tsebelis' view has been challenged in several articles indicating that the author does not account for the Commission, which has the monopoly right of initiative in most EU legislative procedures as well as the possibility to ignore Parliament's amendments by not including them in a revised position (see Moser, 1997; Steunenberg, 1994, and Crombez, 1996). Similarly, the importance of Parliament in the codecision procedure is debated since some argue that it has lost some of its power in comparison to the cooperation procedure (Tsebelis, 1997; Tsebelis and Garrett, 2000), while others claim

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that this procedure has increased Parliament's ability to affect EU policy (Crombez, 2000; Steunenberg, 2000; Corbett, 2000, 2001).

In this chapter we aim to address this discussion on the role of Parliament in the European Union by focusing on actual decisions made by the European Union. An empirical analysis of the influence ('power in action') of different actors bears the risk that the possible influence of an actor is confused with its preferences. Whenever an actor is known to prefer some outcome which appears to be the actual outcome of a decision-making process, it is not clear whether this is due to this actor's abilities or the coincidence that this actor was at this position at the right moment. As suggested by Barry (1980a, 1980b), we need to distinguish between *decisiveness* and *luck* in any analysis of decision-making. Decisiveness refers to the impact an actor has on the outcome, which is the combined result of the actor's preferences and capabilities. Luck reflects coincidence, which is basically masked by the actor's preferences. If Parliament is advocating a policy which is eventually set by the Council, it is not clear whether this is due to Parliament's role in the decision-making process or to luck.

To tackle the need to distinguish between decisiveness and luck, we will base our empirical analysis in this chapter on explanatory models of EU decision-making. By making explicit the mechanism according to which Parliament may affect the outcomes of EU decision-making, we are able to point at the possible cause that induced the outcome to be close to the preferred position of Parliament or any of the other legislative actors. Knowing this cause, the similarity between an actor's preference and the actual outcome of legislative decision-making can be interpreted in terms of decisiveness. However, if this cause is not known or absent, there is no reason to assume that this actor has been decisive. He or she is lucky, a situation which may change when the circumstances in future decision-making processes will differ.

The data set for this analysis is based on the *Decision-Making in the European Union* project, which is more extensively discussed in the chapter on the Netherlands and Belgium. The empirical information refers to 62 legislative proposals which were negotiated by the EU. Furthermore, the cases refer to *consultation* and the current *codecision* procedure. In addition, these cases were discussed by the Council in the period from January 1999 to December 2000. To avoid politically uninteresting and possibly rather trivial cases which did not trigger any political conflict, proposals were only included if at least five lines of text were devoted to them in the European Union daily newspaper *Agence Europe*. This excluded proposals that were simply listed as one of the points on the agenda of a Council meeting. The data were collected using expert interviews in which policy problems were decomposed into the main controversial issues per proposal (Van den Bos, 1994: 54-6; Stokman et al., 2000: 133-7). This resulted in 162 issues that

have a decision outcome. On these issues, the ideal positions of the European Commission, the fifteen Council members and Parliament, as well as the position of the legislative outcome and the status quo were identified.

The chapter is structured as follows. After a discussion of the different views of Parliament's role in the EU legislative process, we evaluate the proximity of the European Union's political actors to the legislative outcome. We discuss and test different explanatory models of EU decision-making which have been developed in the literature. The models are based on the spatial theory of voting and on sequential games. They provide different specifications of the possible interactions between the main legislative actors in the Union. Finally, we discuss the empirical results of our empirical testing.

6.2 Views on Parliament's Legislative Abilities

To understand the power of the European Parliament in the EU legislative process, different models have been put forward that focus on a stylized representation of decision-making. One view regarding the power of the European Parliament vis-à-vis the other actors has been put forward by Tsebelis (1994) in which the author assesses the EP's legislative powers under the cooperation procedure. Although the cooperation procedure is not analyzed empirically in this chapter since for most policy sectors it has been replaced by codecision, the discussion of Parliament's role in the legislative process is relevant here.⁹² Tsebelis attributes substantial powers to Parliament which he assumes to be able to submit a take-it-or-leave-it proposal to the Council of the European Union. Applying a different sequence of play in his modeling, Moser (1996) contests Tsebelis' claim.⁹³ He concludes that Parliament's power is much more limited. The author stresses that Parliament has to act on a proposal of the Commission, while the Commission decides whether or not to include Parliament's amendments in its revised proposal. In Moser's view, the Commission, instead of Parliament, plays a much more important role in the decision-making process. In addition, this controversy illustrates that different game-theoretical designs may result in different conclusions regarding the relative capabilities of the Union's legislative actors.

⁹² After the entering into force of the Amsterdam Treaty, the cooperation procedure only applies to certain aspects of EMU, while codecision has replaced this legislative procedure in all other policy areas.

⁹³ Moser's (1996) line of reasoning is similar to the models developed by Steunenberg (1994) and Crombez (1996). See also Moser (1997) and, more recently, Laruelle (2002).

Although the differences in modeling for the new version of codecision are less pronounced than they are for the cooperation procedure, distinctions remain.⁹⁴ Contrary to most observers, Garrett (1995), Tsebelis (1997), and Tsebelis and Garrett (2000) suggest that the EP effectively lost decision-making power with a move from the cooperation to the codecision procedure. They argue that, while having the authority to set the legislative agenda under the cooperation procedure, the new procedure stripped Parliament of this power, replacing it with mere veto power. Tsebelis (1997: 29) states that Parliament's "ability to influence policy decisions (through conditional agenda-setting introduced by the cooperation procedure) is reduced". Crombez (2000: 366) criticizes this claim and argues that "the consecutive institutional reforms are moving the EU towards a genuinely bicameral system", i.e. Parliament gained control with each new Treaty. Corbett (2000: 377) states that "the statistics... imply that Parliament's influence on legislation is greater under codecision than under the cooperation procedure". Scully (1997b: 101) finds that "evidence from models of legislative bargaining and available empirical data reject the idea that the co-operation procedure places the EP in a more advantageous position than co-decision". He regards the formal model of the codecision procedure offered by Tsebelis and Garrett to be "incomplete and seriously flawed" and concludes that the procedure "enhances the EP's power relative to the other EU governing institutions" (1997a: 59). Again controversy arises concerning Parliament's role in the Union's legislative process, partly due to different ways of conceptualizing the legislative powers of the main actors.

To shed light on the empirical veracity of the competing theoretical claims on the power of the EP, a number of empirical studies that try to assess Parliament's ability to influence policy on the EU level have been put forward. There are, on the one hand, case studies which show that, although Parliament had policy preferences that were opposed to what the Council wanted, it nonetheless successfully managed to get its way (Earnshaw and Judge, 1993; Judge, Earnshaw, and Cowan, 1994; Golub, 1996; Jacobs, 1997; Hubschmid and Moser, 1997; Rittberger, 2000). Studies which follow a quantitative approach, on the other hand, make inferences on the basis of more representative samples. These studies, however, are mostly not linked to the theoretical accounts of the Union's legislative process (Golub, 1999; Schulz and König, 2000). More relevant and interesting is the research by

⁹⁴ Concerning codecision, a distinction can be made between the older procedure established by the Maastricht Treaty and the current procedure as introduced by the Amsterdam Treaty. The old codecision procedure received attention from Steunenberg (1994, 1997), Tsebelis (1995), Schneider (1995), Crombez (1997), and Scully (1997a, 1997b). As for the new codecision procedure, there exist analyses by Laruelle (2002), Steunenberg (1997), Crombez (2000), Rittberger (2000), and Tsebelis and Garrett (2000).

Kreppel (1999, 2002), Kreppel and Tsebelis (1999), Tsebelis and Kalandrakis (1999), and Tsebelis et al. (2001), which highlights Parliament's success rate in amending legislation in the interplay with the Commission and the Council. They show that Parliament, in a substantial number of instances, was able to introduce 'successful' amendments. However, the acceptance of amendments does not yet shed light on the role of the other legislative players in the Union and the extent to which they shape the outcome.

König and Pöter's paper (2001) is the only one so far that confronts hypotheses derived from the theoretical models of EU decision-making with quantitative data. Focusing on four proposals negotiated under the cooperation procedure, they find that "all approaches have a similarly high predictive power" (König and Pöter, 2001: 345). Unfortunately, this result does not shed much light on the differences between these models and thus how the Council, the Commission or Parliament shape EU policy. The question therefore remains how important Parliament is in the Union's legislative process.

6.3 The Location of Parliament: Empirical Evidence

To evaluate Parliament's role, we first focus on the proximity of the preferences of the various legislative actors to the final outcome of decision-making. Table 6.1 presents the average distance over all issues for each of the actors. In addition, we also computed the non-weighted per-dimension Council median as an aggregate measure for the position of the Council of Ministers. These distances present a first impression on how the different actors are located in the policy space.

Table 6.1. Average Distance between the *Outcome* and the Actors' Positions*

	CONSULTATION	CODECISION
<i>Council</i>	26.29 (94)	29.30 (68)
France	34.21 (91)	44.34 (67)
Germany	30.28 (90)	39.62 (68)
Italy	32.50 (86)	41.51 (65)
United Kingdom	32.43 (90)	31.47 (66)
Spain	32.36 (90)	40.07 (68)
Belgium	30.44 (86)	42.30 (66)
Greece	34.49 (82)	36.82 (60)
Netherlands	35.69 (88)	39.09 (66)
Portugal	34.73 (89)	34.61 (61)
Austria	25.54 (74)	37.18 (61)
Sweden	29.88 (88)	24.95 (64)
Denmark	29.27 (85)	31.84 (63)
Ireland	32.00 (82)	29.28 (64)
Finland	26.84 (85)	28.37 (63)
Luxembourg	30.39 (71)	33.82 (61)
<i>Commission</i>	34.10 (90)	37.85 (68)
<i>Parliament</i>	33.83 (70)	35.62 (61)

* Number of issues in parentheses.

The table shows that for both consultation as well as codecision the scores for countries such as Sweden and Finland are smaller than the scores for France and Germany who, together with the United Kingdom, are regarded as the most powerful members of the Union.⁹⁵ These results are in line with the findings presented by Mattila and Lane (2001: 45) on the Member States' voting behavior in the Council of Ministers.⁹⁶ In addition, the results show that Parliament, which is usually considered to be much more decisive under codecision than under consultation (a procedure in which Parliament only presents its view to the Council), is closer to the outcome under consultation than under codecision.

To get a preliminary understanding of whether the success of the EP is primarily derived from its own power or whether it is based on a certain preference distribution among the EU actors, let us compare the average

⁹⁵ The Amsterdam Treaty specifies that France, Germany, and the UK have ten votes each compared to four votes for Sweden and three for Finland.

⁹⁶ Note that Mattila and Lane's (2001) analysis focuses on the Council members only. See Pennings (2002) for an analysis on the EU policy space based on the manifestos of party groupings in the European Parliament. However, Pennings' analysis does not provide information concerning the positions of the Commission or the Council members.

distance between the position of Parliament and the other actor positions both for consultation as well as for codecision. These distances are presented in Table 6.2.

Table 6.2. Average Distance between the Position of *Parliament* and the Other Actors' Positions*

	CONSULTATION	CODECISION
<i>Council</i>	33.22 (72)	42.45 (65)
France	40.91 (71)	38.91 (64)
Germany	42.90 (71)	56.52 (65)
Italy	33.03 (67)	40.06 (62)
United Kingdom	38.51 (71)	54.00 (63)
Spain	38.76 (70)	42.12 (65)
Belgium	34.84 (70)	34.27 (63)
Greece	36.31 (64)	45.93 (57)
Netherlands	42.60 (70)	41.14 (63)
Portugal	33.73 (71)	47.76 (58)
Austria	35.78 (60)	53.50 (60)
Sweden	34.30 (71)	41.95 (61)
Denmark	42.58 (69)	38.77 (60)
Ireland	37.05 (66)	45.00 (61)
Finland	34.04 (68)	41.02 (60)
Luxembourg	39.55 (56)	46.34 (60)
<i>Commission</i>	31.29 (72)	39.92 (65)

* Number of issues in parentheses.

What is remarkable is that there is a rather large difference between the proximity of the European Parliament and the Council as a whole under the two procedures. For consultation the distance is smaller with 33.2, compared to the average distance of 42.5 found for codecision. In addition, under the codecision procedure, the preferences of the EP and those of Germany and the UK appear to be especially divergent. These results seem to suggest that under codecision Parliament and the Council are much more divided.

The next step is to focus on the different preference configurations of the actors. Table 6.3 displays different configurations that are present in the data set. In the table we concentrate on three different patterns: one in which the Council median position is located between the most preferred positions of the Commission and Parliament with either Parliament or the Commission as the most 'progressive' actor (i.e. the actor with a preferred position furthest away from the status quo), one in which the Commission is most central, and one in which Parliament has a most preferred position between the others. The position of the Council is approached as the non-

weighted per issue median in the Council, which is a rather general measure of the Council's aggregate position. The column on the right-hand side presents the ratio between the percentages of the frequencies for three main types of configurations (that is, the Council, the Commission, or Parliament as the central actor).

Table 6.3. Frequency of Preference Configurations of the Main EU Legislative Actors

PREFERENCE CONFIGURATION*	CONSULTATION (99)	CODECISION (75)	PERCENTAGE RATIO**
Council median between Commission and Parliament - Parliament most progressive - Commission most progressive	81 (83%) 47 34	60 (80%) 33 27	1.04
Commission between Parliament and the Council median - Parliament most progressive - Council most progressive	93 (94%) 67 26	65 (87%) 42 23	1.08
Parliament between the Commission and the Council median - Council most progressive - Commission most progressive	75 (77%) 27 48	43 (57%) 15 28	1.32

* The preference configuration includes the ideal position of the actors that is located at its lower or upper boundary; 'progressive' is defined as the actor with an ideal position most distant from the status quo.

** The percentage ration is the relative number of times a specific configuration is found for the consultation procedure divided by the relative number of times this configuration is found for codecision.

The table indicates that under the consultation procedure Parliament is most frequently located at the center of the preference configuration. The ratio here is 1.32 compared to 1.04 and 1.08 for the cases that one of the other actors is located between the two others. This finding, together with the fact that the outcome of EU legislative decision-making under consultation is largely a function of Council-Commission interplay, is responsible for the

closeness of Parliament's position to the outcome under the consultation procedure. Under the codecision procedure in which Parliament has more legislative authority, its preferences are relatively more extreme. Either the Council or the Commission occupies the center position. Consequently, Parliament now faces more difficulty in reaching an outcome that is close to its most preferred position.

However, facing more difficulty in achieving a favorable result does not mean that Parliament is less powerful. Here we enter again the discussion on power and luck. While Parliament might be rather *lucky* under the preference configurations found for the consultation procedure, its increased *legislative abilities* under the codecision procedure might be masked by its more extreme policy preference. By solely using standard statistical techniques, we are not able to distinguish between power and luck. We therefore turn to *explanatory* models of the Union's legislative process to examine which actors might be held responsible for the outcomes that were found.

6.4 Explanatory Models of the EU Legislative Process

To investigate the causal factors that could be held responsible for the legislative outcomes found for the consultation and the codecision procedure, we will analyze a number of models that specify different ways in which decisions are made. Each model points at different actors who are the determining force of these decisions and thus could be regarded as the ones that are responsible for these outcomes.

6.4.1 Consultation

We start with four models representing the consultation procedure. Three models are *baseline models* which simply state that it is either the Commission (model 1), the Council (model 2), or Parliament (model 3) which unilaterally decides the outcome of the European legislative decision process. In the case that the Council decides on its own, we assume, as suggested by Steunenberg and Dimitrova (1999), that the Council Presidency submits a proposal to the other Council members for approval. Taking such as the Council Presidency as the one who shapes the Council's agenda links to various observations of EU decision-making, including the empirical work by Garman and Hilditch (1998), who found that the Presidency is the central actor in shaping the Council position.⁹⁷

⁹⁷ This finding is in line with recent analyses of Kollman (2003), Schout (1998) and Vanhoonacker and Schout (2002) who suggest that the Council Presidency may

The three baseline models relate, in some way, to the consultation procedure. The Commission and the Council have substantial decision-making rights under the consultation procedure, while Parliament's role is rather limited. The Commission drafts the initial proposal (agenda-setting power), which has to be accepted by the Council (decision-making power). If the Council prefers some changes, it could amend the Commission proposal by unanimity. Parliament may only present its opinion on the Commission proposal in the form of amendments, which could be included in the Commission's revised proposal in as far as the Commission prefers these changes. Based on this allocation of decision-making rights, the Commission and the Council seem to be the more powerful actors under this procedure, while Parliament only has a limited ability to affect the outcome.

The last model (model 4) is based on a theoretical account found in the EU literature. It assumes a sequence of play in which the Commission starts the legislative process and drafts the initial proposal, which is submitted to the Council. In the next stages the Council, which has the possibility of amending the Commission proposal, takes a decision whether or not to accept new legislation. We assume that the Presidency considers whether or not to amend the Commission proposal in the second stage and submits the proposal, possibly amended, to the other Council members. In the third and last stage, the Council members take a final vote on the proposal. If the proposal is amended, the Council has to agree by *unanimity*. If the Council cannot agree on amendments, or the Presidency did not propose an amendment, the Council votes on the Commission proposal in the last stage. Depending on the requirement as specified in the treaties, a *qualified majority* or *unanimity* has to be formed.⁹⁸ If the Commission proposal lacks such support, the *status quo* prevails.

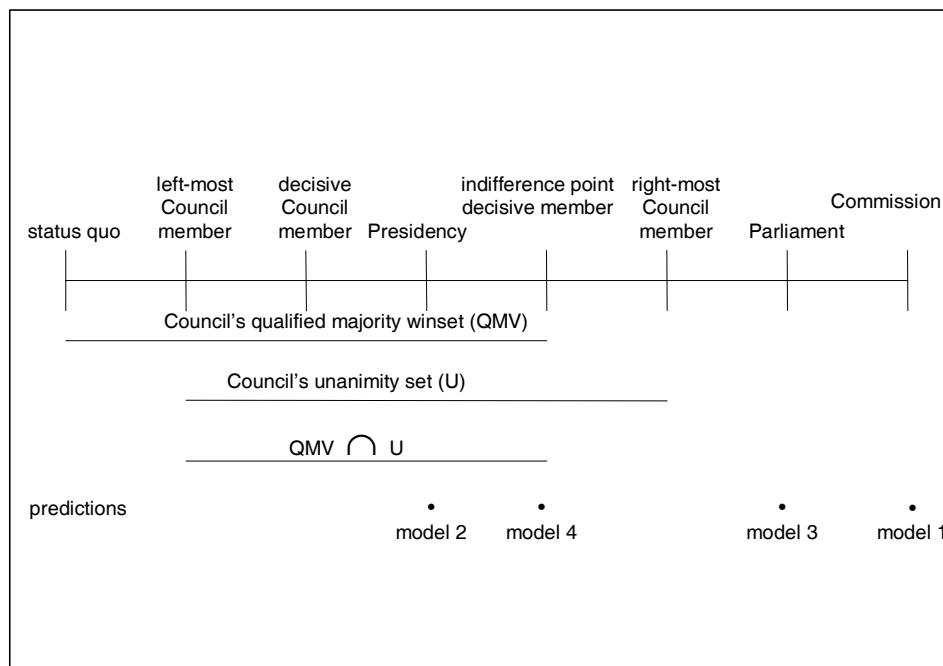
This sequential model can be solved applying backward induction, which implies that starting at the last stage of the game one aims to determine the proposal that will be issued by the Commission in the first stage. Since the Commission is assumed to behave strategically, it only issues a proposal

advocate its own national interest. See also Kirchner (1992), Craig and De Búrca (1998: 59), Westlake (1995: 336), and Hix (1999: 56-98). Drawing on his personal experience as an official working on behalf of Parliament, Shackleton (2000: 333-6) indicates that, as part of the negotiations under the codecision procedure, the main actors which prepare the draft text for the conciliation committee are the Council Presidency and Parliament. Although this observation refers to the codecision procedure, it illustrates the importance of the Council Presidency for the functioning of the Council.

⁹⁸ The predictions account for the Council's voting rule, i.e. either quality majority or unanimity. The results for these subgroups are not presented separately since it further reduces the number of cases in the empirical research. In addition, the focus in this chapter lies on the main institutional features of the different EU legislative procedures and in particular the role of Parliament.

that leads to the best possible result for itself. In this game, this proposal is shaped by two factors. First, the Commission has to have the support of a sufficient number of Council members in order to adopt its preferred proposal as EU law, as indicated by the last stage. In the following we will limit our attention to the qualified majority version of the consultation procedure, although in the empirical analysis we will also include decision-making under unanimity voting in the Council. Second, the Commission wants to avoid its proposal being shifted away from its preferred position by the Council Presidency in the second stage. It therefore drafts a proposal that cannot be changed by unanimity (which includes the Presidency). Based on these two factors, the model predicts that the Commission chooses its best possible proposal that is qualified majority preferred *and* cannot be amended by a unanimous Council.

**Figure 6.1. The Consultation Procedure:
Preferences of the Commission, the Council Members and Parliament**



The logic of the model can be illustrated with the one-dimensional preference configuration in Figure 6.1. All Council members as well as the Commission have a most preferred position to the right of the *status quo*. As indicated in the Figure, the ‘decisive’ Council member in case of qualified majority voting is found to the right of the left-most Council member (and, of course, to the left of the right-most Council member). As indicated, the Council accepts in the last stage all proposals that are in its *qualified*

majority win set, that is, in the set of points a qualified majority in the Council prefers to the *status quo* (i.e. QMV). This set indicates the policies that, in principle, are feasible to the Commission, which is allowed to make the initial proposal away from the *status quo*. In the one-dimensional example, as presented in the Figure, the qualified majority win set is based on the preference of a single decisive player and includes all points from the interval between the *status quo* and the decisive player's point of indifference to the *status quo*.

The next consideration is that the Council could agree on amendments. If the Presidency prefers a change, amendments require unanimity in the Council. A unanimous vote could be formed against proposals that are not found in its *unanimity set*. This set, which is defined as those points that cannot be changed by a unanimous vote, is equal to the points between the left-most and right-most Council members in Figure 6.1 (and indicated as U). If the Commission proposal is not in the unanimity set, the Presidency may introduce an amendment. If it is, the Presidency as well as the other Council members cannot change the Commission proposal.

Finally, and in the first stage of the game, the Commission considers its options and makes its best proposal so that no amendments are possible and the policy is qualified majority preferred. The policies that satisfy these criteria are found in the subset of the qualified majority win set and the unanimity set (i.e. $QMV \cap U$), which, for the configuration in the Figure, is equal to the unanimity set. Selecting its best policy, the Commission chooses a policy equal to the position of the right-most Council member, since this option is closest to its most preferred position.

Model 4 thus predicts as the outcome a policy equal to the position of the right-most and, from the perspective of the *status quo*, the most progressive Council member. In contrast, the baseline models take the most preferred position of the Commission (model 1), the Council median (model 2), or the position of Parliament (model 3) as the outcome, as illustrated in Figure 6.1. In order to provide an explanation of decision-making under this procedure, the more theoretically grounded model should do better than the baseline models.

6.4.2 Codecision

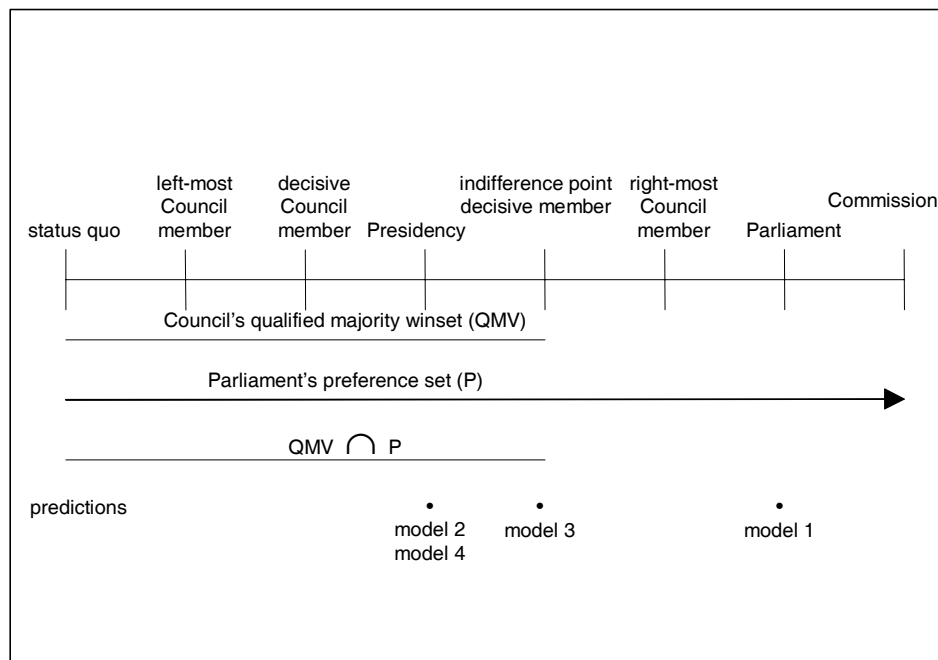
With regard to the codecision procedure, we test four different models. Two models can be regarded as baseline models, since they express rather extreme views on the legislative process. The first model assumes that Parliament sets EU policy (model 1), while the second model assumes that EU policy is the sole result of Council decision-making (model 2). In this model, as in the case of the consultation procedure, the Council Presidency presents a proposal to the other Council members, which they can accept or

reject. The two other models we use are based on the theoretical claims of Crombez (2000) and Steunenberg and Dimitrova (1999).

The first more elaborated model is based on the work of Crombez (2000) and assumes that Parliament takes the lead in the codecision procedure, and especially in the conciliation committee. Having agenda-setting power, Parliament presents a proposal to the Council. The Council can either accept or reject Parliament's proposal, while further amendments on Parliament's proposal are not possible. The equilibrium policy for this model, which we label model 3, is the result of Parliament's best choice given that the outcome is preferred by a qualified majority in the Council. Without the Council's support, Parliament's proposal will be rejected, and both legislative actors will be faced with the *status quo*.

The Council's qualified majority win set, QMV , is illustrated in Figure 6.2, which uses the same preference configuration as in Figure 6.1. Although we also use more dimensional policy spaces in our empirical analysis, a one-dimensional policy space is used in order to keep the presentation as simple as possible. Selecting its best policy, and given the Council's qualified majority win set, Parliament chooses a policy equal to the position of the right-most Council member. This option is closest to its most preferred position.

**Figure 6.2. The Codecision Procedure:
Preferences of the Council Members and Parliament**



The alternative is based on Steunenberg and Dimitrova (1999), which we label model 4. In this model, the Council Presidency starts the process with the drafting of a bill (agenda-setting power), which is put to a vote in the Council. After agreement, the Council proposal is submitted to Parliament, which has the possibility to veto the bill (veto power). Parliament, however, does not have the possibility to amend the Council proposal. Applying backward induction, the equilibrium in this case is the Presidency's best choice given that the outcome is preferred by a qualified majority in the Council *and* Parliament. Parliament's support is necessary, otherwise the proposal will be vetoed in the last stage of the game. This means that any acceptable proposal has to be found in Parliament's preference set, P , which consists of all proposals Parliament prefers to the *status quo*. This set is illustrated in Figure 2. The support of a qualified majority in the Council is also necessary, otherwise the Presidency's draft proposal will not pass the Council in the second stage. This implies that the proposal has to be part of the Council's qualified majority win set (i.e. QMV). Both conditions form the constraint the Presidency faces in making its proposal in the first stage. Based on the configuration in Figure 2, the Presidency selects its own ideal position since it is found in both QMV and P (i.e. $QMV \cap P$).

Figure 2 also presents the predictions for the two baseline models, next to both, more theoretically grounded models. Model 1 predicts the most preferred position of Parliament. Model 2, in this case, yields the same prediction as model 4, that is, the ideal position of the Presidency.

6.5 Data Management

In order to apply the data from the *Decision-Making in the European Union* project, we draw on several additional assumptions. A first assumption concerns the treatment of missing reference points or the legislative *status quo*, which forms the basis for the calculation of individual preference sets and the win set. For only 134 issues a reference point could be identified (83% of the total number of issues). One reason for these missing values is that some issues in the data set specify legislative amendments to other issues within a proposal. For these issues, no *status quo* can be specified since they are substantively linked to the entering into force of provisions laid down in other issues. Another reason is, as suggested by Dimitrova and Steunenberg (2001), that a single status quo point does not exist at the European level since existing policy has been made at the national level. In this circumstance, multiple reference points may exist due to differences in the Member States' domestic legislative settings. Finally, of course, a reason might be that the expert could not recall the status quo as part of the issues identified within the proposal. We decided to drop the issues for which the status quo is missing.

A second problem concerns the treatment of Council members who are ‘neutral’, that is, for whom the expert was not able to indicate a preference during the interviews. The fact that the expert did not allocate a value to these members does not necessarily imply that these values should be regarded as ‘missing’. The ‘neutral’ Council members may not have had a strong opinion on the issues at stake. Dropping these members and possibly lowering the voting threshold for the remaining Council members would be inappropriate since a large number of cases concern proposals with more than one (issue) dimension. Often, an actor is ‘neutral’ for only one of the issues, while this actor clearly prefers a specific policy on one of the other dimensions. In this chapter we followed a different approach based on an interpretation of why these actors may not have stated their preferences at the preparatory stage. We assume that actors did not declare their preference for an issue and go along with the initial *Commission* proposal, which is released for both the consultation and the codecision procedure. Preferring the Commission proposal, the Council member does not prefer to ‘deviate’ and, therefore, did not clearly express a position which could be registered by the expert. This choice implies that ‘neutral’ Council members do not block proposals that are issued by the Commission and, secondly, it avoids neutral actors substantially affecting the Council qualified majority win set.⁹⁹

The last issue concerns the relationship between different policy dimensions in utility terms. In our analysis we assume that all issues are of equal salience to the actors. In other words, we assume that utility will decrease in the same way for every unit change in the outcome space. For a two-dimensional space this means that indifference curves are circular. In a three-dimensional space they are spheres. In addition, we will apply our model to policy spaces up to three dimensions.¹⁰⁰

6.6 *Empirical Analysis*

Based on the additional assumptions dealing with the data, we calculated the outcomes as predicted by the various models and compared them with the actual outcomes of the Union’s decision-making process. Table 6.4 displays in the third column the average errors for the different models we tested.

⁹⁹ In order to avoid that the analysis might be too much affected by imputing data for missing values concerning the preferences of Council members, it was decided to drop issues with more than four ‘neutral’ Council members.

¹⁰⁰ Higher policy spaces are reduced due to computational reasons. For cases of more than three dimensions within one issue, the mean salience of each issue in the proposal was calculated over all the actors and then only the three issues with the highest mean salience were included.

This error is the average distance between the outcome as predicted and the outcome as it was actually decided upon by the legislative actors for the available cases in the data set (as presented in the second column of the table).¹⁰¹

Table 6.4. Model Predictions for EU Legislative Decision-Making

LEGISLATIVE PROCEDURES AND MODELS	NUMBER OF ISSUES	MEAN ISSUE ERROR*
<i>Consultation procedure**</i>		
Model 1: Commission decides alone	90	34.1 (34.3)
Model 2: Council decides alone	59	36.0 (33.0)
Model 3: Parliament decides alone	70	33.8 (37.7)
Model 4: Commission submits proposal to Council	59	32.8 (33.4)
<i>Codecision procedure***</i>		
Model 1: Parliament decides alone	61	35.6 (36.5)
Model 2: Council decides alone	51	34.2 (29.1)
Model 3: Parliament submits proposal to Council	51	28.3 (28.7)
Model 4: Council submits proposal to Parliament	51	34.2 (29.1)

* Standard deviation in parentheses.

** A Wilcoxon signed rank test yields no significant differences between the models for the consultation procedure.

*** A Wilcoxon signed rank test yields the following results for the codecision procedure: for *model 1* versus *model 3*: $p > z = 0.014$ (difference at the 5% level); for *model 1* versus *models 2 and 4*: $p > z = 0.546$ (no significant difference); for *model 3* versus *models 2 and 4*: $p > z = 0.077$ (difference at the 10% level).

We first focused on the *consultation* procedure. As indicated, the models in which the Commission (model 1), the Council (model 2), or Parliament (model 3) decides, are regarded as baseline models. In addition, we developed a more theoretically grounded model, which focuses on the interaction between the Commission and the Council (model 4). We hoped that this model would do better than the baseline models. The results, however, indicate that, although the mean error of model 4 seems to be slightly smaller, the error terms do not differ in a statistically significant

¹⁰¹ These distances are computed as the mean absolute error over all the issues. To check the robustness of the estimates, the mean Euclidean error over all the proposals was calculated. The results of the computations appear to be rather similar.

way.¹⁰² In other words, none of the proposed models seems to provide a satisfactory explanation of the way in which decisions are reached under consultation. The fact that the model in which Parliament ‘sets’ the policy is not statistically different from the others, has to do with the fact that Parliament has rather centrally located preferences for the issues negotiated under the consultation procedure as we found in Section 3.

Comparing the models developed for the *codecision* procedure, the mean error of the model in which Parliament submits a proposal to the Council (model 3) turns out to be significantly smaller than the error terms of the other models. The models in which the Council submits a proposal to Parliament (model 4) or decides on its own (model 2) produce similar predictions, which do not significantly differ in terms of resulting error. Also the model in which Parliament is assumed to make decisions on its own without Council involvement (model 1) performs rather poorly and is significantly worse than model 3.

The fact that model 3 performs best implies that Parliament rather than the Council sets the political agenda under the *codecision* procedure. This may more specifically refer to the negotiations between both co-legislators as part of conciliation. The Council is still rather powerful since it has to accept Parliament’s proposal. This result is robust to changes regarding the additional assumptions which we used to perform the empirical testing.¹⁰³ Despite the fact that, on average, Parliament’s ideal position is more distant from the outcomes, as shown in Section 3 of the chapter, the impact of Parliament is more substantial on these cases. This is due to the complex interplay between the most preferred positions of both Parliament, the other legislative actors in the Union, and the status quo point. In addition, by knowing which actor is able to affect the resulting policy outcome, these models help in distinguishing between power and luck. Although, in view of its preferences, Parliament is clearly less lucky for the cases we analyzed, it was able to affect the final outcome as if it had the power of an agenda-setter in the negotiations with the Council.

¹⁰² To test whether our results are significantly different from each other, Wilcoxon signed-rank test was used which augments the traditional *t*-test. This has been done since the data are highly skewed and show high negative kurtosis, and because the sample size is rather small.

¹⁰³ The results prove stable when using a different strategy concerning missing preference values of Council members, e.g. using the preference of the most conservative member in the Council.

6.7 Conclusion

The role of the European Parliament in the Union's legislative process has been perceived rather differently in the literature on the EU, ranging from a political forum with limited power to a genuine co-legislator. We show in this chapter how Parliament has affected the content of EU legislation in the period 1999-2000 by using data on a large number of legislative proposals that have been decided under the consultation and the codecision procedure. In our research we paid attention to the difference between power and luck, which is important to empirical analyses of the role of political actors in the decision-making process. Power is approached as the capabilities of the political actors as reflected by their decision-making rights. These rights include the possibility to make the initial proposal (agenda-setting power) and to amend, approve, or veto a proposal. Luck is the incidental possibility of having a preference close to the final result so that the mistaken impression could arise that this actor exercised power in order to shape this result. However, without decision-making rights such an actor is just lucky. How decision-making rights translate into more favorable outcomes is explained by using game-theoretical models of the Union's legislative process. These models provide the causal link between preferences and outcomes. They point towards different institutional mechanisms that could be held accountable for the way in which preferences are transformed into EU policy.

In our empirical analysis of these models, in which we confronted the predictions made by the models with the actual outcomes as reached within the Union, we found the following results. First, in describing preferences, we found that the position taken by Parliament varies between different legislative procedures. When the consultation procedure is used, Parliament is located closer to the actual outcome than in the case of the codecision procedure. This finding is remarkable since one would expect that Parliament has more legislative abilities and would thus be able to pull the outcome closer to its most preferred position under codecision. However, this finding does not preclude *luck*, that is, the fact that Parliament 'just happened to have a preference' which is located close to the outcome decided upon by the Council. In addition, one could imagine that an actor who only has an 'advising' role in the legislative process announces a less extreme position, since it would otherwise be ignored by the Council members. A more 'constructive' opinion of Parliament in this case could be supported by some Council members and may lead to some change of the initial proposal. Under the codecision procedure, and especially during the negotiations in the conciliation committee, a more extreme position could be helpful in achieving a compromise which is closer to one's own preference. In this respect, Parliament's preferences as described by the expert could be a reflection of Parliament's different abilities under both legislative

procedures.¹⁰⁴ Still, even if Parliament anticipates its political weakness in the consultation procedure and presents only rather modest preferences, this does not make it a powerful player. Our findings suggest that the issues which were negotiated under consultation and codecision may substantially differ in the sense that the Member States as well as Parliament have rather different views on these issues.

Second, in predicting actual outcomes, we found that the models proposed for the consultation procedure are not significantly different. More troubling is the fact that the model based on a representation of the interaction between the Commission and the Council does not differ from the baseline model in which Parliament determines the outcome. The fact that the latter model might be difficult to beat has to do with the fact that Parliament has rather centrally located preferences for the issues negotiated under this procedure. At the same time this does not explain why the Commission and the members of the Council only passed legislation that is found in the ‘center’ of their preference configuration. The procedural models as used in this chapter expect more shifts in outcome in the direction of the preferences of the players that have more substantial decision-making rights in the legislative process. This result suggests that procedural models may emphasize the differences between political actors too much, while these actors might be more inclined to explore the ‘common ground’ between them.

Third, for the codecision procedure we found that Parliament does have an important say in the drafting of the legislative proposal. Although Parliament’s preferences are less close to the preferences of the other political actors, the model in which Parliament makes a legislative offer to the Council appears to predict best the outcomes found for this procedure. The other alternatives, including a model in which the Council makes an offer to Parliament, are doing less well. This result suggests that Parliament, next to the Council, has substantial impact on the policies set under the codecision procedure. This result is in line with the theoretical claims made by Crombez (2000), Moser (1996, 1997) and Scully (1997a, 1997b), who suggest that Parliament can be regarded as genuine co-legislator under this procedure. Still, the Council remains an important decision-making body as well. The more successful model stresses the *interaction* between Parliament and the Council in producing legislative outcomes. In the model, the Council still has to approve the proposals made by Parliament before they can be enacted as law. At the same time, this chapter empirically specifies the claims stemming from the “revisionist approach” to EU politics (Tsebelis et al., 2001: 573), which posits that the Council is the

¹⁰⁴ See also Mokken et al. (2000) who noted a similar effect for the power of stakeholders in the field of structural funds. Based on their analysis, it seems that only powerful actors can permit extreme positions as extreme positions of weaker actors will be neglected.

dominant decision-making body (Tsebelis, 1997; Tsebelis and Garrett, 2000).

More generally, the results in this chapter indicate that in order to understand legislative decision-making, it is important to take into account the abilities as well as the preferences of the political actors involved. An analysis solely based on actor preferences, in which the closeness to the outcome is regarded as a token of influence, confuses the distinction between power and luck. It is this combination of abilities and preferences which affects the European Parliament's relative performance in the EU legislative process.

7 Evaluating the Predictive Power of a Procedural Model for the European Union Legislative Process^{*}

7.1 Introduction

The previous chapter looked at different model specifications which relate to the hypothesized roles of the main institutional actors in the European Union regarding the legislative process. Rather than looking at different procedural models, this chapter analyses the European Union legislative process by comparing the predictions gained from a procedural model with the power of a much simpler model that is informed by the median voter theorem. The finding of the analysis shows that the simpler model outperforms the more complex one. The chapter proceeds by deriving the hypothesis that the more salient an issue is for EU policymakers, the higher the probability becomes that the procedural model outperforms the median model. The test results show that this hypothesis can be confirmed.

In the academic literature on European Union legislative decision-making, there is an ongoing debate taking place which tries to determine the relative strengths of the European Parliament, the European Commission, and the EU Member States in the Union's policy process with the help of sequential game-theoretic models (Scully, 1997a, 1997b; Tsebelis and Garrett, 1997a). Although there have been numerous theoretical studies on this topic, work that tries to analyze the empirical veracity of the different existing approaches is still rather scarce.¹⁰⁵ An important objective for political science and for science in general, however, is to find out how useful a certain theoretical framework is in explaining and understanding social reality.

For the domain of European Union policymaking, a series of formal models, so-called *procedural models*, also referred to as *spatial voting models*,¹⁰⁶ have been put forward which try to enhance our understanding of how the policy-process on the European level works (Hix, 1999: 88-94). While the existing theoretical accounts differ in certain aspects from one another, all the procedural models which have been advanced to explain EU legislative politics combine two important features. The first one is a close reading of the European Union treaties in order to precisely specify the hypothesized policy process or form of the game. The second feature is an analytical framework which is based on the idea that an agenda-setter, be it

^{*} Forthcoming in the *Journal of Legislative Studies*. I would like to thank the three anonymous reviewers for their helpful comments.

¹⁰⁵ For a summary of empirical studies on EU decision-making and on rational institutionalist theory applied to the EU, see Wallace and Wallace (2000: 69, 80-1), Rosamond (2000: 130-56), and Hix (1999: 56-98).

¹⁰⁶ The two terms are being used interchangeably throughout this book.

the Commission, the Parliament, or one of the Member States, can submit a take-it-or-leave-it proposal to the other institutional actors. In the formal literature on decision-making, the idea that the policy process is instigated by an agenda-setter can be traced back to Shepsle's concept of *structure-induced equilibrium* (Shepsle, 1979; Ostrom, 1986). The solution concept of structure-induced equilibrium has been used extensively in the more formal literature on EU policymaking because it lends itself particularly well for analyzing situations that are characterized by a highly institutionalized decision context, such as the ones that are found in parliamentary systems. Achen¹⁰⁷ compares the predictive power of one of their models with the predictions that are gained from a *null model* which is derived from the much simpler concept of Duncan Black's *median voter theorem* (Black, 1958).

The theoretical motive behind this chapter is to find out whether it is possible to derive certain conditions under which the procedural model approach performs better than the less sophisticated median model. To do so, the chapter proceeds in the following way. The next section provides a short introduction to the procedural modeling approach. The third section presents the research design, summarizes the idea behind comparing the procedural model with a null model based on the median voter theorem, and sums up the findings of the model comparison. Section four derives conditions under which we might expect the procedural approach to outperform the median model. The error terms of the two models are then compared with each other in light of a hypothesis on relative issue salience. The final section concludes the chapter by summarizing the results and by outlining avenues for future research.

7.2 A Procedural Model of the EU Legislative Process

The procedural or spatial voting approach to European Union legislative decision-making is based on Shepsle's (1979) concept of structure-induced equilibrium. While this solution concept was originally intended to

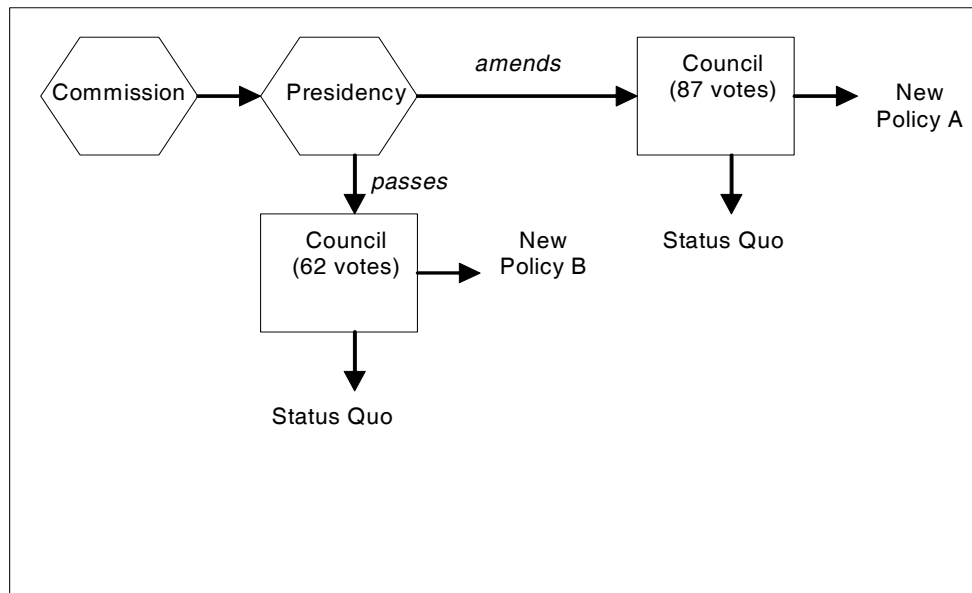
¹⁰⁷ See Achen (2003a). Another possible null model for spatial models is discussed by Achen (2003b). This model would be based on the *mean*, or *average* position within a committee. For the present analysis, the *median* is preferable over the *mean* because it is rooted firmly in the spatial modeling literature, and because, just as the procedural approach, it is based on non-cooperative game theory. At the same time, it uses one particular mode of decision-making, in this case simple majority voting, as the decision rule. Therefore, while representing the null hypothesis, it does not assume EU legislative politics to be a completely random process. Rather, just like the more complex procedural model does, this model assumes actor preferences and institutions to be the building blocks for analyzing legislative decision-making (Shepsle and Bonchek, 1997: 115).

contribute to the highly abstract literature on stability-inducing properties for multi-dimensional policy spaces (Shepsle and Bonchek, 1997: 82-136; Hinich and Munger, 1997: 64-9), the idea that an agenda-setter might commence the policy process in a legislative setting found immediate use in applied explanatory models of political and organizational decision-making. It was regarded as particularly useful to enhance the understanding of the legislative process of the European Union (Steunenberg, 1994; Tsebelis, 1994; Crombez, 1996).

In order to employ the theoretical approach for the European Union legislative domain, the theoretical approach has been adapted by including as players the fifteen Member States plus the European Commission and the European Parliament, by adjusting the dimensionality of the issue space to allow for package deals and logrolling by utilizing multi-dimensionality, and by allowing the possibility to overrule the agenda-setter by applying heightened majority threshold levels. For instance, under the consultation procedure linked to qualified majority voting, the models try to accommodate the fact that the Council is able to unanimously overrule a legislative bill issued by the Commission (Kapteyn and VerLoren van Themaat, 1998: 192; Craig and De Búrca, 1998: 131-32, 142-143).

For the application of the modeling approach in combination with empirical information on EU policymaking, we have to make additional assumptions on who sets the agenda under the different procedures. Depending on the primary legal procedure, either the European Commission, or the Council Presidency, which is rotating every six months amongst the EU Member States, is regarded as an agenda-setter. The role of the Presidency in setting the agenda has been examined by Kirchner (1992), by Kollman (2003: 51-74), and by Tallberg (2003). Steunenberg and Dimitrova (1999) have formalized the idea. Note that the Presidency's power to propose is assumed to be fully effective under the codecision procedure. Under consultation, however, the Council only has the power to unanimously overrule a legislative bill issued by the European Commission. Figure 7.1 presents the sequence of play for the procedural model, thereby focusing as an example on the consultation procedure under the condition of Council qualified majority voting.

Figure 7.1. Sequence of Play for the Consultation Procedure



Under the Union's consultation procedure, the model starts by a move of the European Commission. The Commission has to propose a new legislative bill. Note that 'doing nothing' is not considered a possibility here, so that the Commission cannot simply opt for the status quo.¹⁰⁸ In the second stage of the game, the Presidency can amend the bill. It does amend the proposal if it realizes that such an amended proposal might be supported by a unanimous Council. The last move then belongs to the Council as a whole which can vote the bill up or down.¹⁰⁹

The model can be solved numerically. We can test the theoretical account of EU decision-making outlined above against any other model by confronting each of them with empirical information on European legislative politics. The next section presents a research design for model comparison and presents findings concerning the overall predictive power of two different stylized characterizations of how the European Union policymaking process works.

¹⁰⁸ The model hereby follows Crombez (1996) and diverges from the account given by Steunenberg (1994). For a discussion on whether the Commission can be requested by the Council or by the EP to submit a proposal, see Craig and De Búrca (1998: 141-2).

¹⁰⁹ The model considers the Council to be a multi-member committee. For an analysis which is based on the unitary actor assumption, see Laruelle (2002).

7.3 *Research Design and Preliminary Findings*

Like any other theory that proposes a causal pattern of interaction between different factors, game-theoretic models which are applied to political decision-making claim to explain certain phenomena that occur in the real world. They therefore have to stand up against empirical testing.¹¹⁰ To be able to confirm that a certain hypothesized relationship does not hold, quantitative studies often make use of the concept of a so-called *null hypothesis* or *null model*.¹¹¹ For tests of game-theoretic models that are applied to a political choice situation, a similar concept should be employed to enable us to reject some formal account of political interaction (Bueno de Mesquita and Stokman, 1994). Achen (2003b) advances just such a model, which he refers as to a *predictive baseline*, for bargaining models. For cases in which decision-makers are able to trade issues against one another, he opts for the weighted mean as the model contender which has to be beaten by more sophisticated game-theoretic models.

Since the procedural model approach that is used in this chapter is based on non-cooperative game theory and, since it emphasizes the importance of the voting rule in a certain committee or an organization, the baseline model applied for testing this sort of model can be based on Black's *median voter theorem*—or *Downsian* model, as Achen refers to it.¹¹² The median voter theorem states that, for a game represented by a one-dimensional policy space and with simple majority over pairs as the decision rule, the equilibrium outcome will be located exactly at the ideal position of the median voter within the committee. As input factors, the model is based only on the preferences of the different actors involved. The model always predicts the median. It therefore displays a natural tendency to point towards 'central' outcomes for a policy process. Although very simple, it can serve as a frame of reference for more sophisticated accounts of how political institutions work. For this analysis, the model is referred to as the median model.

To compare the empirical performance of the procedural model with the one of the median model, we have to employ information on real-world EU legislative decision-making. The data necessary to compute the model predictions have been extracted from the *Decision-Making in the European*

¹¹⁰ See Kreps (1990: 7). Note, however, that in the field of game theory there also exists 'pure theory', models which only constitute a basis for further theorizing without immediate applications to real-world phenomena. See Morton (1999: 60-1).

¹¹¹ Such a model refers to the hypothesis that a certain model factor, in this case the decision-making procedures of the European Union, have no statistically significant effect on the outcome. See Tabachnick and Fidell (1996: 34-6).

¹¹² Note, however, that Downs' (1957) model deals rather with party electoral competition than with committee voting.

Union (DEU) data set. The DEU data set is based on quantitative expert interviews. It consists of 174 observations, where each observation represents one contentious legislative issue that was negotiated by the Council during the time period from January 1999 to December 2001.¹¹³ Numerical estimates exist for the outcomes of the different decision processes on 162 of the 174 issues. The mean for the *outcome* variable displays a central tendency with 54 on the 0—100 continuum. This indicates that the legislative outcome on the European level is located approximately in the middle of what the different legislative actors want. For the current analysis, the decision was taken to compare the mean of the issue-per-issue error for the procedural model and for the median model. Table 7.1 displays the average model errors.

Table 7.1. Average Model Errors*

MODEL	OBSERVATIONS	MEAN ERROR	STANDARD DEVIATION
Procedural	110	32.08	31.37
Median	162	27.56	29.81

* Wilcoxon signed-rank test: $p = 0.1857$; t -test: $p = 0.2232$.

What is striking is that the median model is able to predict results for many more issues than the spatial voting model does. While the median model gives predictions for 162 issues, the procedural model only computes values for 110. One reason for this discrepancy is that the computations for the procedural model rely on a variable that represents a measure for the legislative *status quo*. The DEU data set, however, only includes 134 issues which include such a parameter.¹¹⁴ A second reason is that the software which has been used to compute the predicted outcomes for the procedural model allows for a maximum number of three dimensions.¹¹⁵

¹¹³ See Thomson et al. (2004b). For an introduction to the data-gathering method, see Bueno de Mesquita and Stokman (1994) and Bueno de Mesquita (2002). For the DEU data set, in order to measure whether an issue is politically contentious, the European Union daily news bulletin *Agence Europe* was consulted. Estimates on actor positions were normalized to better fit the comparative analysis.

¹¹⁴ Values for the status quo variable are missing on many issues because of the fact that some of the corresponding observations in the data set represent *new policies* on the level of the European Union. This means that it is not possible to give a numerical estimate for the situation which would apply in case the policymakers would not be able to agree on some new European Union legal measure.

¹¹⁵ For cases with more than three dimensions, the salience estimates of all actors for each issue are aggregated and only the three most salient issues are used. The Council amendment option for consultation is computed differently than prescribed by the models. Here, to amend a Commission proposal, the Council unanimity winset, and not the unanimity set, is computed. The second-order agenda-setter, the

Comparing the average errors for the predicted results of both models, we find that, overall, the median model predicts better than the voting model. It does so with a mean difference of about 4.5. Since, however, the procedural model is more sophisticated than the median model—it makes use of additional assumptions concerning the decision space, the functional differentiation between actors in agenda-setters and veto-payers, and the game form—we would have expected the procedural model to do much better than it does here.¹¹⁶ So what went ‘wrong’? Why is the model not able to outperform the null model? Should the procedural model now be rejected, if only for the data at hand? Or are there situations under which the procedural model still performs better than the median model? Finding an answer to this question will be the subject of the following section.

7.4 *Interpretation of the Results*

To find out whether there are conditions under which the voting model works better than the median model, it is useful to report on the specific assumptions of the procedural approach and compare them with other game-theoretic work. A hypothesis can then be derived which highlights conditions under which the different models might be expected to predict better.

The original idea behind the procedural spatial voting model, which is based on structure-induced equilibrium, was to *induce stability* for multidimensional policy settings. Since it had been found that the median voter theorem ceases to apply for higher-dimensional spaces which are not characterized by the existence of a median in all directions, the original framework for spatial modeling had to be extended (Hinich and Munger, 1997: 64-7). To be able to predict a decision outcome for multidimensional spaces, equilibria are based on the existence of structure-inducing agents in the decision-process, such as an agenda-setter who has the power to submit a *take-it-or-leave-it* proposal to a committee such as the Council of the EU (Shepsle, 1979). For such multidimensional spaces, however, the functions representing the different actors’ *indifference curves* to the status quo are

Council Presidency, then amends the proposal, whereas in the formal model, the Commission anticipates this move and submits a ‘non-amendable’ proposal. See Steunenberg (1994) and Crombez (1996). For a definition of the different sets, see Tsebelis (2002). Note that the result also holds for the models which are discussed in the chapter on the European Parliament, i.e. models which do take into account the unanimity winset.

¹¹⁶ Applying the Wilcoxon signed-rank test shows that the populations are statistically not clearly distinguishable from each other. This, however, might have to do with the limited number of cases that were used for this analysis.

elliptically shaped.¹¹⁷ The functional form represents the relationship between different policy issues.¹¹⁸

For an example, consider a situation characterized by two contentious issues, x and y . The distinct shape of this function will depend on the levels of issue importance, a and b , which an actor attributes to those two different issues. Note that only for the special case that occurs if both issues are equally important, $a = b$, will an actor's indifference curve represent a circle. For all situations in which one of the issues is more important than the other, such that $a \neq b$, the utility levels are elliptical but not circular. Since a political actor's indifference curve relates to the utility that some actor derives from some particular combination of the two issues x and y , the relationship of a against b can be interpreted as symbolizing the relative importance of the issues to some player (Hinich and Munger, 1997: 52-9).¹¹⁹ Interestingly, however, all current multidimensional applications of the procedural approach to the European Union legislative process, whether they are theoretically oriented, such as those of Tsebelis (1994), or in the form of testing designs such as the application proposed by König and Pöter (2001) or the one by Hubschmid and Moser (1997: 225-42), employ a configuration of circular indifference curves. The studies thereby implicitly assume that all the issues within a given decision situation are of equal importance to all the actors that take part in EU decision-making.¹²⁰

It is a well-known fact that introducing the concept of relative issue salience into game-theoretic models of decision-making can affect the models' predicted results (Coleman, 1972). Kadane (1972) and Kramer (1972) showed for spatial voting models that, on separate issues, if actors' preferences are symmetric and single-peaked, salience still does not matter. If, however, actors have to decide on some package deal that represents a set of two or more issues in a higher-dimensional space, the inclusion of salience can dramatically affect the situation and have a large impact on the equilibrium outcome of such a game. Buchanan and Tullock (1962) presented the case for bargaining games. The authors demonstrated that the greater the difference of the salience ratio over two issues, the higher the possibility for policy change by *log-rolling*, by trading one's own vote on an issue one cares little about for another actor's vote on an issue to which one attaches high salience. Figure 7.2 graphically depicts situations with equal (A) and unequal salience ratios (B) of two issues for two different actors.

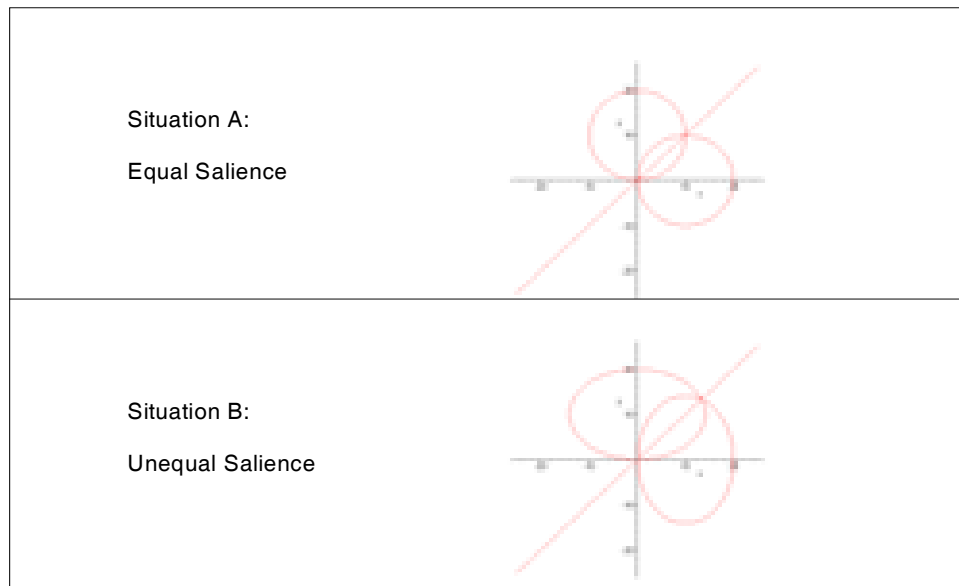
¹¹⁷ Note that this includes the possibility that they are circular.

¹¹⁸ The equation of the utility function U for some actor i over two issues, x and y , can be given as $U_i = \frac{1}{2} \frac{e^{(-ax^2)} e^{(-by^2)}}{\pi}$.

¹¹⁹ See also Enelow and Hinich (1984).

¹²⁰ For an overview of the theoretical literature, see Hix (1999).

Figure 7.2. Situations with Different Saliency Configurations



Note that the *winset*, the common set between the indifference curves of the actors which form this two-member committee, is larger for the second situation (B). This means that the set of points that can beat the legislative status quo is larger for this case than for situation (A). The importance of issue saliency for European Union policy-making has previously been recognized by Bueno de Mesquita and Stokman (1994). The authors integrate the concept into models of group decision-making to predict outcomes for legislative politics on the level of the Council of the EU.

The previous analysis for the procedural model was computed under the implicit assumption that all the issues within one legislative proposal are of equal saliency to all actors. However, since the assumption on issue saliency forms part of the model and since, as has been demonstrated, relative saliency matters for the results of the model calculations, the next step in the analysis will be to control for whether the inclusion of a saliency parameter has any empirical effect on whether the procedural model or the median model performs better in predicting the outcomes.

Issue saliency can be empirically controlled for in the following way. A measure is computed which adds all the actors' individual saliency estimates over each issue in the data set. This new measure is labeled *mean composite saliency* (MCS).¹²¹ We can distinguish between cases (a) for which the median model does better, (b) for cases where both models

¹²¹ The DEU data set provides a quantitative measure on how important a certain issue is for the political actors that are involved in a decision. For a discussion on the measurement of issue saliency, see also Van den Bos (1994: 55).

predict the same, and (c) for cases where the procedural model outperforms the median model. The cases are then grouped together. This strategy allows for checking whether MCS varies significantly between the situations in which one of the models predicts better than the other. Table 7.2 demonstrates the results of the comparison.¹²²

Table 7.2. Model Comparison by Mean Composite Salience

RELATIVE MODEL PERFORMANCE	OBSERVATIONS	MEAN COMPOSITE SALIENCE (MCS)	STANDARD DEVIATION
All issues	174	936.87	296.12
Procedural worse than Median (a)	98	898.57 (*)	296.73
Procedural equal to Median (b)	44	937.73	288.99
Procedural better than Median (c)	32	1052.97 (*)	281.86

(*) Kruskal-Wallis test: $p = 0.0172$.

(a) Includes issues for which the procedural model gives no prediction.

(b) Includes issues for which both models give no prediction.

The table displays information on relative model performance. The second column indicates that, for the total sample of 174 issues, 98 are predicted better by the median model, 44 have the same mean error, and for only 32 issues, the procedural model does better than the median model.¹²³

The third column shows how the MCS scores differ for the relative model performance, indicating situations where either the median model or the procedural model outperform one another or where they predict the same. The MCS score for cases where the median model beats the procedural model is 898.57. For cases in which the procedural outperforms the median model, the value is 1052.97, which is a difference of 154.4, or 17.18%. Employing the *Kruskal-Wallis test*, also referred to as *equality of populations test*, shows that there is a clear statistically significant difference between the two situations in which one of the two models outperforms the other.¹²⁴

¹²² The results prove stable for a model specification in which the unanimity set has been computed.

¹²³ This sort of information is also an input factor for the Wilcoxon signed-rank test, which was employed for the overall model comparison in Table 7.2.

¹²⁴ To test the stability of the estimates, relative model performance has further been regressed on the MCS scores with the help of logistic regression. The results confirm the analysis for simple logit ($p > \chi^2 = 0.0079$) on whether any of the two models performs better, and also on multinomial logit ($p > \chi^2 = 0.0207$) and ordered logit ($p > \chi^2 = 0.0164$) for all three conditions, i.e. for the case that the

The fact that the spatial voting model or procedural model outperforms the median model as the decision situations become more salient could be interpreted in the following way. If a policy issue is only of minor or of average importance for the decision-makers, decision outcomes have a tendency to center around an intermediate, or ‘middle’, position. If, however, issues become more salient, actors make use of their real decision weight. Instead of compromising on their position, they use the formal resources at their disposal to get their preferred policy outcome.

Another, related interpretation of the empirical result is that the application of the spatial voting model is under-specified. Recall that the procedural model employed in this analysis effectively assumes that all issues are of equal importance for all stakeholders. Existing theory shows, however, that the inclusion of a weighted salience parameter results in different policy predictions for the game. We might therefore want to extend the procedural model by integrating relative issue salience into the applied analysis and then compare the predicted outcome of that newly specified model against the outcomes of the models which were used for the present analysis.

7.5 Conclusion

In their authoritative work on the European Union, Wallace and Wallace (2000: 80) argue that increasing attention must be placed on evaluating “how well the theoretical studies and analytical approaches measure up against the empirical evidence”. This proviso applies to the EU’s legislative decision-making realm as much as to any other aspect of the EU. The question of whether and how the institutional structure of the EU legislative process affects the joint outcome can only be finally evaluated with the help of theoretically informed empirical studies (Hix, 1994: 94).

This chapter departed from the finding that a simple spatial model that is based on Black’s median voter theorem outperforms a more sophisticated multidimensional procedural model, or spatial voting model, which is based on the concept of structure-induced equilibrium. It was then demonstrated that, although the overall predictive power of the procedural model appears to be inferior if compared to the simple median model, conditions exist under which the procedural approach does work better. More specifically, the concept of *issue salience* seems to be a factor that determines which of the two model approaches works better.

What does this result imply for our understanding of European Union policymaking? It could mean that, since the outcome of EU

procedural model predicts worse than median, that both models predict the same, and that the procedural model predicts better than the median.

legislative politics is rather *centrist*, and not easily predictable with the help of the procedure-oriented model, the actual policymaking process might be more collegial, or cooperative, than previously assumed by spatial voting models of EU legislative politics. The analysis pointed out that EU policymakers might 'switch' between more or less conflictive decision modes. The procedural model, therefore, might be under-specified. A quantitative measure of issue salience should be integrated into both the formal modeling of EU politics as well as applied statistical analysis. Resulting integrative models could then be tested against other less sophisticated models, such as the models which have been employed in this study.

Existing case studies on the European Union legislative process indicate that the relative salience which actors attach to an issue might be critical to understanding the policy outcome on the European level (Van den Bos, 1994; Payne et al., 1997; Rittberger, 2000). So far, the use of quantitative testing strategies for formal models of the European Union legislative process is in general quite limited. While theories and case studies on how the EU works abound, few research designs try to evaluate the actual value of such models in explaining the political phenomena at hand. While a single empirical test such as the one which was conducted for this chapter should not lead to an outright rejection of some model, this study uncovers some shortcomings of existing models on European Union policymaking.

8 Summary and Conclusion

8.1 *Summary of Findings*

This book presents an attempt to empirically test the explanatory power of procedural models which were designed for European Union legislative decision-making. After outlining the research questions and presenting different existing models which have been put forward to enhance our understanding of how the EU works and how legislation is being negotiated by the political actors within this organization, I first introduced the European policy process by comparing it to the legislative process in the United States.

I then compared the different procedural models in terms of the assumptions which they make regarding the sequence of play, actors' decision weight, and the dimensionality of the policy space. Computer simulation techniques were employed to evaluate the effect changes of different model parameters, such as the number of players, the decision rule, and the dimensionality of decision-making. The objective of this chapter was to assess how stable the models are against changes that affect parameters other than agenda-setting and amendment power.

Afterwards, by focusing on the bargaining success of the Netherlands and Belgium in the EU legislative context, a data set on micro-level information on European policymaking was presented. In two subsequent chapters, the data were used to empirically test the models. First, individual models were evaluated against each other to analyze actors' relative decision power. Then, the overall empirical validity of a procedural model was compared by confronting it with a null model.

The *Central Question* of this book tried to provide an answer to the question of how the legislative decision-making structures of the European Union impact upon the organization's legislative output. *Sub-Question 1* dealt with comparing different models that try to evaluate EU legislative politics. The results show, that, on the one hand, there exist different characterizations in terms of game form, actor configuration, and dimensionality of the decision space. On the other hand, some of the differences between the models might be less pronounced than claimed by the authors. Using computer simulation, I demonstrated that differences in the dimensionality of the issue space for the models at hand are at least as important for explaining the outcome as the structure of decision-making.

Sub-Question 2 inquired about the predictive power of the existing procedural models. At first sight, the findings indicate that a procedural model is outperformed by a simpler baseline model. This result could indicate that procedural models as applied in this study appear to predict worse than a less complex model which is informed by the *median voter*

theorem (Black, 1958). However, as we move from less politicized issues to more politicized issues, from rather unimportant problems to highly salient situations of political decision-making in the EU, the procedural approach outperforms the simpler model. This finding is in line with the idea that, if an actor cares little about a certain policy outcome, she will be more conciliatory. If however, the stakes are high, she will mobilize all the decision-making power at her disposal, including formal voting weight in a committee, to push through some desired measure (Buchanan and Tullock, 1962).

Sub-Question 3 dealt with the explanatory power of different models and relative actor capabilities under the procedures. It was found that the model which follows Crombez (2000) by assuming that the EP is setting the legislative agenda under codecision outperformed a model which assumes that the Council Presidency plays a dominant role in shaping the agenda. This question is related to the relative power of the institutional actors in the EU policy process. Based on Barry's (1980a, 1980b) idea to distinguish between power and luck, it was possible to show that the European Parliament is indeed a very powerful actor under codecision. When testing for whether the EP should be considered an agenda-setter rather than only a veto-player under codecision, the former characterization appears to work better.

A related question was how to conceptualize the decision-making process in the European Union in terms of dimensionality. I used dimension-reducing techniques to see whether it is possible to find some underlying pattern of conflict hinting towards possible coalitions of EU actors and an underlying decision space. It was found that, although there exists a clear incentive for the actors to move away from the European legislative status quo, the great variance of actor positions in the DEU data set allows for only a limited use of reducing the amount of policy issues into clear-cut characterizations such as *north versus south*, or *in favor of integration versus against integration*.

8.2 Concluding Remarks

The present study represents an attempt to explain European Union legislative politics by integrating game-theoretic models of decision-making with statistical applications informed by micro-level data on EU policymaking. This design departs from much of the current political science literature which emphasizes either model-building or empirical testing by means of case studies or statistical applications. The latter approach often relies on macro-political data or on procedural indicators.

The present study was inspired by the idea of linking the statistical testing strategies as closely to the original formal models of EU

policymaking as possible.¹²⁵ After describing salient features of the EU legislative process and comparing the different models, the models' predictive power was evaluated in terms of what the political actors wanted and what they eventually got out of a joint EU policy outcome. In this way, the study avoided relying too much on macro-political data or on procedural indicators such as the success rates of the European Parliament in amending legislation.

While the decision to measure policy preferences in spatial terms might be regarded as a welcome step in bridging the gap between testing designs and formal models of politics, it confronted the analysis with the intricacies of collecting micro-level information on actor preferences in the EU policy process. The use of elite interviews provided the analysis with data over a relatively large number of cases and at the same time furthered the analyst's subjective understanding of the singular policy processes as reported by experts who were usually directly involved in the decision-making situation.

One conclusion which arises from the finding that, overall, the median model predicts better than the procedural models under consideration might be that there are possibly factors which have not been controlled for in the current design but which might affect the estimates. One of these factors could be related to the sheer amount of time which is needed to negotiate EU legislation. Game-theoretic models usually assume stable preference profiles of actors during negotiations.¹²⁶ However, since it takes often months or even years for a legislative measure in the EU to pass (Schulz and König, 2000), the question arises whether the assumption of stability of preferences over the whole negotiation period is adequate, or whether the use of these models might better be restricted to just the negotiation stage during the conciliation committee.

For the present analysis, only legislative decisions were selected that were somewhat contentious amongst the EU legislative actors. Since one of the empirical findings of the analysis is that the procedural approach only beats the median model for cases that are highly salient, the implication might be that procedural models, if applied to a more representative—i.e. less politicized—sample than the one which has been used for the current analysis, might predict worse. This in turn points towards the possibility that EU policymaking is overall much more cooperative than hypothesized by spatial voting models of the European Union political process. On the other hand, if one would only focus on highly politicized or *landmark* cases of EU

¹²⁵ For further references on the most recent model testing designs in the area of EU politics, see also Stokman and Thomson (2004) and Thomson et al. (2004b).

¹²⁶ Note that some models use *discount factors* to incorporate the fact that a certain outcome in the future might be less valued by an actor than the same outcome in the present (Rubinstein, 1982).

policymaking, or on negotiations on the level of the European Council, the procedural approach might be expected to outperform the median model.

The intergovernmental level of European Union politics has previously been researched with the help of rational-choice theory (Moravcsik, 1991, 1999; Schneider and Cederman, 1994). As we shift the analytical focus from the level of intergovernmental negotiations in the European Union downwards to day-to-day EU policymaking, the applicability of certain game-theoretic models might decrease. Where we assume single-shot games and non-cooperative behavior, the opposite might in fact hold. Although the European Union has considerable regulatory powers at its disposal, ‘high politics issues’ such as defense and immigration are by and large still decided upon in the Member States’ domestic realm. This insight, together with the fact that the Council working groups operate behind closed doors and that Council decision-making is rather consensual (Mattila and Lane, 2001) and characterized by a high level of technical expertise instead of political conflict might partially explain why the procedural models do not perform as well as envisioned in explaining the policy outcome for the data at hand. Conversely, if one were interested in modeling cases of elevated political conflict, game theory as a modeling tool can be extremely helpful by explicitly taking into account the amount of conflict between different actors, and at the same time rigorously mapping out the possible course of action which an actor has at its disposal.

8.3 Areas for Future Research

For future work that tries to build on the results of the current study and that aims at testing procedural models of the EU legislative process with the help of research designs that are similar to the one that was used in this book, there are two elements that deserve attention. The first element relates to the data-gathering method, and the second centers around the theoretical approach used to model decision-making.

First, on an empirical level, future studies that try to measure actor preferences in the area of EU policymaking might want to consider weighing official documents against information gained from expert interviews. The potential loss of validity accompanied by a switch from interviews to documents might partially be made up for by a gain in reliability regarding the empirical information. The approach advocated by Laver and Garry (2000) and Laver et al. (2003) might fruitfully be employed to this end. This argument deserves attention as data availability is constantly improving due to more published information regarding inter-institutional decision-making on the internet, e.g. via *PreLex* or via the Council register.

Second, on a theoretical level, it might be desirable to integrate a measure of issue salience into the procedural models (Enelow and Hinich, 1984). The computational results showed that the models predict better on more important issues. An explicit inclusion of different degrees of political salience into the procedural models as well as into the model computations might yield results which outperform the simpler variant which assumes indifference curves to be spherical.

Unlike many other political entities, such as the United States, the European Union is still engaged in a long-term process of redesigning its primary decision-making structures. When looking at the organization's history, the European Parliament seems to be one of the institutional actors which constantly gained power relative to the European Commission and the Council of the EU. This study is an attempt to contribute to the literature which assesses decision-making power with the help of formal models. Hopefully, it will help to accelerate a process in which not only new theoretical accounts of the EU are produced, but one in which more consideration is given towards trying to empirically evaluate how good our understanding of the evolving European Union legislative process really is.

Appendix: The DEU Data Set – List of Commission Proposals

PROPOSAL	PROCEDURAL REFERENCE	TOPIC
1	COD/1999/0238	Approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (phthalates) and amending Council Directive 88/378/EEC on the approximation of the laws of the Member States concerning the safety of toys
2	CNS/1999/0116	Establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention
3	CNS/1998/0288	First Regulation implementing Articles 85 and 86 of the Treaty
4	COD/1998/0252	Taking up, pursuit of and prudential supervision of the business of electronic money institutions
5	CNS/1999/0246	Common organisation of the market in milk and milk products
6	COD/1999/0127	Energy efficiency requirements for ballasts for fluorescent lighting
7	COD/1999/0204	System for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97
8	CNS/1998/0354	Community action programme in the field of civil protection
9	CNS/1999/0236	Support system for producers of certain arable crops, to include flax and hemp grown for fibre
10	COD/1999/0252	Interoperability of the trans-European conventional rail system
11	COD/1999/0083	Transport of dangerous goods by road
12	COD/1996/0085	Resale right for the benefit of the author of an original work of art
13	CNS/1999/0214	Financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership
14	CNS/1999/0274	European Refugee Fund
15	COD/1998/0191	Community framework for electronic signatures
16	COD/1997/0264	Approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and

		88/357/EEC (Fourth motor insurance Directive)
17	COD/1995/0341	Company law concerning takeover bids
18	COD/1996/0161	Certain aspects of the sale of consumer goods and associated guarantees
19	COD/1996/0112	Cocoa and chocolate products intended for human consumption
20	COD/1999/0244	Manufacture, presentation and sale of tobacco products
21	CNS/1999/0163	Closer dialogue with the fishing sector and groups affected by the common fisheries policy
22	CNS/1999/0138	Convention on future multilateral cooperation in the north-east Atlantic fisheries
23	CNS/1999/0072	Maximum residue limits of veterinary medicinal products in foodstuffs of animal origin
24	CNS/1999/0192	Employment Committee
25	CNS/1998/0347	Community structural assistance in the fisheries sector
26	CNS/1999/0066	Community participation in the European Audiovisual Observatory
27	CNS/1999/0050	Types of behaviour which seriously infringe the rules of the common fisheries policy
28	CNS/1996/0114	Honey
29	CNS/1996/0115	Fruit juices and certain similar products intended for human consumption
30	CNS/1999/0056	Reduced VAT rate on labour-intensive services
31	CNS/1999/0255	Conservation of fishery resources through technical measures for the protection of juveniles of marine organisms
32	CNS/1999/0151	Budgetary discipline
33	CNS/1998/0110	Common organisation of the market in milk and milk products
34	CNS/1999/0225	General framework for equal treatment in employment and occupation
35	COD/1999/0067	National emission ceilings for certain atmospheric pollutants
36	COD/2000/0184	Common regulatory framework for electronic communications networks and services
37	CNS/1999/0092	Marketing of forest reproductive material
38	CNS/2000/0127	Minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
39	COD/2000/0032	Public access to European Parliament, Council and Commission documents

40	CNS/2000/0030	Third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement
41	COD/2000/0060	Laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic
42	COD/2000/0067	Accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers
43	CNS/2000/0223	Common system of value added tax, with regard to the length of time during which the minimum standard rate is to be applied
44	CNS/1999/0202	Production aid for cotton
45	CNS/1999/0047	Common organisation of the markets in fishery and aquaculture products
46	CNS/2000/0062B	Action against anti-personnel landmines in third countries other than developing countries
47	CNS/1998/0087	Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States
48	CNS/1999/0154	Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
49	COD/1998/0323	Rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies
50	CNS/1998/0189	Approximation of taxes on cigarettes, Directive 92/80/EEC on the approximation of taxes on manufactured tobacco other than cigarettes and Directive 95/59/EC on taxes other than turnover taxes which affect the consumption of manufactured tobacco
51	CNS/1998/0193	Minimum of effective taxation of savings income in the form of interest payments within the Community
52	CNS/1999/0235	Common organisation of the market in bananas
53	COD/1998/0134	Community Customs Code
54	CNS/1996/0160	Conservation of fishery resources through technical measures for the protection of juveniles of marine organisms
55	COD/1998/0195	Second phase of the Community action programme in the field of education Socrates
56	CNS/2000/0358	Extension of the period of validity of the aid scheme and the quality strategy for olive oil

57	CNS/2000/0250	Common organisation of the markets in the sugar sector
58	COD/1998/0240	Orphan medicinal products
59	CNS/1998/0109	Common organisation of the market in beef and veal
60	COD/1998/0300	Implementation of measures to promote economic and social development in Turkey
61	CNS/1999/0276	Implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus - Development, Distribution and Promotion) (2001-2005)
62	CNS/1998/0331	Common system of value added tax
63	COD/1998/0158	Food additives other than colours and sweeteners
64	COD/1999/0217	Health problems affecting intra-Community trade in bovine animals and swine
65	COD/1998/0325	Certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce")
66	COD/2000/0062	Action against anti-personnel landmines in developing countries
67	CNS/1999/0132	Aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, in particular by the setting up of a European Agency for Reconstruction
68	CNS/1998/0299	Implementation of measures to intensify the EC-Turkey customs union
69	COD/1997/0359	Harmonisation of certain aspects of copyright and related rights in the information society
70	COD/1999/0275	Implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA-Training) (2001-2005)

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Samenvatting

In deze studie worden procedurele speltheoretische modellen van het wetgevingsproces in de Europese Unie getoetst. Na een vergelijking van het Europese politieke proces met het wetgevingsproces in de Verenigde Staten worden de verschillende procedurele modellen vergeleken met betrekking tot hun assumpties over de spelstructuur, het stemgewicht, en de dimensionaliteit van de politieke ruimte. Om te evalueren wat de effecten zijn van veranderingen in verschillende parameters van de modellen worden computersimulatietechnieken gebruikt. De parameters zijn het aantal spelers, de beslissingsregel, en de dimensionaliteit van besluitvorming. Het doel van dit hoofdstuk is een evaluatie van hoe stabiel de modellen zijn ten opzichte van andere parameters dan agendabeheersing of de macht om te amenderen. Daarna wordt een gegevensset met informatie voor het microniveau over Europese besluitvorming gepresenteerd met de focus op het politieke succes van Nederland en België in de EU. In twee volgende hoofdstukken worden deze gegevens gebruikt om de modellen empirisch te toetsen. Eerst worden de individuele modellen geëvalueerd ten opzichte van elkaar om de relatieve macht van actoren te analyseren. Daarna wordt de empirische validiteit van een procedureel model vergeleken door dit model te confronteren met een nulmodel.

Hoofdstuk 2 koppelt de discussie die momenteel gaande is over de toekomst van het wetgevingsproces in de Europese Unie aan hedendaagse constitutionele politieke theorie zoals toegelicht in *The Federalist Papers*. De stelling luidt dat wetenschappers er goed aan doen om zowel de doelstellingen, als de redeneermethoden van de Federalist te raadplegen om beleidsvorming in de Europese Unie beter te begrijpen. De institutionele opzet van de Unie in het algemeen en het wetgevingsproces in het bijzonder in ogenschouw nemend, wordt getoond dat Jean Monnet, een van de hoofdarchitecten van het huidige Europa, de ontwikkelingen die leidden tot de oprichting van de Europese Gemeenschap voor Kolen en Staal als een ongekend proces opvatte. Ondanks het feit dat de Europese Unie inderdaad een nieuwe soort organisatie is en niet een staat in de traditionele zin van het woord, zou het debat in Europa profiteren van een meer constitutioneel georiënteerde beoordeling van de potentiële effecten van de Unie's institutionele arrangementen op haar wetgeving. Constitutionele theorie kan een basis zijn voor een dergelijke beoordeling. Zonder de Amerikaanse Grondwet op zich over te nemen, zou het Europese debat over de besluitvormingsprocedures van de Unie verrijkt worden door een terugblik op de logica van de Federalist Papers.

In hoofdstuk 3 worden relevante academische theorieën voorgesteld die gebruik maken van procedurele ruimtelijke stemmenmodellen om wetgevende besluitvorming in de Europese Unie te verklaren. Gebruik makend van Tsebelis' (1994), waarin de samenwerkingsprocedure van de

Unie gemodelleerd wordt en als een referentiepunt wordt gebruikt, wordt aangetoond dat er nog geen duidelijkheid bestaat over welke van de bestaande procedurele modelspecificaties de meest overtuigende resultaten oplevert. Het hoofdstuk eindigt met suggesties hoe deze huidige situatie zou kunnen worden verbeterd en met de vaststelling dat procedurele modellering zou kunnen worden geïntegreerd met andere rationele keuzetheorieën om de continue evolutie van de instrumenten van beleidsvorming in de Europese Unie beter te kunnen begrijpen.

In hoofdstuk 4 wordt de procedurele modelbenadering gekoppeld aan computersimulaties. Getracht wordt de effecten van institutionele veranderingen op de flexibiliteit van organisationele besluitvorming te modelleren door gebruik te maken van het concept *structure-induced equilibrium*. Concreet wordt de flexibiliteit van de besluitvorming geanalyseerd als een functie van het aantal actoren in een organisatie, de beslissingsregels en de dimensionaliteit van de besluitvorming. Gebruik makend van een combinatie van speltheorie en computersimulatietechnieken wordt aangetoond dat voor issueruimtes met een groot aantal dimensies het aantal actoren in een organisatie een relatief laag effect heeft op de organisationele inertie onder de simpele meerderheidsregel en zelfs onder de tweederde meerderheidsregel. Indien de unanimiteitsregel van toepassing is en een comité uit veel actoren bestaat, wordt de situatie gekenmerkt door traagheid. Echter, om flexibiliteit te voorspellen is de dimensionaliteit in welke de onderhandelingen plaatsvinden minstens even zo belangrijk als de institutionele arrangementen en het aantal vetospelers.

Hoofdstuk 5 gaat na hoe succesvol Nederland en België zijn op het terrein van de legislatieve besluitvorming binnen de Europese Unie. Na de literatuur over de beleidsvormingsstrategieën van de twee EU-lidstaten te hebben besproken, wordt een onderzoeksopzet gepresenteerd dat de informatie over de preferenties van de verschillende politieke actoren voor 70 recente beleidsbeslissingen van de Unie bevat. Het resultaat is dat de preferenties van Nederland en België niet wezenlijk van elkaar verschillen en dat de respectievelijke succesratio van de Nederlanders en de Belgen op het terrein van EU beleidsvorming gelijk en vrij hoog is. Mogelijke paden voor toekomstig onderzoek worden uitgezet die het begrip van wetenschappers van het verband tussen binnenlands beleidsformatie en het besluitvormingsproces op het Europese niveau zouden kunnen vergroten.

Uitgaand van Barrys (1980) vraag, of “het beter [is] om machtig te zijn of geluk te hebben”, tracht hoofdstuk 6 de vraag te beantwoorden hoeveel invloed het Europees Parlement heeft in het beleidsvormingsproces van de Europese Unie. Het wordt beoordeeld hoe dicht de wensen van het parlement bij de uiteindelijke uitkomsten van de besluitvorming liggen en of deze uitkomst het resultaat van haar eigen macht is, of dat het door de overeenkomst tussen haar positie en die van de andere EU actoren komt. De

empirische analyse maakt gebruik van verschillende modellen van wetgevingbesluitvorming. Zij laat zien dat het Europese Parlement redelijk invloedrijk is indien een wet onder medebeslissingsprocedure tot stand komt, terwijl het geluk heeft bij de wetgeving die is vastgesteld onder de raadplegingsprocedure. Voor het verklaren van politieke uitkomsten blijft het cruciaal om een verschil te maken tussen capaciteiten en voorkeuren, oftewel tussen “macht” en “geluk”.

Hoofdstuk 7 evalueert de voorspellende kracht van een formeel procedureel model dat toegepast is op de Europese Unie. De voorspellende kracht van het model wordt vergeleken met de kracht van een veel simpeler model dat is ingegeven door Black's (1958) *median voter theorem*. De statistische bevindingen laten zien dat het simpele model het meer complexe model overtreft qua voorspellingskracht. In het vervolg wordt de hypothese opgesteld dat hoe saillant een issue voor EU beleidsmakers is, hoe hoger is de waarschijnlijkheid dat het procedurele model een hogere verklarende waarde heeft dan het mediaan model. Deze hypothese wordt bevestigd.

In hoofdstuk 8 worden de uitkomsten van het onderzoek gepresenteerd en worden aanbevelingen gegeven voor toekomstig onderzoek.

Curriculum Vitae

Torsten J. Selck, born 22 November 1971 in Schleswig, Germany, studied Public Policy and Management at the University of Konstanz in Germany. In August 1999, he graduated with a master thesis on conflict management in militarized disputes. From September 1999 to August 2003, he worked as a Ph.D. student at Leiden University in the Netherlands. From September 2003 to March 2004, he was Assistant Professor of Law and International Relations and Lecturer of International Relations at the University of Groningen in the Netherlands. Since April 2004, he is working as Assistant Professor of Political Economy at the University of Groningen.