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DECISION MAKING IN THE COUNCIL
OF MINISTERS OF THE EUROPEAN
UNION

Ph.D. Political Science

2011

JAMES CROSS

DECLARATION

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SUMMARY

This thesis examines legislative decision making in the European Union with a specific focus upon decision making in the Council of Ministers. It examines the manner in which member states seek to influence the legislative process at different levels of negotiation within the Council. The first empirical contribution of the thesis (Chapter 4) has two aims. It first examines the influence that legislative rules and procedures have upon the legislative process. It elaborates upon a one-dimensional procedural model of EU politics that explicitly captures the structure of the legislative game by accounting for the order in which actors move, and the manner in which the order of the game affects each actor's ability to influence legislative outputs. The second aim of the chapter is to demonstrate the importance of accounting for the dimensionality of the policy space under consideration. It does so by exploring a second two-dimensional version of the procedural model, which considers each individual controversy that arose during negotiations for a proposal as a dimension in a two-dimensional policy space for each proposal under consideration. The chapter also investigates the effect that accounting for the saliency that each actor attaches to each dimension has upon the accuracy of model predictions. The findings presented in this chapter suggest that it is important to model the decision-making process in multi-dimensional terms and account for the role of issue saliency in legislative decision making.

The next chapter draws attention to the internal structure of the Council, and considers the manner in which negotiations differ across different institutional contexts within the Council. It elaborates upon a number of scope conditions that are thought to vary across different levels of negotiation in the Council, in order to demonstrate how the negotiation process is expected to vary depending upon the level under consideration. In addition, the chapter examines how the role of power in negotiations changes, based upon the presence or absence of these scope conditions. It does so by identifying the decision-making level within the Council at which agreement is reached on the controversies found in the dataset under

consideration, and by examining the role of power in resolving these controversies. The findings presented suggest that the role of power in determining decision-making outcomes varies according to the level of decision making within the Council under consideration. This implies that the internal structure of the Council is important to account for when examining the legislative process in the EU.

The chapter following that builds upon the findings presented in the previous two chapters by considering the manner in which member states respond to 1) the institutional structure in which negotiations take place, and 2) the structure of the policy space associated with the proposal under negotiation. The chapter focuses upon member state intervention behaviour at different levels of negotiation in the Council and investigates the determinants of this behaviour. An intervention is defined as any attempted by a member state to intercede during negotiations in order to change the contents of the proposal under negotiation. This chapter introduces new data on member state interventions and considers the determinants of this behaviour. The findings presented indicate that member states engage in different forms of bargaining behaviour at different levels of negotiation within the Council, and that this behaviour is heavily influenced by the policy space of the proposal under negotiation, the saliency attached to each proposal, and member state power.

The final substantive chapter examines the implications of the findings discussed in the previous three chapters by considering the manner in which differences in member state agency, luck and power, impact upon member state bargaining success. Bargaining success is conceptualised as the distance between a member states' initial policy positions and the final outcome on a particular issue or proposal under consideration. The findings show that the most important determinants of member state bargaining success are related to the distribution of policy positions in the policy space for the proposal under negotiation. Findings relating to member state agency and power are more mixed, but each is found to be related to bargaining success in some manner.

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CONTENTS

DECLARATION	2
SUMMARY	3
ACKNOWLEDGEMENTS	5
CONTENTS	7
CHAPTER 1: INTRODUCCION	9
THE RESEARCH QUESTIONS.....	9
THE THEORETICAL FRAMEWORK: RATIONAL CHOICE INSTITUTIONALISM.....	12
INSTITUTIONS.....	13
THE LEGISLATIVE PROCESS AND LEGISLATIVE PROCEDURES.....	15
THE INTERNAL DECISION-MAKING PROCESS IN THE COUNCIL OF MINISTERS.....	19
CHAPTER BY CHAPTER SUMMARY OF THIS THESIS.....	21
CHAPTER 2: LITERATURE REVIEW	25
INTRODUCTION.....	25
THEORETICAL PERSPECTIVES ON THE EVOLUTION OF THE EUROPEAN UNION OVER TIME.....	25
LEGISLATIVE DECISION-MAKING AND THE DAY-TO-DAY POLITICS OF THE EUROPEAN UNION.....	28
<i>Rational Choice Institutionalism</i>	29
<i>Sociological Institutionalism</i>	32
DIMENSIONS OF CONFLICT IN THE COUNCIL.....	34
THE INTERNAL STRUCTURE OF THE COUNCIL.....	39
THE PRESIDENCY OF THE COUNCIL.....	45
THE ROLE OF OTHER EU INSTITUTIONS IN THE NEGOTIATION PROCESS.....	47
<i>The Commission</i>	47
<i>The European Parliament</i>	50
<i>The General Secretariat</i>	53
CONCLUSION.....	55
CHAPTER 3: RESEARCH DESIGN	57
INTRODUCTION.....	57
THE SELECTION OF LEGISLATIVE PROPOSALS.....	58
SELECTION OF RELEVANT EXPERTS.....	65
SEMI-STRUCTURED INTERVIEWS: MEASURING POLICY SCALES, ACTOR POSITIONS AND ISSUE SALIENCY.....	65
<i>Identifying Controversial Issues</i>	66
<i>Actor Positions</i>	67
<i>Saliency</i>	71
ACTOR POWER.....	72
MEASURING MEMBER STATE NEGOTIATION ACTIVITY IN TERMS OF INTERVENTIONS.....	74
STRATEGIES FOR DEALING WITH THE CENSORSHIP OF LEGISLATIVE RECORDS.....	77
CONCLUSION.....	78
CHAPTER 4: ACCOUNTING FOR THE INFLUENCE OF INSTITUTIONAL RULES AND THE POLICY SPACE IN LEGISLATIVE NEGOTIATIONS	79
INTRODUCTION.....	79
THE ONE-DIMENSIONAL PROCEDURAL MODEL.....	82
EXTENDING ACTOR PREFERENCES TO TWO DIMENSIONS AND ACCOUNTING FOR VARIANCE IN ISSUE SALIENCY.....	85
FORMAL SPECIFICATION OF A PROCEDURAL MODEL.....	88
THE DATA.....	91
RESULTS.....	93
CONCLUSION.....	100

CHAPTER 5: RELATIVE POWER AND THE INTERNAL STRUCTURE OF THE COUNCIL OF MINISTERS OF THE EUROPEAN UNION.....	103
INTRODUCTION.....	103
RELATING MEMBER STATE POWER IN THE COUNCIL TO THE DECISION-MAKING PROCESS	106
SCOPE CONDITIONS THAT RELATE TO THE USE OF POWER AT DIFFERENT LEVELS OF NEGOTIATION IN THE COUNCIL	109
ACCOUNTING FOR THE COUNCIL STRUCTURE AND ITS INFLUENCE ON THE USE OF POWER IN THE NEGOTIATION PROCESS.....	112
THE COUNCIL AT WORK: THE PROPOSAL FOR ENVIRONMENTAL QUALITY STANDARDS IN THE FIELD OF WATER POLICY.....	119
CAPTURING INFORMAL BARGAINING IN THE LEGISLATIVE PROCESS.....	121
THE DATA.....	126
ANALYSIS.....	127
CONCLUSION.....	137
CHAPTER 6: INTERVENTIONS AND NEGOTIATION IN THE COUNCIL OF MINISTERS	141
INTRODUCTION.....	141
MEMBER STATE AGENCY IN COUNCIL DECISION MAKING.....	143
THEORY & HYPOTHESES	146
RESEARCH DESIGN.....	153
ANALYSIS.....	158
DISCUSSION & CONCLUSION	166
CHAPTER 7: AGENCY, LUCK, AND POWER IN THE COUNCIL OF MINISTERS.....	169
INTRODUCTION.....	169
THEORETICAL FRAMEWORK.....	171
<i>Agency</i>	172
<i>Luck</i>	177
<i>Power</i>	181
RESEARCH DESIGN.....	182
ANALYSIS.....	186
CONCLUSION.....	196
CHAPTER 8: WHAT HAS BEEN LEARNED AND WHAT REMAINS TO BE ADDRESSED?.....	199
INTRODUCTION.....	199
CAPTURING THE LEGISLATIVE PROCESS USING SPATIAL MODELS OF POLITICS	199
THE ROLE OF COMMITTEES IN THE DECISION-MAKING PROCESS WITHIN THE COUNCIL OF MINISTERS	201
<i>What Determines the Levels of involvement of each Level of Negotiation in the Council?</i>	202
<i>The Working Group Level of Negotiation</i>	202
<i>The Coreper Level of Negotiation</i>	204
<i>The Ministerial Level of Negotiation</i>	207
WINNERS, LOSERS, AND BARGAINING SUCCESS IN THE COUNCIL OF MINISTERS.....	208
<i>Agency</i>	208
<i>Luck</i>	209
<i>Power</i>	210
LIMITATIONS OF THE CURRENT STUDY AND THE POTENTIAL FOR FUTURE RESEARCH TO ADD TO OUR UNDERSTANDING OF THE LEGISLATIVE PROCESS IN THE EUROPEAN UNION	211
IMPLICATION OF THE RESEARCH FOR ACADEMICS, POLICY MAKERS AND EU OBSERVERS.....	214
APPENDIX: LIST OF PROPOSALS CONSIDERED IN THESIS.....	218
BIBLIOGRAPHY:.....	223

CHAPTER 1: INTRODUCCION

THE RESEARCH QUESTIONS

The European Union (EU) is one of the most institutionally developed international organisations in existence, and it exerts a strong influence over international and domestic levels of politics between and within member states. While observers usually pay much attention to important landmark decisions such as the Single European Act (SEA), and various treaty revisions such as the recent Nice and Lisbon treaties, these decisions tend to distract from the fact that the EU is an important driver of new legislation at both the EU and domestic levels (Thomson and Hosli 2006). Indeed, the day-to-day activity of EU institutions is dominated by the legislative process, with the EU now legislating in areas including but not limited to the internal market, environmental policy, justice and home affairs, and social policy. In light of these facts, understanding the legislative process and the manner in which different actors can bring their influence to bear on legislative proceedings is of fundamental importance.

This thesis seeks to explore the legislative process by considering the manner in which the internal structure of the Council of Ministers impacts upon member state behaviour and decision-making outcomes. While it is generally acknowledged that the inner structure of the Council impacts upon the legislative process, the academic literature is only beginning to uncover this influence (Häge 2007; 2008; Lewis 1998; 2003; 2005). This study shall draw attention to the important role that the working group and Coreper levels of decision making play in determining legislative outputs. It will be argued that these levels of decision making in the Council play a fundamental role in the decision-making process, and shape actor behaviour and legislative outputs. The manner in which each level of negotiation within the Council impacts upon the legislative process and member state behaviour shall be considered in a variety of ways. The research questions that are now introduced represent the basis upon which each of the chapters that follow are based.

The first research question to be addressed in this thesis relates to how the institutional structure of legislative decision-making and the particular aspects of the proposal under consideration impact upon the decision-making process. The manner in which the sequence of play in the legislative game structures the decision-making process shall be considered in order to assess whether this empowers certain institutional actors in the decision-making process. The sequence of play in the legislative game is thought to give certain actors agenda setting power that can have a significant impact upon legislative outcomes (Steunenberg 1994; Tsebelis 1994; Crombez 1996). This proposition shall be tested in order to identify the influence that the formal institutional rules have over legislative negotiations.

A second related question that must be addressed is whether legislative negotiations are best modelled on an issue by issue basis using a uni-dimensional model of the negotiation, or whether accounting for negotiations in a holistic manner using a higher-dimensional model best captures the negotiation process. When modelling the legislative process, one should capture as accurate a picture of legislative negotiations as possible in order to test the propositions under consideration. The impact that varying assumptions about the dimensionality of the policy space under negotiation and the role of saliency in shaping the legislative process is something that is considered in order to advance this goal, and the findings presented are integrated into the chapters that follow where appropriate.

Once these questions have been addressed, the study will consider how member states' use of power to affect the decision-making process varies across different levels of negotiation within the Council. It is important to consider how the institutional structure impacts upon negotiators ability to coerce and use power to influence the decision-making process, as this relates to how initial policy positions are translated into legislative outcomes in the decision-making process. Much debate in the academic literature has surrounded the manner in which the decision-making process varies across different levels of negotiation in the Council (Lewis 1998; 2003; 2005; 2010; Juncos and Pomorska 2006), and the research presented later in this

thesis on the varying impact of power at different levels of negotiation in the Council makes a contribution to this debate.

In order to further explore the manner in which negotiators are affected by the institutional context in which they negotiate, the thesis shall then consider how member state negotiation behaviour varies across these levels, in terms of the interventions they make over the course of the negotiation process. An intervention is defined as any attempted by a member state to intercede during negotiations in order to change the contents of the proposal under negotiation. Considering the factors that affect member state intervention behaviour is important as this behaviour should be a direct result of the interaction between institutions and policy positions that lies at the heart of the policy making process. New insight into the legislative process is gained from considering member state intervention behaviour, which has to date been neglected in the academic literature due to the difficulty associated with extracting relevant intervention data.

The final question to be addressed in the thesis is to consider how factors including interventions, the institutional environment and the distribution of positions in the policy space under negotiation impact upon member states' ability to influence decision-making outcomes. This question is addressed by considering the determinants of member state bargaining success. Member state bargaining success relates to how successful a member state is in converting their initial policy position taken at the outset of negotiations, into the final outcome decided upon once negotiations conclude. This is an important question to consider, as it connects the behavioural observations relating to interventions considered earlier in the thesis to the policy outcomes that are produced once negotiators have reached agreement.

New insight shall be provided into the legislative process in the Council of Ministers of the EU by systematically addressing these research questions. The next section introduces the

theoretical framework that is utilised in the thesis, and demonstrates why it is useful for exploring the research questions under consideration.

THE THEORETICAL FRAMEWORK: RATIONAL CHOICE INSTITUTIONALISM

The study utilises a rational choice institutionalist framework, which is one of three 'new-institutionalisms' identified by Hall and Taylor (1996). This form of new-institutionalism emerged from the study of American congressional behaviour, and the observation that relatively stable majorities exist in the US congress, in spite of Riker's (1980) contention that significant 'cycling' of outcomes should occur when the multiple preference orderings of legislators and the multi-dimensional characteristics of the legislation being negotiated is taken into account. Shepsle (1979) proposed that this stability in majorities could be explained by considering the influence of the rules of procedure that structure the legislative process, and the role that congressional committees play in structuring the choices and information available to negotiators. The findings presented in the rational choice institutionalist literature on the US congress are of interest to those studying legislative decision-making in contexts such as the EU, as a similar institutional environment comprised of sets of procedural rules and legislative committees exist in this context. Rational choice institutionalism is thus particularly useful for shedding light upon the legislative process in the EU, and the manner in which institutions influence negotiation outcomes.

Applying the theoretical insights from the rational choice institutionalist literature on the US congress to legislative politics in the EU has already provided important insights into the manner in which institutions shape the legislative decision-making process¹ (Aspinwall and Schneider 2000). Some authors have focused upon how various treaty revisions have affected the balance of power between different institutional actors such as the Commission, Council and Parliament (Steunenberg 1994; Tsebelis 1994; Crombez 1996). Others have considered how

¹ The findings presented in this literature are explored in detail in the next chapter.

different forms of bargaining shape the legislative process and have developed a competing set of models that seek to capture different aspects of the decision-making process (Bueno de Mesquita and Stokman 1994; Thomson *et al.* 2006). The variety of findings presented by this literature demonstrates how the rational choice institutionalist approach is useful in examining legislative politics in the EU. The main advantage of utilising this framework is that it allows researchers to consider the legislative process in an integrated manner, with policy outcomes being determined by the interplay between institutions and actor preferences (Thomson and Hosli 2006). Utilising this framework in this particular study is appropriate given that this is precisely the aspect of the decision-making process that the thesis seeks to investigate.

INSTITUTIONS

Up to this point institutions and rational choice institutionalism has been discussed, but it is important to further examine what exactly is meant when discussing 'institutions' within the rational choice institutionalist paradigm. Shepsle (2006) argues that there are two standard ways to think about institutions in the rationalist tradition. The first interpretation of institutions holds that they are *exogenous constraints* that structure the manner in which actors interact. Institutions thus define which actors are involved in the game, what behavioural strategies they can pursue, the sequence in which they can move, the information they possess, and the different outcomes likely to result from different combinations of all these factors. The actual outcome observed is the result of combining the institutional structure with actor preferences over outcomes, as the institutional structure dictates how to achieve a given outcome, and actor preferences dictate which outcome they most prefer.

This interpretation of institutions is found in the game theory tradition, and appears in chapter 4 and to some degree in 5 of this thesis. These chapters seek to account for the influence of the institutional structure in a formal manner and thus lend themselves very well to this interpretation of institutions.

Shepsle (2006) points out that within the rationalist tradition, a second more subtle interpretation of institutions can also be found. In this interpretation of institutions, institutions are not given exogenously, but are simply an agreement between the players as to how a particular game should be played. Institutions are an equilibrium way of doing things that players abide by at a particular point in time. This is not to say that at some later stage the players will not change the rules of the game, but at a given point in time, there is consensus as to how the game should be played. Shepsle (2006) states that Calvert (1995) is particularly clear on this point:

“...[T]here is, strictly speaking, no separate animal that we can identify as an institution. There is only rational behavior, conditioned on expectations about the behavior and reactions of others. When these expectations about others’ behavior take on a particularly clear and concrete form across individuals, when they apply to situations that recur over a long period of time, and especially when they involve highly variegated and specific expectations about the different roles of different actors in determining what actions others should take, we often collect these expectations and strategies under the heading institution...”

Calvert (1995, 73-74)

This definition of institutions is utilised in the later chapters of the thesis (chapters 5-7), as it better captures the type of institution that is being referred to in these chapters. It is a softer interpretation that sees institutions as scripts that constrain actor behaviour in a given situation, but are not indelible to change, should the need arise. In the EU context this could refer to the commonly referred to ‘norms of consensus’ in the Council’ (Schneider et al. 2006). Behavioural norms that are not dictated in the formal institutional rules can thus be accounted for within the rationalist paradigm. This is particularly useful when studying decision-making in the Council of Ministers, as a series of authors have found that informal rules of behaviour seem

to be more influential in determining legislative outcomes than the formal rules of the legislative process (Achen 2006; Steunenberg and Selck 2006).

Before exploring the academic literature on legislative decision making in the EU and engaging with the debates found therein in the next chapter, it is useful to give a descriptive account of the institutional context that structures legislative politics in the EU, and the manner in which the Council is nested within this institutional structure. Once the institutional environment within which the Council is located has been described, the internal structure of the Council itself is considered. This detailed account of the institutions involved in the legislative process provides the setting in which legislative decisions are negotiated, and demonstrates how legislative rules can be expected to shape the manner in which different actors interact in the decision-making process.

THE LEGISLATIVE PROCESS AND LEGISLATIVE PROCEDURES

Legislative decision making in the EU occurs within a set of legislative contexts that structure how the actors involved in the decision-making process interact. A number of different decision-making procedures apply to the decision-making process, depending upon the policy area under consideration and the type of legislation under negotiation. These include the consultation procedure and the codecision procedure, which are most commonly utilised, as well as the consent procedure (formerly the assent procedure), which is less common. Each of these procedures empowers a different set of actors and outlines a different order in which each actor can move. This thesis focuses upon the consultation and codecision procedures because they are the most commonly utilised procedures in legislative politics at the EU level. At this stage, it is useful to consider each procedure in turn in order to demonstrate how they structure actor interactions.

Under the consultation procedure, the legislative process is initiated by the Commission once it makes a proposal. The Council must then decide upon this proposal using either a

unanimity voting rule if it wants to amend the proposal, or a qualified majority voting rule if it wants to adopt the proposal without amendment. Under consultation, the Council is required to consult with the European Parliament before a decision is reached, yet the Parliament's opinion is not binding and can be ignored by the Council if it disagrees with the content of such an opinion. The sequence of moves under the consultation procedure is described in Figure 1.1.

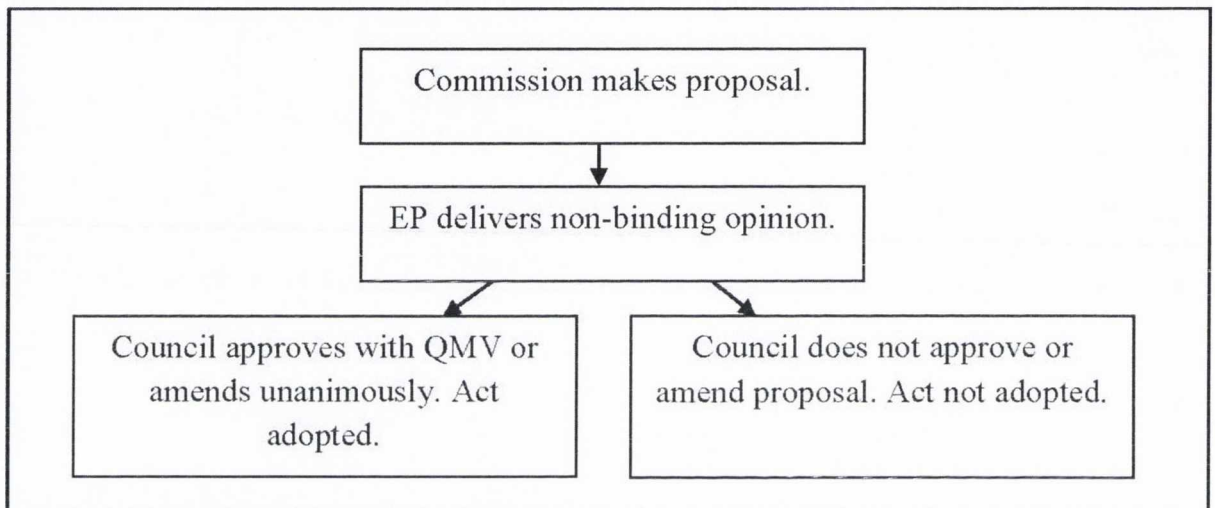


FIGURE 1.1: THE CONSULTATION PROCEDURE.

Under the codecision procedure (referred to as the ordinary legislative procedure since the adoption of the Lisbon Treaty), the Parliament holds much greater power to influence the decision-making process. This procedure is initiated when the Commission submits a proposal to the Council and Parliament for negotiation and decision. Discussions proceed on a parallel basis within both the Council and Parliament until the Parliament introduces its first reading opinion to the Council. If the Council approves of the Parliament's position, then the act can be adopted without further debate. If the Council wishes to change the positions presented by the Parliament, it adopts its own positions, which are then returned to the Parliament for a second reading. At the second reading, the act is adopted if the Parliament approves of the position submitted by the Council. Should the Parliament reject the Council text, then the law fails to be adopted; if, on the other hand, it modifies the Council text, this modified text is then passed back

to the Council. At this stage, the Council can either approve the text as it stands or convene a conciliation committee that brings together Council and Parliamentary representatives who attempt to agree upon a compromise text. If such a text is agreed upon, it must be approved by both the broader Council and Parliament plenary before it can become law. If such an agreement cannot be reached, the proposal can be further negotiated, shelved by the Council President, or withdrawn by the Commission. Figure 1.2 describes the sequence of moves under the codecision procedure.

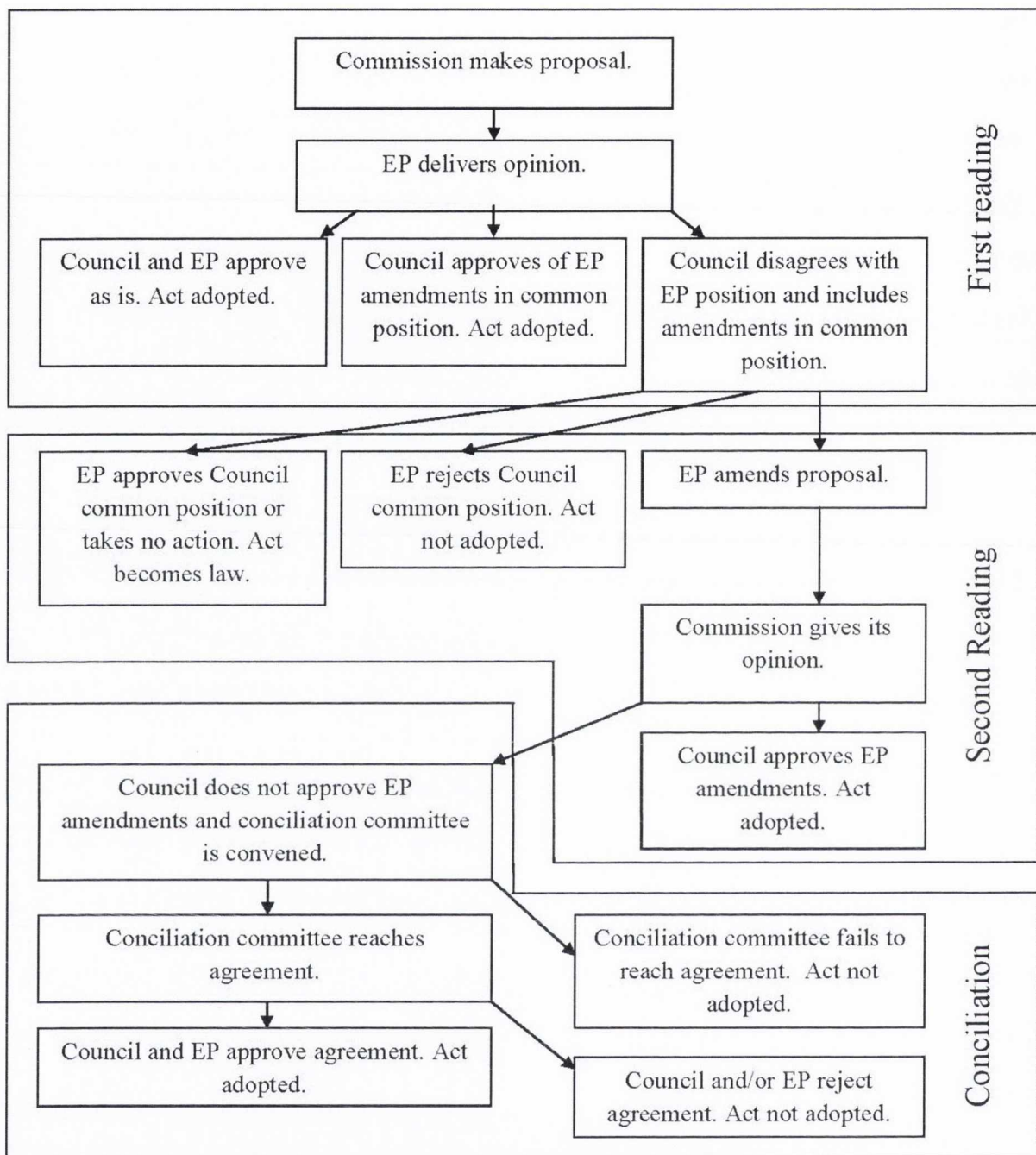


FIGURE 1.2: THE CODECISION PROCEDURE (ADAPTED FROM THOMSON AND HOSLI (2006)).

Both the consultation and codecision legislative procedures are expected to impact upon the legislative process and actor behaviour in different manners, and these effects are expected to be mediated through the institutional environment that forms the context in which negotiations take place.

THE INTERNAL DECISION-MAKING PROCESS IN THE COUNCIL OF MINISTERS

The above descriptions of the consultation and codecision procedures focus upon how different institutions interact in the legislative process. This necessarily ignores the fact that within the Council, legislation usually passes through three distinct levels of negotiation before a decision is reached. The working group, Coreper, and ministerial levels within the Council each play a role in deciding legislation. One of the major innovations of this thesis is that it draws attention to this internal structure of the Council of Ministers, and it examines the way in which this affects actor behaviour and policy outcomes. It is useful to discuss the role played by each level within the Council to illuminate the decision-making process at work. The discussion and figure (Fig. 3) presented here are adapted from Häge (2008), who offers a thorough account of the internal structure of the Council and of the role played by each level of negotiation in the legislative process.

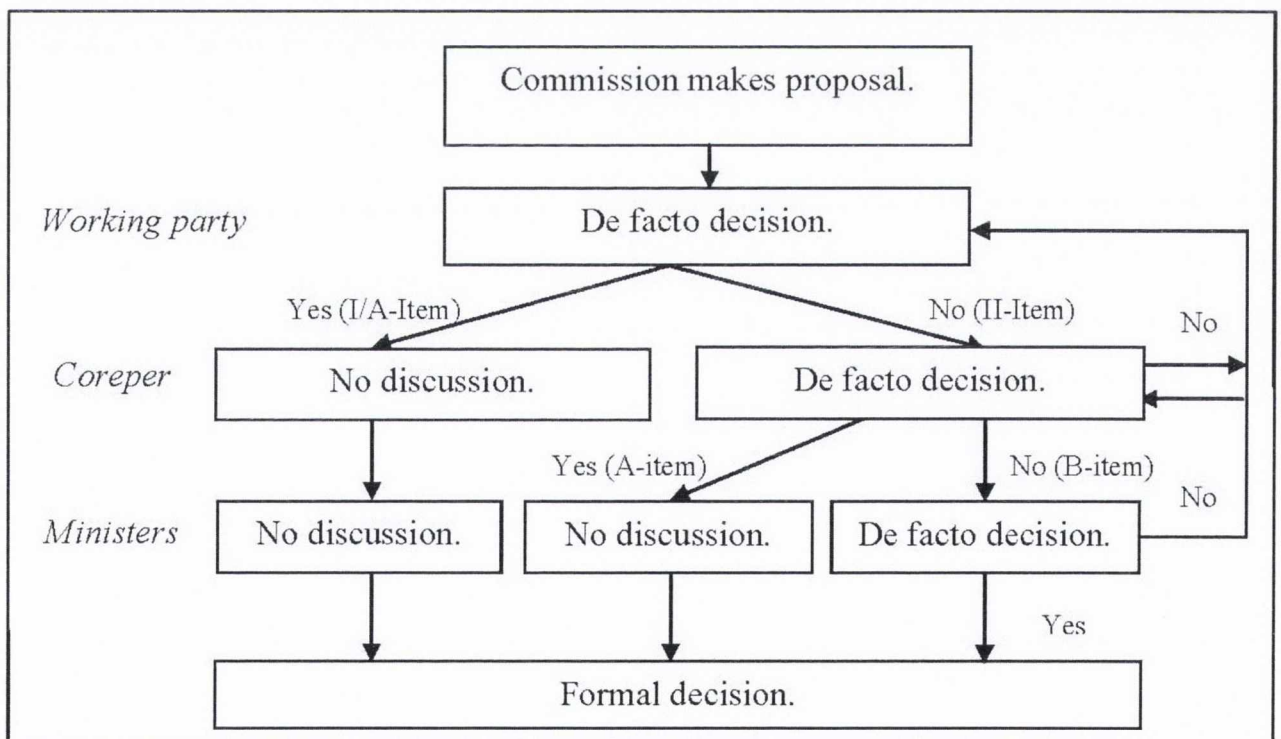


FIGURE 3: THE INTERNAL DECISION-MAKING PROCESS WITHIN THE COUNCIL OF MINISTERS (ADAPTED FROM HÄGE 2008)

Figure 3 presents a stylised account of the manner in which a proposal moves between different levels of negotiation within the Council. The first level of negotiation within the Council that discusses a Commission proposal is usually the working group level. Working group meetings are attended by national officials posted in the permanent representations of member states in Brussels, and by national experts seconded from their respective member state capitals. The working groups examine the proposal under consideration, with each member state stating its position on different aspects of the proposal with which it may have an issue. If an agreement resolving the various controversies that arose during discussions can be reached at this level of negotiation, no further discussion at higher levels takes place. A proposal is marked as a roman I-point on the Coreper level agenda, and as an A-point on the ministerial level agenda and then it becomes law.

When the working group level of negotiation is unable to reach an agreement on a particular proposal, the dossier is marked as a roman II-point for discussion at the Coreper level of negotiation. Häge (2008) argues that this level of negotiation consists of three distinct committee formations—Coreper I, Coreper II, and the Special Committee on Agriculture (SCA)²—each of which addresses a distinct set of policy areas. If an agreement is reached at this level of negotiation within the Council, the dossier is entered as an A-Item on the ministerial agenda and is passed into law without further discussion.

Should agreement remain elusive at the Coreper level, the dossier enters the ministerial agenda as a B-point requiring further discussion. Ministers from member states' respective governments then discuss the legislation and thus attempt to reach agreement. Should agreement be reached at this level, the proposal passes into law, thus ending the negotiation

² This classification of committees has been implemented in order to make a clear distinction between different committees within the Council, and to delineate a clear hierarchy between the different levels. Häge (2008) points out that other committees, such as the Economic and Financial Committee and the Political and Security Committee, also exist within the Council framework, yet the work of these committees is channelled through Coreper I or II, both of which report directly to the Ministerial level and can insert points into the Ministerial agenda. This formal ability to insert points into the Ministerial agenda justifies the focus upon Coreper presented in this thesis.

process. However, if agreement cannot be reached, negotiators have a number of options. If the ministers are interested in continuing negotiations and finding agreement, they can pass the proposal back to the lower levels of negotiation within the Council for further discussion, with the aim of reaching a compromise (Andersen and Rasmussen 1998). If the ministerial level cannot reach an agreement and there appears to be no hope of this situation changing, the proposal can be shelved by the Council Presidency and eventually withdrawn by the Commission (Häge 2008).

As can be seen, the institutional arrangements pertaining to the legislative process in the EU are complex, and decision-making process is subject to significant variations depending upon the legislative procedure in use and on the formal power that each legislative procedure assigns to each of the actors involved in the negotiation process. The ways in which member states and other institutional actors interact within the institutional environment described in this section and how they seek to influence negotiations are the subjects of the chapters that follow. The next section introduces each of these chapters, and gives a overview of the thesis as a whole.

CHAPTER BY CHAPTER SUMMARY OF THIS THESIS

The thesis is organized as follows. The next chapter presents an in-depth review of the current academic literature on legislative decision making in the EU. It first discusses a broad overview of the literature that seeks to explain how the EU has evolved over time into the international organisation it is today, before elaborating upon a more specific literature concerned with the day-to-day politics of the EU and the manner in which legislation is negotiated. The second chapter concludes by considering the varying roles played by each of the institutions (Council, Commission, Parliament, and General Secretariat) involved in the legislative process. The aim of this chapter is to outline the state of the art with regard to academic study of the EU and to identify areas that require further academic attention. It will

elaborate upon the research questions introduced at the beginning of this chapter in light of the academic literature that is considered. This shall clarify the exact substantive and academics contribution of the research findings presented in the chapters that follow.

Once the current academic literature on EU decision-making has been examined, Chapter 3 elaborates upon the research design that will be used to explore the research questions of interest identified in Chapters 1 and 2. It describes how EU politics is conceived of in spatial terms and details the construction of the datasets used in the analyses through a variety of methods. First, Chapter 3 describes the data collection methods associated with constructing a spatial model of the decision-making process. Second, it elaborates upon how such spatial data were extended by adding data relating to the Council's internal structure and to negotiator activity at each of the levels within the Council that are of interest. These data are used extensively in the analyses that follow.

Chapter 4, which represents the first empirical contribution of the thesis, has two aims. It first examines the influence that legislative rules and procedures have upon the legislative process. This section elaborates upon a one-dimensional procedural model of EU politics that explicitly captures the structure of the legislative game by accounting for the order in which actors move, and the manner in which the order of the game affects each actor's ability to influence legislative outputs. The second aim of the chapter is to demonstrate the importance of accounting for the multi-dimensional nature of the policy space under consideration. It does so by exploring a second two-dimensional version of the procedural model, which considers each individual controversy that arose during negotiations for a proposal as a dimension in a two-dimensional policy space for each proposal under consideration. The chapter also investigates the effect that accounting for the saliency that each actor attaches to each dimension has upon the accuracy of model predictions. The findings presented in this chapter suggest that it is important to model the decision-making process in multi-dimensional terms and account for the role of issue saliency in legislative decision making.

Chapter 5 draws attention to the internal structure of the Council, and considers the manner in which negotiations differ across different institutional contexts within the Council. This chapter elaborates upon a number of scope conditions that are thought to vary across different levels of negotiation in the Council, in order to differentiate between these levels and to demonstrate how the negotiation process is expected to vary depending upon the level under consideration. In addition, Chapter 5 examines how the role of power in negotiations changes, based upon the presence or absence of these scope conditions that are thought to be influential in certain Council settings. It does so by identifying the decision-making level within the Council at which agreement is reached on the controversies found in the dataset, and by examining the relative importance of power in resolving these controversies. The findings presented suggest that the role of power in determining decision-making outcomes varies according to the level of decision making within the Council under consideration. This implies that the internal structure of the Council is important to account for when examining the legislative process in the EU.

Chapter 6 builds upon the findings presented in the previous two chapters by considering the manner in which member states respond to 1) the institutional structure in which negotiations take place, and 2) the structure of the policy space associated with the proposal under negotiation. The chapter focuses upon member state intervention behaviour at different levels of negotiation in the Council and investigates the determinants of this behaviour. As mentioned earlier, an intervention is defined as any attempted by a member state to intercede during negotiations in order to change the contents of the proposal under negotiation. Examining member state intervention behaviour over the course of negotiation is fundamental to understanding how conflict is resolved between member states, yet this aspect of member state behaviour has to date received relatively little academic attention due to the difficulty of acquiring data on such behaviour. This chapter introduces new data on member state interventions and considers the determinants of this behaviour. The findings presented indicate that member states engage in different forms of bargaining behaviour at different levels of

negotiation within the Council, and that this behaviour is heavily influenced by the policy space of the proposal under negotiation, the saliency attached to each proposal, and member state power.

Chapter 7 examines the implications of the findings discussed in the previous three chapters by considering the manner in which the dimensionality of the policy space and differences in member state agency, luck and power, impact upon member state bargaining success. Bargaining success is conceptualised as the distance between a member states' initial policy positions and the final outcome on a particular issue or proposal under consideration. The findings show that the most important determinants of member state bargaining success are related to the distribution of policy positions in the policy space for the proposal under negotiation. Findings relating to member state agency and power are more mixed, but each is found to be related to bargaining success in some manner.

Chapter 8 concludes the thesis with an overview of the findings presented in the previous chapters, and then explores some of the implications of these findings for both academic and policy-making audiences. It shall also point to a number of directions that future research should consider to further current understanding of the legislative process in the EU. The aim is to situate the findings presented in the thesis within the broader academic literature and demonstrate the substantive impact of the internal structure of the Council on EU decision making.

CHAPTER 2: LITERATURE REVIEW

INTRODUCTION

This chapter shall outline the current academic literature examining decision making in the European Union in general and in the Council of Ministers in particular. It first explores competing theoretical perspectives that seek to explain how the EU has evolved over time, before examining current literature on the decision-making process in the Council of Ministers. Then the chapter explores the empirical literature that evaluates the competing claims emerging from this theoretical literature. Once the empirical evidence on Council decision making has been discussed, the roles of other EU institutions in the decision-making process are considered in order to gain a complete picture of EU politics. The aims of the chapter are to provide an overview of existing scholarship in this area and to identify areas where further scholarly investigations and attention are appropriate. The research questions introduced in the previous chapter shall be elaborated upon in light of this discussion, thus placing the work that follows in the current academic literature and demonstrating its contributions to this literature.

THEORETICAL PERSPECTIVES ON THE EVOLUTION OF THE EUROPEAN UNION OVER TIME

The first set of academic literature that shall be explored relates to the development of the EU as an international organisation over time. The discussion presented in this section relates to the debate between neo-functionalist scholars that emphasise the role of supranational actors in EU integration, and intergovernmentalist scholars that argue that EU integration is best explained as the result of bargaining between member state governments. The legislative process in the EU brings together a variety of actors, ranging from government ministers at the highest level of negotiation in the Council, to bureaucratic official of varying seniority at the Coreper and working group levels. Considering the theoretical and empirical implications of this literature is important, as they directly relate to the role that these different types of actors play in the decision-making process.

As the EU has evolved over time, the theoretical debate informing EU scholarship and the importance ascribed to different factors affecting EU integration have also evolved. Early theoretical insights into the EU were informed by various competing theoretical approaches found in the international relations literature. Scholars such as Haas (1958) advocated a neo-functionalist approach to explaining the evolution of the EU as a continually widening and deepening union. The thrust of the argument is that positive spillover effects, in which increased integration in one policy area enhance incentives to further integration in other policy areas, have helped the European project develop from the initial institutional arrangements found in the European Coal and Steel Union established in the 1950s to the highly institutionalised European Union observed today. Scholars argue that there has been a shift from national-level governance to supranational-level governance, with supranational actors such as the Commission and European Court of Justice exerting ever more power and influence in the European political system.

These theoretical arguments have regained popularity recently, finding new followers in light of recent treaty changes that have once again widened and deepened the EU as a political entity. A new generation of scholars has updated neo-functionalist theories by integrating insights found in institutionalist approaches to politics (North 1990). Three main constituent elements characterise this updated version of neo-functionalism (Sandholtz and Stone Sweet forthcoming): 1) There exists a set of political actors with transnational goals and interests (transnational society); 2) The supranational organizations in the political system under consideration are institutionalised, with autonomous abilities to resolve disputes and create legislation; and 3) A system of rules or normative structure exists that defines the political system and has evolved over time.

These constituent elements are thought to interact in the following manner. Transnational society (non-state actors engaged in transactions across national borders) create a demand for rules, standards and dispute resolution mechanisms (supranational governance).

This leads to the development of international institutions that increase the level of supranational governance. The resulting increase in supranational governance lowers transaction costs and leads to increased levels of cross-border transactions, as transnational actors take advantage of the more institutionalised setting and decreased levels of uncertainty surrounding the successful completion of these transactions. In turn, this causes a feedback loop between transnational demands for supranational governance and a resulting supply of said governance, thus creating a demand-driven spillover effect that is thought to fuel the EU integration project and the further institutionalisation of EU politics. A series of studies have found compelling evidence supporting this explanation of EU integration (Stone Sweet and Brunel 1998a; Fligstein and Stone Sweet 2002; Pitarkis and Tridimas 2003; Carruba and Murrah 2005).

While the evidence presented in the aforementioned studies provides important insight into the development of the EU over time, not all experts agree that the emphasis on transnational demands and the proposed feedback loop capture the full picture of EU integration. In contrast to the neo-functional explanation of EU integration, intergovernmentalists such as Hoffman³ (1966) have emphasised the importance of national governments and their role in shaping the EU as a political system. According to intergovernmentalists, national governments and the determinants of their preferences are the most important factors leading to increased EU institutionalisation, rather than spillover effects. Milward (1992) added weight to these claims by demonstrating that the early stages of the EU integration process was characterised by hard bargaining between self-interested member states, rather than supranational actors and ideals.

Moravcsik (1998) has put forward a liberal-intergovernmentalist theory of EU integration in which the level of institutionalisation observed at the EU level is a result of a

³ Hoffman's argument of course preceded those of the authors of the adapted form of neofunctionalism discussed above, but he is generally considered to be the founder of intergovernmentalist theory and is therefore referenced because of this.

three-step process. In the first stage, domestic-level preferences provide a demand for a certain level of supranational governance. In the second stage, interstate bargaining occurs and leads to the establishment of international regimes, reflecting the domestic-level demands of national governments. In the final stage, the international regimes lead to decreased transaction costs between governments, which in turn strengthen the legitimacy of the established international regime. Most importantly, and in contrast to the neo-functional argument outlined above, integration only occurs in areas where a domestic-level demand for integration exists, and there is little scope for spillover effects. Neo-functional arguments assume that the transnational demand for integration creates a need for further supranational institutionalisation, whereas neoliberal intergovernmentalists argue that any such EU-level demands are the result of domestic-level processes, but these processes are not *a priori* guaranteed to lead to EU-level demands for further supranational institutionalisation.

LEGISLATIVE DECISION-MAKING AND THE DAY-TO-DAY POLITICS OF THE EUROPEAN UNION

While the ongoing debate between neo-functional and intergovernmentalist scholars has provided important insights into the factors that have shaped the process of EU integration over time, these theoretical approaches reveal relatively little about day-to-day legislative decision making in the EU (Hix 1999). Since the early 1990s, a series of scholars taking inspiration from approaches developed in comparative politics, rather than in international relations, have sought to explore the role that the institutional environment plays in determining legislative outputs in the EU (Bueno de Mesquita and Stokman 1994; Tsebelis 1994; 1996; Crombez 1996; 2001; Thomson *et al.* 2006). These studies shift attention from the evolution of the EU political system over time to the inner workings of the EU as a political system at particular points in time. This line of research is of direct relevance to the research questions elaborated upon in the previous chapter, which are concerned with the manner in which the institutional structure in which negotiations take place impact upon legislative

decision-making and negotiator behaviour. two distinct forms of new-institutionalism are now explored.

RATIONAL CHOICE INSTITUTIONALISM

The importance ascribed to different aspects of the institutional environment in affecting actor behaviour varies within the institutionalist literature, depending upon the type of 'new institutionalism under consideration (Aspinwall and Schneider 2000). Rational choice institutionalist scholars have chosen to focus upon legislative procedures and the role that legislative rules play in determining decision-making outcomes (Steunenberg 1994; Tsebelis 1994; Crombez 1996; 1997). These studies contend that the sequence of moves in the legislative game and the distribution of actor positions on any particular issue under consideration determine the influence of each actor over the decision-making process. Emphasis is placed on agenda-setting and proposal amendment powers and the role that voting thresholds play in determining these powers. Member state power is believed to be determined by the number of votes ascribed to each member state by the legislative rules, and whether or not a member state turns a losing coalition into a winning coalition due to their relative policy position in the political space under consideration. Under the unanimity voting rule, each member state possesses veto power over the decision-making process and thus equal *a priori* ability to influence outcomes. Under the qualified majority voting system, each member state has a given number of votes with which to influence negotiations, with the number of votes broadly reflecting the relative size of each member state.

In this conceptualisation of the decision-making process, the power of other institutions such as the Commission and European Parliament to affect outcomes is determined by the stage at which they are allowed to provide policy inputs and by the rules determining how these inputs are assimilated into the legislative process. The exact role that each institution plays in the legislative process depends upon the legislative procedure in use. The consultation procedure is thought to empower the Commission as the agenda setter and the Council as the

decision maker (Crombez 1996). This is due to the fact that the Commission has sole right to propose legislation and the Council is the decision-maker under consultation.

In contrast, the codecision procedure is thought to empower the Parliament as co-legislator with the Council. Under the codecision procedure, the Commission loses some of its agenda-setting power, as the Council and Parliament can later agree upon amendments to the proposals under consideration in a conciliation committee, without approval from the Commission. The exact role that each institution plays in the legislative game under codecision is disputed. Some argue that the Commission still plays a role in the legislative process as proposer of legislation, despite the post-hoc ability of the Council and Parliament to agree on changes to proposals in conciliation committees (Crombez 2003; Steunenberg 2001). A contrasting view suggests that the Commission is irrelevant under codecision despite its proposal making powers, due to the post-hoc ability of the Council and Parliament to agree on changes to proposals in conciliation committees (Tsebelis and Garrett 2000; 2001). When the Commission is thought to be irrelevant, there is debate as to whether the Council Presidency (Steunenberg 1994; Crombez 2000a) or Parliament (Steunenberg 1997; Crombez 2000a) takes the role of agenda setter. In an empirical test of these competing models, the Parliament model (Steunenberg 1997) performs best, suggesting that the Parliament takes the lead and shapes codecision proposals (Steunenberg and Selck 2006).

This debate surrounding the appropriate way in which to capture the legislative process is relevant to the chapters that follow, as it seeks to identify the exact role that each institutional actor plays in the legislative process. The influence of the Commission and Parliament on the decision-making process in the Council is a recurring theme in the chapters that follow, with some chapters explicitly modelling this influence using game theoretic models of the decision-making process (Chapter 4), and others testing the influence that the policy positions taken by the Commission and Parliament have upon member state behaviour and outcomes at different levels of negotiation in the Council (Chapters 5-7).

In contrast to procedural models of EU decision making, another set of models explores the role that informal bargaining between actors plays in determining legislative outputs (Arregui *et al.* 2004; Arregui *et al.* 2006; Achen 2006a). Models in this tradition are built upon the argument that legislative rules and the sequence of play in the legislative game are less important in determining outcomes than the distribution of policy positions, voting power and the saliency that each actor attaches to the issues under negotiation. The exact manner in which each of these factors influence the decision-making process varies between different bargaining models, but the emphasis upon bargaining rather than procedural rules distinguishes this set of models from the previous set.

Achen (2006a) critiques the extended form games utilised by the procedural models discussed above, and draws attention to the difficulty inherent in formulating such models in a way that accounts for the complexity of the legislative process. He argues that modelling the formal rules of the legislative process is difficult due to the complexity of the laws involved; and even if such models can be constructed, correctly specifying the strategy spaces, actor information sets and order of play for the games under consideration is nearly impossible, given the current knowledge available⁴. As a result, Achen advocates the use of cooperative game theory models, which make no attempt to explicitly track the sequence of moves in the game, but instead treat the decision-making process as a black box, focus upon making predictions that must satisfy a set of axioms, and are based upon a series of inputs (policy positions, issue saliency and actor power). The logic behind utilising these much more simplified models of the legislative process is that they focus upon predicting the outcomes produced by the negotiation process, without becoming lost in the minutiae of how these outcomes are produced (Achen 2006a).

⁴ Chapter 4 investigates the impact that varying assumptions about the dimensionality of the policy space has upon the predictions of these procedural models of the legislative process.

The obvious criticism of Achen's approach is that it ignores actor interactions at the micro level by focusing on macro level processes. Other scholars elaborate upon a position-exchange model that accounts for both micro and macro level aspects of legislative decision making in the EU. In the position exchange model, the EU decision-making process is divided into two distinct phases (Stokman and Van Oosten 1994; Stokman *et al.* 2000; Arregui *et al.* 2006). The first phase involves informal bargaining between actors, in which position exchanges between pairs of actors occur when they are mutually beneficial to those actors. The second stage consists of the application of the insights provided by Achen (2006a) about the usefulness of cooperative game theory, in order to make predictions based upon actor positions following the exchanges that occur in the first phase. These models can be seen as appealing as they account for actor level behaviour to some degree, without being encumbered by the legislative details for which non-cooperative game theory models account.

Thomson *et al.* (2006) undertook an ambitious study that empirically tested a series of these models' predictions against negotiation outcomes over a large selection of legislative proposals decided upon between 1999 and 2001. They found that overall, bargaining models outperformed procedural models; and specifically, compromise (Achen 2006a) and exchange models (Arregui *et al.* 2006) outperform models based on formal rules and procedures (Steunenberg and Selck 2006). These findings suggest that the legislative process in the EU is better characterised as bargaining between member states, rather than a sequential game in which each actor responds to the move of the previous actor.

SOCIOLOGICAL INSTITUTIONALISM

The two sets of legislative models described above are linked by the fact that they both emerge from a rational choice institutionalist framework. Rational choice institutionalist scholars generally assume that actor preferences are fixed from the outset, and that actors behave rationally when pursuing their preferences in order to maximise the utility gained from the outcomes produced. In contrast to this rationalist conception of EU decision making,

deliberative theorists and those who adopt a more sociological institutionalist perspective have speculated that behavioural norms and a deliberative form of negotiation better characterise negotiations in certain legislative contexts in the EU. These arguments are based on a distinction made by March and Olsen (1998) between a 'logic of consequence', which is thought to lie behind forms of behaviour examined by rationalist accounts of the decision-making process, and a 'logic of appropriateness', which is thought to lie behind forms of behaviour examined by more deliberative accounts of the decision-making process. This literature is now explored as it relates to the debate surrounding how the decision-making process varies across different levels of negotiation in the Council, a debate which is important to understand when examining the research questions addressed in this thesis.

When examining the role of different levels of negotiation in the Council, Lewis (1998; 2003b; 2005; 2010) draws attention to particular aspects of Coreper decision-making that suggest a 'logic of appropriateness' is at work in influencing legislative outcomes. He identifies a number of scope conditions that are believed to affect the type of decision-making logic behind member state behaviour, such as the level of insulation from outside influence, the level of rotation of negotiators, and the density of issues under consideration⁵. In Coreper, where negotiators are relatively insulated from outside influence, with low levels of actor insulation, and a relatively high level of issue density, a 'logic of appropriateness' is thought to be at work, which establishes a set of norms regulating acceptable forms of negotiation behaviour. Under these norms, certain types of behaviour, such as the coercion of other negotiators, are deemed inappropriate. It is argued that this fundamentally alters the process of decision making that takes place at this level of negotiation in the Council.

Juncos and Pomorska (2006) extend this argument to the working group level of negotiation in the Council by appealing to the same set of scope conditions. They argue that at

⁵ These scope conditions and the effect that they have of the type of decision-making process at work at different levels of negotiation in the Council is considered in detail in Chapter 5.

the working group level, there are lower levels of insulation from outside influence, higher levels of negotiator rotation, and lower levels of issue density, compared to the Coreper level of negotiation. This set of scope conditions is thought to prevent the internalisation of behavioural norms at this level of negotiation to some extent. While behavioural rules are thought to exist, they are followed as part of a strategic calculus, in which concerns for credible commitments and an awareness of long-term time horizons motivate actor behaviour.⁶

The variation in these scope conditions across different levels of negotiation in the Council present an opportunity for assessing how the decision-making process is affected by the institutional structure in which it is taking place. The relative influence of these scope conditions on the decision-making process is considered in detail in Chapter 5. While the abovementioned literature presents interesting theoretical insights into the process of decision making in the EU, other aspects of the decision-making process also deserve academic attention. These include accounting for the dimensionality of the political space in which bargaining takes place, accounting for variation in the decision-making process across different levels of negotiation within the Council, and accounting for the role played by the other EU institutions in the bargaining process. The current academic literature on these diverse issues is now explored.

DIMENSIONS OF CONFLICT IN THE COUNCIL

The importance of accounting for the dimensionality of political space when engaging in spatial modelling has long been established in the field of social choice theory. Early contributions in this field established that the number of dimensions associated with negotiations is inherently linked to the power of the agenda setter and the location of decision-making outcomes (Plott, 1967; McKelvey, 1976; Tollison and Willet, 1979; Riker, 1986, 1993; Tsebelis, 1997) Understanding the architecture of the political space in which actors take positions is fundamental to the process of modelling EU decision making (Benoit and Laver

⁶ There seems to be an implicit link to this argument found in game theoretic literature on repeated games, in which actors are concerned with reputation due to repeated interactions.

2006). Indeed, all the models mentioned in the previous section rely on the correct specification of the dimensionality of political space, (Junge and König 2007), and an understanding of whether or not actor preferences are separable across these dimensions (Hinich and Munger 1997). A large set of empirical literature has sought to identify the underlying dimensions of conflict that shape the decision-making process, and thus shed light upon these issues. Current academic literature on the underlying dimensions of conflict in the Council can be broadly divided into a number of different approaches, relating to the methodology utilised to assess the underlying dimensions of conflict in the Council. Methodologies utilised include examining voting behaviour, initial policy positions, policy networks, and member state policy goals through election pledges.

Some scholars have chosen to focus upon the explicit voting behaviour of member states in the Council, and the degree to which this behaviour is shaped by underlying dimensions of conflict (Mattila and Lane 2001; Mattila 2004; 2008; Aspinwall 2006). Three distinct dimensions of conflict were found to influence member state voting behaviour. Voting coalitions were found to form around a geographical North-South dimension, an ideological Left-Right dimension, and a pro-/anti-EU integration dimension. These voting coalitions were found to remain relatively stable both before and after enlargement in 2004 (Mattila 2008), suggesting that the enlargement process has not significantly changed voting patterns in the Council.

While these studies give interesting insight into cooperative behaviour between member states with regard to explicit voting in the Council, they are limited by the fact that formal votes are only taken for approximately 20% of all proposals decided upon, and that these votes only take place at the ministerial level of decision making within the Council (Naurin and Lindahl 2008). This is a significant disadvantage when examining patterns of member state cooperation, as the studies ignore all proposals that were decided upon without an explicit vote in the Council, thus limiting the generalisability of the findings produced. Furthermore, the

studies give no indication of how member states cooperate at all stages of negotiation prior to the ministerial level of decision making.

Hagemann (2007; 2008), and Hagemann and Høyland (2008) consider government disapproval of proposals rather than explicit voting alone, in an attempt to ameliorate the problem that formal votes are relatively rare. They do so by combining voting records with new information on the formal statements inserted by governments into the Council minutes that record their concerns or disapproval of the proposal decided upon. It is assumed that these statements are another form of opposition that circumvents the need to vote against a proposal. When this new measure of coalition patterns in the Council was analysed, evidence that the ideological affiliations of member state governments affects their voting behaviour emerged. While this approach increases the number of proposals that can be considered by including data on formal statements, it still ignores the fact that these statements are made in the final stage of the negotiation process and thus cannot fully account for all that goes on before this stage.

In contrast to those studies focusing upon explicit voting behaviour in the Council and formal statements entered into Council records, a second set of scholars has examined the underlying dimensions of conflict in the Council in terms of the congruence between member state initial policy positions taken at the outset of legislative negotiations (Thomson *et al.* 2004; Zimmer *et al.* 2005; Kaeding and Selck 2005). This approach is a more comprehensive manner by which to examine the underlying dimensions of conflict before and after enlargement, as it is not limited by the fact that an explicit vote or formal statement might not have been applied to a particular proposal. These studies once again revealed a North-South divide structuring the policy space before and after enlargement, although this alignment was not found to be very strong (Thomson 2009). Furthermore, this geographical dimension seemed to have evolved somewhat following the 2004 enlargement, with evidence of a new Eastern bloc coalition having some influence over the legislative process (Naurin and Lindahl 2008; Thomson 2009).

An interesting picture of the manner in which the underlying dimensions of conflict between member states has evolved both before and after enlargement emerges from this second set of literature, yet a number of criticisms should be noted. The first of these relates to the fact that these studies measure the underlying dimensions of conflict in terms of member states' initial policy positions, which are assumed to be fixed at the outset of negotiations. Measuring the underlying dimensions of conflict in this manner necessarily ignores the fact that initial positions might be strategic in nature and not representative of a member state's 'true' position on the issue. Arregui *et al.* (2004) investigate shifts in member state bargaining positions over the course of negotiations and find that this is an important feature of the policy-making process. Arregui (2008) provides more insight into shifts in member state policy positions by showing that institutional factors, such as legislative procedures and decision rules, and negotiations conditions, such as the duration of negotiations and the extremity of member state positions, have an important impact upon whether or not member states do indeed change their positions over the course of legislative negotiations.⁷ It thus seems important to allow for shifts in member state bargaining positions when assessing the underlying dimensions of conflict in EU negotiations.

The second criticism relevant to this literature is that it fails to account for the internal structure of the Council and does not consider whether or not the underlying dimensions of conflict between member states vary, depending upon the level of decision making within the Council at which negotiations take place. There are compelling theoretical reasons to expect member state behaviour and the underlying dimensions of conflict shaping this behaviour to vary, depending upon the level of decision making within the Council that is under consideration. These arguments emerge from the literature outlined in the previous section,

⁷ The focus of that chapter is on member state negotiation behaviour in terms of the interventions they make over the course of negotiations.

relating to variation in the decision-making process depending upon the set of scope conditions at work at a particular level (Lewis 2005; Juncos and Pomorska 2006).

Yet other scholars have sought to investigate patterns in member state cooperation and the underlying dimensions of conflict shaping this behaviour through the use of network analysis. Beyers and Dierickx (1997; 1998) investigated communication networks between member state negotiators at the working group level and found a North-South divide between member states, similar to the studies already mentioned above. They also found that these networks were centralised in nature, with larger member states and important institutional actors such as the Commission, General Secretariat and Presidency holding central positions, while smaller member states are more periphery. In a more recent study of cooperation networks between member states across different levels of negotiations in the Council, Naurin (2007) verifies Beyers and Dierickx's (1997; 1998) findings regarding the existence of a North-South divide between member states and the centrality of larger member states, using data collected following the 2004 enlargement. This study found that enlargement has also led to a new Eastern bloc structuring member state behaviour and separating newer member states from older member states. These studies avoid some of the problems associated with assessing the dimensionality of the policy space in terms of voting behaviour or initial policy positions, by examining stakeholder perceptions of patterns of cooperation amongst member states.

While these studies provide interesting insight into patterns of member state cooperation at different levels of negotiation within the Council, it is important to consider the validity of the data used in these analyses, which were collected by interviewing or surveying the stakeholders involved. It is difficult to assess the manner in which survey respondents and interviewees make judgments regarding with whom they cooperate most often, and the accuracy of such responses is difficult to gauge, in spite of the significant efforts made by the authors to avoid such problems.

Veen (2011) produces an analysis of the dimensionality of the Council's political space based upon a subset of data from the 'Euro-manifestos' project (Braun *et al.* 2004), which avoids some of the problems associated with the previously discussed studies. This dataset was constructed by analysing the policy platforms of member state governments as presented in their EP election manifestos. The argument for using this data source is that these European manifestos represent relatively honest statements of policy goals, given the fact that voters rarely consult parties' Euro-manifestos. Veen (2011) argues that these manifestos are better characterised as 'contracts' that define parties and distinguish them from other parties in the political system, and as such, can be used to measure parties' EU-level policy goals. The finding presented again shows evidence in support of a geographical structuring of Council decision making with a North-South divide before enlargement and an east-west divide after enlargement. The study concludes that these geographic divides occur in a two-dimensional policy space, with one dimension described as a 'policy' dimension, and the other described as a 'pro-/anti-EU integration dimension. The novelty of this study is that the findings are produced from a non-obvious and new data source, and they corroborate the findings presented in the existing studies discussed above.

THE INTERNAL STRUCTURE OF THE COUNCIL

While the theoretical reasoning behind the need to account for the internal structure of the Council is clear from the literature discussed at the start of this chapter (Lewis 1998; 2005; 2010; Juncos and Pomorska 2006), the relative importance of each distinct level of decision making in the negotiation process must also be considered. In order to establish the role played by each level of decision making in the Council, it is important to examine the proportion of decisions made by each level. Häge (2008) provides an excellent overview of scholarship in this area. Table 1 below is adapted from that study and indicates the extent of decision making taking place at each level within the Council, based on the studies reviewed. This literature is relevant to the research questions under consideration in this thesis as they seek to explore the

role that each of these levels of negotiations play in the legislative process within the Council.

As can be seen in Table 3.1, there is wide variation between the estimates of the proportion of decision making taking place at each Council level presented in each study. The methodologies used and the issue areas covered by these studies vary considerably across the set, which might explain some of this variation. The most important studies to note from the perspective of the current argument are those that consider all policy areas and differentiate between the different levels of negotiation in the Council (Hayes-Renshaw and Wallace 1997; van den Bos 1991; Häge 2008). The remaining studies are included for the sake of completeness. The often-quoted figures produced by Hayes-Renshaw and Wallace (1997) are now considered to be problematic, due to the fact that they rely on personal insight and anecdotal evidence (Häge 2008). The Van den Bos (1991) estimates are of more interest, as they were collected through expert interviews with stakeholders involved in the decision-making process. That study estimates that approximately 37% of all discussions occur at the working group level, 16% at the Coreper level, and 47% at the ministerial level. However, one can expect significant changes to have occurred in the process of negotiation in the Council, given the fact that the study was published in 1991. Furthermore, the scope of that study was limited to proposals deemed important to the Netherlands, and thus might not be representative of the decision-making process as a whole.

Table 3.1: Assessment of the extent of committee decision making from existing research (Häge 2008).

Author	Data source	Policy/period	Working group	Coreper	Ministers
Hayes-Renshaw and Wallace (1997: 40, 78)	Practitioner Estimate	General unspecified	70%	15-20%	10-15%
Hayes-Renshaw and Wallace (2006: 53) ¹	Ministerial agendas	General 2004		66%	34%
Andersen and Rasmussen (1998: 589) ²	Council documents	Environment 1993/1994		26%	74%
Gomez and Peterson (2001: 540)	Ministerial agendas	GAER 1995-2000		48%	52%
van den Bos (1991: 232) ³	Expert interviews	General 1987	37%	16%	47%
van Schendelen (1996: 538)	Ministerial agendas	Agriculture 1992/1993		87/65%	13/35%
Häge (2008) ⁵	Prelex database	General	42.8/30.6%	22.2/21.1%	35/48.3%

Notes: This table is adapted from Häge (2008), with an added row for the findings produced in that study.

¹ The total number of B points and the total number of agenda points in GAER seem to be incorrect in the original Table 2.2. As a result, the percentage figures given in the original table are also incorrect. The percentages given here result from re-calculations made based on the raw numbers given in the original table.

² Proportions refer to acts discussed at different levels and were calculated from raw figures, as presented on page 589.

³ Proportions were calculated from raw figures as presented on page 232. Decisions by the Article 133 Committee were counted as working party decisions.

⁴ The first number is the proportion of A-items plus the proportion of B-items discussed but not decided; the second number is the proportion of A-items only.

⁵ The first number is the proportion of legislative acts decided upon at each level; the second number is the proportion of legislative acts discussed at each level.

Perhaps the most accurate and informative study of the relative role played by each level of decision making within the Council is that produced by Häge (2008). This study relies on documentary evidence recorded by the General Secretariat over the course of negotiations, and is not limited to a particular policy area, thus providing a more accurate measure of the influence of all levels of decision making in the Council. The findings produced by this study

estimate both the distribution of final decisions across different levels within the Council, and also allow one to track the progress of negotiations across each level within the Council. When one considers the context in which a proposal was finally decided upon, one finds that the working group level accounts for 42.8% of all final decisions, the Coreper level accounts for 22.2% of all final decisions, and the ministerial level accounts for 35% of all final decisions. When one considers the percentage of discussions that take place at each level, one finds that 30.6% of all discussions take place at the working group level, 21.1% of all discussions take place at the Coreper level, and 48.3% of all discussions take place at the ministerial level. These findings lend weight to the claim made previously that it is important to account for the internal structure of the Council when examining EU decision making (Lewis 1998; 2005; Juncos and Pomorska 2006). In spite of the important insights provided by this study, there are a number of limitations to the data that must be mentioned before proceeding.

The first important weakness of the Häge (2008) study is that it only considers Council decision making up to the point when the Parliament delivers a first reading opinion. This is problematic because under the codecision procedure, in many situations, the Council and the Parliament do not reach agreement following the Parliament's first reading; negotiations are subsequently referred back to different levels within the Council. Häge (2008) argues that excluding negotiations following first reading decisions hardly affects the measure of ministerial involvement, due to the fact that ministers are rarely involved after the first reading stage of negotiations, and negotiations are handled at lower levels of negotiation in the Council. Even if this is the case, the study remains problematic as it systematically underestimates the roles played by these lower levels in the Council when negotiations go beyond the first reading stage. Furthermore, when one considers the procedural model literature and the important role that it ascribes to the order in which actors are allowed to move and the agenda-setting capabilities of actors inherent to the sequence of the game, this decision seems inappropriate.

While the aforementioned studies give estimates of the relative importance of each level of decision making in the Council, a more detailed picture of the inner working of the Council is provided by the literature relating to each level individually. The importance of the working group level in Council decision making, which becomes apparent from Häge's (2008) estimates, shall first be discussed. One of the major debates surrounding the working group level of negotiation within the Council is whether the process of decision making is best described by the rationalist concept of bargaining or the deliberativist concept of arguing. The theoretical differences between the two approaches were explored in the theory section above, but subjecting these concepts to empirical testing yielded some interesting findings. Initial attempts to assess the relevance of these competing explanations were based upon case studies, in which scholars used process tracing to assess whether deliberative behaviour was taking place in Council working groups and committees (Joerges and Neyer 1997; Jacobsson and Vifell 2007; Niemann 2009). These studies have provided insight into the decision-making process, finding evidence that deliberative behaviour was taking place at the working group level, but they are limited by that fact that it is impossible to assess how widespread this behaviour is across different Council settings because generalisation from such case studies is inappropriate.

Naurin (2010) made a significant theoretical and empirical contribution to the debate surrounding the working group level within the Council, by distinguishing between arguing and bargaining in terms of the *purpose* that actors ascribe to their actions. He argues that deliberative theorists have confounded observation of member state reason-giving during negotiations with deliberation, and points to the fact that one must account for the purpose of giving a reason for a particular point of view, in order to distinguish between arguing and bargaining in negotiations. Giving reasons itself is compatible with either interpretation of the negotiation process, and it is only by examining the motivations behind negotiator actions that one can differentiate between these different forms of negotiation. In order to access the motivations behind member state reason giving during negotiations, Naurin (2010) interviewed

officials involved in negotiations and asked them to discuss the motivations behind their negotiation behaviour. The empirical findings presented show that while member states do engage in arguing and deliberative forms of negotiation, they generally do so when the stakes under consideration are low. When the issues under consideration are salient to the actors involved and the risks involved in losing with respect to outcomes are high, the negotiation process is found to more closely resemble the rationalist concept of bargaining rather than the deliberativist concept of arguing.

At the Coreper level of negotiation within the Council, as mentioned in the theoretical discussion presented above, a different set of scope conditions is expected to apply, which are thought by some to encourage more deliberative forms of negotiation (Lewis 1998; 2005; 2010). Lewis (2005) provides some evidence that in contrast to the working group level, Coreper is characterised by relatively high levels of issue density, a high level of insulation from domestic audiences, and a wide policy scope, and—as a result—is able to maintain a high density of norms and group standards of behaviour. These scope conditions are found to have a positive reinforcing effect on member state behaviour over time, which leads to more cooperative styles of negotiation. Lewis (2005) adds an important caveat by arguing that even within Coreper, one should expect variation in these scope conditions across different Coreper configurations, which in turn will affect the internalisation of group norms of behaviour. However, such a caveat only reinforces the substantive importance of the scope conditions under consideration in determining member state behaviour at different levels within the Council. The role of these scope conditions in affecting the decision-making process is examined in detail in Chapter 5.

There is a relative paucity of empirical studies on member state behaviour and the process of legislative decision making that focus upon the ministerial level when considered in isolation. This is mostly due to the fact that these meetings are in most cases conducted in an in-camera setting, and the usual research strategies for data collection such as semi-structured

interviews or surveying those involved in such meetings are more difficult to implement, given that access to the government ministers involved in the negotiation process is more difficult to obtain. As mentioned above, empirical records of voting behaviour seem to demonstrate relatively low levels of conflict in terms of negative voting behaviour and abstentions (Mattila and Lane 2001; Mattila 2004; 2006; 2008). However, it is difficult to draw strong conclusions from these studies, as voting results reflect the outcome of extended negotiation processes involving all levels of Council decision-making, rather than activity at the ministerial level alone. The present study shall investigate the decision-making process at the micro and macro levels, with a strong focus upon the role played by the working group and Coreper levels within the Council. Unfortunately, investigating the role of the ministerial level of negotiation is more difficult for the very reasons stated above. The role of the Council Presidency is now considered, before moving on to the other institutions involved in the decision-making process in the final part of the literature review.

THE PRESIDENCY OF THE COUNCIL

While the role of the Council Presidency is not explicitly accounted for in the analyses that follow, it is important to be aware of the role played by the Presidency in Council decision making. Council negotiations are lead by the Council President which previous to the Lisbon treaty introduced in 1999, was a position rotated between member states every six months⁸. The Presidency is tasked with guiding negotiations and acting as impartial arbitrator between negotiating parties. Whether or not holding the Presidency grants the holder extra influence over the decision-making process is debated in the academic literature. Those who think the President possesses little extra power appeal to a number of arguments (Schalk *et al.* 2007). Firstly, Presidency power is thought to be limited due to the relatively short time period for

⁸ The Council of the EU, which has a rotating Presidency is not to be confused with the European Council, which since the treaty of Lisbon entered into force on 1 December 2009, has had a permanent President elected for 2 ½ years. The European Council is tasked with driving the overall direction of EU policy making, whereas the Council of the EU deals mainly with law-making and budgetary matters.

which the Presidency is held (six months). Secondly, the position requires a heavy commitment to administrative tasks in order to ensure the smooth progress of negotiations, leaving little time to influence legislative negotiations at the same time. Thirdly, the Presidency is thought to have to be relatively consistent with the positions of previous Presidencies, as policies set by previous Presidents are difficult to alter or reverse. Finally, the formal powers of the Presidency—in terms of veto power and agenda setting—are considered relatively weak. When these factors are combined with the fact that the decision-making process is characterised by consensus seeking between negotiators (Hayes-Renshaw *et al.* 2006), the conclusion is that the Presidency has relatively little influence over the decision-making process (Schalk *et al.* 2007).

In contrast to this rather bleak view of Presidency influence, Tallberg (2004; 2006; 2010) argues that the President can leverage asymmetries of information and its procedural control over the legislative process, in order to influence decision-making outcomes in its favour. Schalk *et al.* (2007) add to the discussion surrounding the potential influence of the Presidency over the decision-making process by differentiating between various stages in the negotiation process at which the President can seek to influence outcomes. They test a series of hypotheses using the DEU dataset (Thomson *et al.* 2006) and find that while Presidency influence is limited at early stages in the negotiation process, when negotiations reach the decision/voting stage, the Presidency does seem to have an impact upon policy outcomes.

Analysing the role of the Council Presidency in Council negotiations is beyond the scope of the current study, which seeks to explore member state behaviour at different levels of negotiation in the Council. Accounting for the role of the Council President in legislative negotiations is an important endeavor, given the rather mixed findings presented above, and is something that future research should seek to address. The discussion of the role of the Presidency presented in this section is included for the sake of completeness, and to show that the Presidency plays a role in Council decision-making, despite the fact that this role is not directly investigated in the work presented in the chapters that follow.

While the literature discussed in the previous section has significantly improved our understanding of Council decision making, one must also account for the fact that the Council is nested within a broader institutional structure, with the Commission, Parliament and General Secretariat playing important roles in the decision-making process. The role of each of these institutions in affecting Council decision making is considered in a variety of ways in the chapters that follow. This section discusses the current literature on this diverse set of institutional actors and the manner in which they interact with the Council in the decision-making process, so as to establish the context in the academic literature in which the chapters that follow are located.

THE COMMISSION

The first important institution that interacts with the Council in the decision-making process is the European Commission. The Commission holds an important position in the legislative process as sole proposer of legislation, thus making it the agenda-setter in EU policy making (Crombez 1996; 1997). Commonly seen as the most supranationalist EU institution, it is tasked with proposing legislation for adoption, monitoring state compliance with existing legislation, and representing the interests of the EU as a whole.

Theoretical accounts of the influence of the Commission over the legislative process stress the importance of the Commission as an agenda-setter because of its role as proposer of legislation (Steunenberg 1994; Crombez 1996). This agenda-setting power stems from the relative difficulty in amending Commission proposals once they have been proposed. Under the consultation procedure, proposals put to the Council by the Commission must be amended with unanimous agreement from all member states, which provides a significant barrier to changing the proposals as they stand. Under the codecision procedure, amendment of Commission proposals is easier because the Council and Parliament can agree on amendments in

conciliation committees at later stages in the negotiation process (Tsebelis and Garrett 2001). This is thought to weaken the Commission's agenda-setting power to some degree.

Of course, the question of whether or not the agenda-setting power of the Commission leads to legislative outcomes that differ from member states' most preferred outcomes is dependent on the policy position of the Commission in the first place, and on member states' ability to influence the Commission's position. Pollack (2003) argues that the Commission and member states have a principle-agent type of relationship, with member states' ability to control the Commission as agent based firstly upon their ability to appoint Commissioners and the Commission President, and secondly, upon comitology, in which member states can monitor Commission activities after legislation has entered into force (Franchino 2000; Döring 2007).

The first avenue of agent control, relating to the appointment of Commission officials and its effects on Commission preferences, has received some attention in the scholarly literature. Hooghe (2001; 2005) examined the preferences of top Commission officials and the factors that affect these preferences. She found that the most important determinants of Commission officials' preferences were the length of service in government at both the national and EU levels, the age at which Commission officials enter the Commission, and these officials' national party affiliation. Interestingly, no intrinsic conflict between national and international norms or preferences is found, and the most powerful influences on pro-European support among officials are at the national or sub-national level (Hooghe 2005). These findings suggest that member states can influence the preferences of Commission officials through careful consideration of those they nominate for top office. Interestingly, it appears that member state governments, which are political rather than bureaucratic by their very nature, are aware of this avenue of influence, as a number of studies have shown that those selected for high office in the Commission tend to come from a political rather than bureaucratic background (Wonka 2004; Magnette 2005). Furthermore, when one considers the link between the appointments process and the policy positions taken by the Commission, Thomson (2008a) finds empirical support for

the hypothesis that a Commissioner's nationality impacts upon the congruence between the policy positions of member states and the Commission. He finds that the Commission's policy positions are generally closer to those of the relevant member state, when the Commissioner involved is from that member state. This suggests that member states can influence the Commission's policy position in policy areas where they have a nominated Commissioner.

Comitology is often seen as the second avenue through which member states can control the Commission, once legislative decisions have been reached. The comitology system establishes a series of intergovernmental committees that are tasked with overseeing the activities of the Commission in policy areas where such oversight mechanisms have been institutionalised. Experts believe comitology is applicable to approximately 20% of all legislation decided upon by the EU since 1987 (Dogon 1997). Franchino (2000) argues that these committees represent an *ex-post* control over Commission activities, and thus significantly alter the ability of the Commission to pursue its own policy agenda. While the Commission maintains its proposal power, this power is mitigated to some degree when comitology arrangements are in place, given that member states can influence the implementation stage of the policy process after legislation has been enacted.

Dehousse (2003) has argued that perceptions of the role played by these comitology committees in the decision-making process have evolved over time. While the committees were initially established to provide intergovernmental oversight of Commission activities, this role seems to have changed somewhat, with evidence of a principle-agent problem and bureaucratic drift between the committees and their member state principles emerging. In response to this perceived principle-agent problem, actors such as the European Court of Justice, the European Ombudsman, and the Parliament have sought control mechanisms and procedural standards of openness for the committees themselves. These mechanisms have been codified to some degree in the 1999 framework decision on comitology (Council 1999). At this stage, it remains unclear how widespread the problem of bureaucratic drift in these committees is, as there are few

empirical studies regarding the comitology process, its effects on legislative decision making, and its influence over the power of the Commission to affect this process.

THE EUROPEAN PARLIAMENT

The second institutional actor that must be accounted for in the legislative process is the European Parliament. The role of the Parliament in EU politics in general has increased since its inception in 1979, and it now has the power to enact legislation in many policy areas, amend most lines in the EU budget, veto governments' nominees for the EU Commission President, and sack the Commission itself (Hix 1999; Hix *et al.* 2005). In light of these facts, a large academic literature has developed that seeks to explain the Parliaments' role in the legislative process.

Similar to the Commission, the formal role of the Parliament is determined by the decision-making procedure under which negotiations take place. Under consultation, the role of the Parliament is limited to providing non-binding opinions on the legislation being considered. While this legislative procedure limits the formal influence of the Parliament, Varela (2009) argues that the Parliament can influence the Commission and Council by pooling divergent policy demands, and by acting as an indirect channel through which lobbyists and civil society can access the decision-making process. The Parliament can take advantage of the fact that it holds significant legitimacy as the only directly elected EU institution to pressurize the other institutions, even when the legislative rules give it no formal power to influence the negotiation process. The idea that the Parliament has some influence over legislative outcomes under the consultation procedure has received some support in empirical investigations of the decision-making process (Thomson and Hosli 2006).

Under codecision, in contrast, the Parliament has full veto power over legislative negotiations and must reach agreement with the Council before legislation can be adopted (Tsebelis and Garrett 2001). There is considerable debate over the balance of power between the Parliament and Council under codecision. Formal modellers have focused upon the rules of

the legislative game and the sequence of play in which each institution can move. Even within this literature, there are significant differences of opinion with regard to the balance of power between the institutions involved, with game theoretic models being developed to represent different interpretations of the legislative process (Garrett 1992; Steunenberg 1997; Tsebelis 1997; Tsebelis and Garrett 2000; Crombez 2000a; Selck and Steunenberg 2004). In an empirical test of some of these competing models, Steunenberg and Selck (2006) found evidence that formal models in which the Parliament move first better predict policy outcomes (Steunenberg 1997).

The source of this Parliamentary advantage over the Council is not explained by the formal institutional rules, as they do not specifically dictate that the Parliament moves before the Council. A second set of authors has focused upon the informal institutions that are thought to regulate interactions between the Council and Parliament. These authors provide some insight into why the Parliament appears to have a slight advantage over the Council in the bargaining process. Farrell and Héritier (2003) suggest that particular factors—such as differences in actor time horizons, sensitivities to failure, and levels of resources—are used by the Parliament to increase its influence over the legislative process. It is argued that the Parliament has longer time horizons than the Council, which generally partitions work to coincide with the rotating six-month Presidency. Parliament is less sensitive to failure than the Council, as Parliamentary elections are second order in character (Reif and Schmitt 1980; Marsh 1998), thus providing weaker electoral pressure on MEPs than is felt by member state governments. Finally, Parliament has an advantage in terms of resources because Parliamentary committees are policy-area specific, whereas Coreper committees deal with a large cross-section of issues. The better-equipped Parliamentary committees can leverage their resources to further the Parliament's influence over the decision-making process. The suggestion is that all these factors tip the balance of power in favour of the Parliament.

The interaction between the Council and the Parliament is usually mediated through the Parliamentary rapporteur attached to the legislative proposal under negotiation. The rapporteur is tasked with representing the views of the Parliament to other institutional bodies and reporting back to Parliamentary committees and the plenary regarding the progress of negotiations. Given the pivotal importance of this position, numerous scholars have investigated the influence of rapporteurs upon the legislative process. Benedetto (2005) assesses the degree to which rapporteurs self-select in order to elucidate how different political parties from different member states can use rapporteurships to affect the legislative process. The findings presented first establish the importance of the rapporteur position in the legislative process, and then show that political parties from member states that have traditionally had a high commitment to the Parliament have targeted specific rapporteurships in order influence legislative negotiations in their favour.

Yoshinka *et al.* (2010) analyse partisan influences over the role played by rapporteurs in the legislative process by considering the repeat allocation of rapporteurships. They find that rapporteurs play a role as both policy experts seeking to find consensus on the proposals under consideration, and as partisan representatives that seek to further party interests. This finding suggests that viewing rapporteurs as purely technocratic or purely partisan actors glosses over the fact that they are capable of acting as both in the legislative process.

While political parties seek to influence the legislative process through the placement of sympathetic rapporteurs in policy areas of interest to them, these rapporteurs are also found to impact upon the policy positions taken by the Parliament itself, in terms of the reports they present back to the plenary. Costello and Thomson (2010) find that rapporteurs can influence the Parliament's opinions on legislative proposals under certain conditions, such as when the proposal is subject to the consultation procedure, or when the proposal is subject to early agreement between the Council and Parliament. Interestingly, when rapporteurs are found to have such an influence, this tends to be motivated by national interest. This is consistent with

the argument that member state governments attempt to influence the Parliament's policy positions through national MEPs (Corbett *et al.* 2003; Costello and Thomson 2010).

In light of the importance of the Parliament in the decision-making process, it is important to account for the manner in which it affects Council decision-making and actor behaviour during negotiations. The current study examines the influence of the Parliament in the legislative process in a two distinct ways. Chapter 4 formally models the role of the Parliament in the decision-making process under the codecision procedure and empirically tests the predictive accuracy of such a model. Chapter 6 and 7 in contrast consider the manner in which the Parliaments policy position affects the behaviour of member states during the negotiation process, and their ability to influence the decision-making outcomes produced. This allows one to assess how the Parliament impacts upon the legislative decision-making process.

THE GENERAL SECRETARIAT

The General Secretariat is probably the most under-studied EU institution, and while it is generally acknowledged that it plays an important role in supporting the Council Presidency during EU negotiations, whether or not this allows the General Secretariat to have an independent effect on policy outcomes has yet to be fully assessed. Some authors have theorised about potential sources of General Secretariat power. Beach (2004) argues that the General Secretariat can leverage its comparative informational advantage and high level of process and content expertise, its reputation as an impartial assistant to member states, and its privileged institutional position to influence EU treaty reform. Beach's article presents evidence collected through interviews with officials involved in the negotiations for the 1996-97 and 2000 intergovernmental conferences (IGCs) on treaty reform, and shows that the General Secretariat was perceived by officials to have some influence over negotiation outcomes. This influence was felt most keenly on issues of lower political salience and was predicated upon the Council Presidency at the time allowing the General Secretariat to exercise such an influence. It was found that Presidencies that were more reliant on the expertise of the General Secretariat

tended to allow the General Secretariat to exercise more influence over negotiations, as long as this influence was perceived to support the policy preferences of the Presidency itself.

Many of the factors thought to empower the General Secretariat at IGCs should also allow it to have some effect on other areas of EU policy making. Dijkstra (2010) argues that the General Secretariat has established itself as an important power broker with a role in shaping the agenda and implementing policy in second pillar policy making in general and in the Common Foreign and Security Policy (CFSP) in particular. She utilises a rational choice institutionalist framework to draw attention to the functional demands that member states need fulfilled for the first and second pillar policy areas. The functional demands identified include agenda setting, the facilitation of negotiations in order to reduce transaction costs, the provision of information, and the enforcement of agreements to produce credible commitments. Under the first pillar, member states are believed to have empowered the General Secretariat to reduce transaction costs associated with the negotiation process, and to have empowered the Commission to fulfil the remaining functional demands. Under the second pillar, the General Secretariat is still tasked with reducing transaction costs, but also plays some role in fulfilling the other functional demands in lieu of the Commission. The General Secretariat has been delegated some executive implementation power in the CFSP, and shares certain agenda-setting and representation powers with the Council Presidency, as sovereignty-wary member states have attempted to minimise the transfer of power to the Commission in this sensitive policy area (Dijkstra 2010). Beach (2008) presents a similar argument regarding the General Secretariat's role under second and third pillars, and again finds evidence that it can provide leadership in the Council, and ensure that negotiations proceed in an efficient manner.

The literature discussed above represents the state of the art when it comes to the role of the General Secretariat in the EU decision-making process. The institutional structure associated with the day-to-day decision-making process can also be expected to empower the General Secretariat to some degree, yet this has yet to be assessed in the academic literature.

There is much opportunity for future research to further investigate the role of the General Secretariat in the legislative process; yet such investigations are beyond the scope of the current project. The discussion of current literature on the role played by the General Secretariat is included for the sake of completeness.

CONCLUSION

This chapter has sought to outline the current state of the academic literature on EU politics. It has shown that current research regarding the EU has significantly increased our understanding of EU politics, but that significant gaps in our knowledge of the decision-making process still exist. The chapter began with a discussion of different theoretical approaches to understanding the politics of the EU, then considered the current state of empirical research into the different issues that arose in this literature. The first set of literature reviewed sought to explain the evolution of the EU as an international organisation. The debate between neo-functionalists and neo-liberal institutionalist scholars has provided interesting insight into how this process has evolved over time, and the factors that have led to the development of the highly integrated institutional environment we observe today. However, this literature tells us relatively little about the day-to-day politics of the EU.

The second set of literature explored more directly addresses the day-to-day politics of the EU, with a clear distinction emerging between those focusing on formal and informal aspects of the decision-making process. When the theoretical insights provided by this literature were empirically tested, it was found that the legislative process seems best approximated by informal bargaining between member states.

While much progress has been made in our understanding of the EU's legislative process from this literature, much remains to be explored. Authors such as Lewis (1998; 2005) and Häge (2008) have pointed out the importance of accounting for the internal structure of the Council when assessing the manner in which decisions are made in the EU. The research

presented in this thesis builds upon these arguments by examining the internal structure of the Council in detail, and the manner in which it affects member state negotiation behaviour and decision-making outcomes. The research presented in the following chapters thus addresses an important gap in the current literature on EU decision making in general, and on member state negotiation behaviour in the Council in particular.

CHAPTER 3: RESEARCH DESIGN

INTRODUCTION

In order to begin to investigate the questions of interest in this thesis, it is necessary to utilise a research design that captures the political processes inherent in legislative decision making in the EU in an empirical manner. This is done through the implementation of a spatial model of EU politics, in which any particular negotiation can be represented as an n-dimensional political space, with each dimension representing a controversy on which the actors involved can take a policy position. The conceptualisation of political negotiations in spatial terms underlies much of modern politics and the study thereof. When discussing politics on the national level, we talk of the 'left' versus the 'right', which is a clear indicator of the fact that people view politics in a spatial manner. Similarly, when analysing negotiations between political actors, we talk of them taking positions on controversies, the closeness of certain positions to others, and actors changing positions as negotiations evolve. The development of a spatial model of politics represents a formalisation of this underlying tendency to conceptualise of politics spatially, and such developments have been central to the advancement of the rationalist conception of political science.

The first efforts to create a formalised spatial model of politics can be traced back to scholars such as Downs (1957) and Black (1958), who took inspiration from Hotelling's (1929) seminal work on the clustering of shop locations on the high street and used this as a metaphor for the clustering of positions taken by politicians in the United States Congress. This basic metaphor was leveraged to explain political phenomena as diverse as government coalition formation (Austen-Smith (1986), Austen-Smith and Banks (1988), Schofield (1993) to name but a few), government accountability (Ferejohn (1986) and Austen-Smith and Banks (1989) represent important contributions), the impact of domestic politics on international relations (Putnam 1988; Milner 1997) and many others.

In recent years, numerous scholars have used spatial model of politics to provide insight into the legislative process of the EU⁹ (Bueno de Mesquita and Stokman (1994) and Thomson *et al.* (2006) are good examples). These studies, which were explored in detail in the previous chapter, demonstrate the usefulness of a spatial conceptualisation of EU politics, and in light of their success in analysing EU politics, a similar research design is employed here. The research presented in this thesis builds upon this work by utilising a similar research design to provide new insight into Council decision making. This chapter first discusses the case selection process used to identify the legislative proposals of interest, then moves on to the manner in which data relevant to constructing a spatial representation of legislative negotiations were collected through expert interviews. It then concludes with a discussion of how these data were extended to include important variables that can be used to add new insight into the legislative process at different levels of negotiation within the Council.

THE SELECTION OF LEGISLATIVE PROPOSALS

In order to evaluate competing theories of legislative decision-making, one must collect data on legislative proposals decided upon at the EU level. The process of selecting appropriate legislative proposals requires careful consideration in order to create a dataset representative of the decision-making process as a whole. It should be noted that the datasets used in this study vary across the different chapters, depending on the research question under consideration. The earlier chapters utilise a larger dataset containing proposals decided upon both before and after the 2004 enlargement. The later chapters, in contrast, utilise a subset of this larger dataset, encompassing only post-enlargement cases. The reasoning for this approach is explained in detail below. While this chapter presents a general discussion of the research design used in the thesis, research design issues specific to a particular chapter are elaborated upon in each individual chapter as the need arises.

⁹ See Chapter 2 for an in-depth review of this literature.

A total of 48 distinct proposals are considered in this thesis. Three important criteria must be fulfilled in order for a proposal to be selected for the initial dataset. These include the decision-making procedure under which a proposal is decided, the time period in which the proposal was introduced and decided upon, and the political importance of the proposal under consideration (Thomson and Stokman 2006). The reasoning behind each of these selection criteria is now explored.

The first selection criterion of importance when selecting appropriate proposals for analysis is the type of legislative procedure that applies to the proposal under consideration. As discussed in Chapter 1, the legislative procedure that applies to different proposals varies according to the policy area under consideration. Legislative procedures include the consultation procedure, the codecision procedure, and the consent procedure (previously the assent procedure). The fact that the decision-making procedures vary across proposals and policy areas implies that it is important to control for this variation when explaining the manner in which proposals are decided upon. The current study focuses upon proposals subject to the consultation and codecision procedures, as these two procedures are commonly seen as the most important procedures and apply to the vast majority of legislation produced by the EU (Thomson and Stokman 2006). Table 3.1 presents the distribution of proposals and issues in the dataset across the different legislative proposals.

The type of proposal in the dataset also varies in terms of the type of legal act under consideration. There are a number of different types of legal act in the EU, ranging from regulations and decisions, which are relatively legally binding, to recommendations and opinions, which are not legally binding. Directives generally refer to a general framework or objective that must be achieved and must be transposed into law at the national level. Regulations are more detailed in their requirements, but do not need to be transposed into national law. Decisions are usually characterised as being more technical in nature than directives or regulations and are directed towards specific legal entities, including but not

limited to member states. All the different types of legal acts are represented in the dataset, but none of the models analysed in this thesis refer to a specific type of legislative act, so the distinction between them are irrelevant to the current study.

Table 3.1: Distribution of proposals and issues by decision-making procedure and voting rule

Time period	Legislative procedure	Council voting rule	No. of proposals	No. of issues
EU-15 (1999-2000)	Consultation	QMV	10	20
		Unanimity	7	14
	Codecision	QMV	3	6
		Unanimity	-	-
Post-2004	Consultation	QMV	5	20
		Unanimity	-	-
	Codecision	QMV	20	57
		Unanimity	3	13
Total			48	130

The second selection criterion relevant to the larger dataset used in this study is that the proposal under consideration must have been introduced by the Commission between the introduction of the Amsterdam treaty on May 1, 1999, and the introduction of the Lisbon Treaty on December 1, 2009. The reasoning behind this selection criterion is that one must hold the legislative procedures under consideration constant across the proposals, and both the Amsterdam and Lisbon treaties include important changes to these legislative procedures. The limited time period covered by the dataset implies obvious limitations as to the generalisability of the findings produced in this study, and these limitations must be acknowledged. While this is indeed the case, the time period is by no means short and does include the enlargement of the EU from 15 member states to 25 in 2004 and 27 in 2007. This provides an excellent opportunity to assess the effects of this membership enlargement upon the decision-making process (see Chapter 4).

The final criterion used to select proposals for the larger dataset used in this study was that the proposals involved must be of some political importance, and they have been subject to

some minimal level of disagreement and controversy between the actors involved in negotiations. This is important because the theories explored in this study seek to explain the resolution of conflict in negotiation scenarios. When a proposal is not subject to any controversy and disagreement, this leaves little to explain in terms of conflict resolution and negotiation outcomes. For this reason, the proposals in the dataset are limited to those that generated some level of conflict between negotiators. In order to ensure a minimal level of political importance, the proposals chosen must have been the subject of some substantive discussion in *Agence Europe*, the main independent news reporting service covering EU affairs. Choosing proposals that were mentioned by *Agence Europe* ensures that the proposals under consideration were of some interest to the readership of this news service, which mostly consists of experts in EU affairs and policy makers with a stake in the legislative agenda (Thomson and Stokman 2006). This avoids the inclusion of proposals that raised little controversy during negotiation.

The fact that the proposals selected in the dataset were all subject to some minimum level of contestation certainly introduces a bias towards negotiations characterised by conflict between the actors involved. This is appropriate because the study at hand seeks to examine the manner in which conflict is resolved between actors in the negotiation process, and when no conflict arises in negotiations, there is little to explain. Avoiding the inclusion of unimportant proposals in the dataset thus focuses the analyses upon situations of conflict, in which actors strive to influence the negotiation process by utilising a variety of bargaining resources at their disposal. It is the use of these bargaining resources and the effect that the institutional environment has upon their use that are of interest in this study.

The analyses presented in Chapters 5 to 7 utilise a sub-sample of proposals in the larger dataset to investigate the questions of interest in these chapters. These chapters examine the role that the internal structure of the Council plays in shaping the legislative process and the manner in which member states react to the institutional structure within which they negotiate. A number of selection criteria were used to select this sub-sample of the larger set of proposals.

The first selection criterion of importance relates to the availability of Council records pertaining to the legislative process, which are essential to the construction of measures of member state intervention activity at different levels of negotiation within the Council. In an attempt to improve legislative transparency in the EU, records pertaining to the activities of different actors involved in the legislative process have been made publically available online by the General Secretariat. These records detail a number of important aspects of the legislative process, which are examined in Chapters 5 to 7. They first detail the timing of certain important milestones in the legislative process, including the introduction of the Commission proposal; the stages at which the proposal moves between different levels within the Council; the stage at which the Council reaches a common position and final agreement; and the stage at which the Parliament introduces its opinions. Secondly, they record member state negotiation activity at different levels of negotiation within the Council, which is an essential part of the analysis that follows.

While the EU has made important progress in terms of legislative transparency and the public provision of negotiation records, some areas of legislation are still subject to censorship of various forms. Censorship, when applied, can be more or less problematic when it comes to the study of the legislative process presented in the following chapters, and careful consideration of the problems raised is important for the research design that is implemented. Once the larger set of proposals of interest was selected using the criteria mentioned above, the Council record of the documents relating to the negotiations of that proposal was consulted.¹⁰ These records show which documents are freely available and which are subject to censorship. Upon detailed examination of these records for the proposals in the dataset both before and after the 2004 enlargement, it was noted that the records were considerably more complete following the enlargement process. Before 2004, a large number of documents relevant to the

¹⁰ The Council maintains detailed records of the documents produced over the course of legislative negotiations, which can be accessed here: <<http://www.consilium.europa.eu/showPage.aspx?lang=EN>>.

negotiation process are either unavailable online or heavily redacted. For this reason, it was decided to limit the proposals to those decided upon after 2004. Although the availability of documents was less of an issue for the post-2004 cases, some documents remained unavailable online. When this was the case, the General Secretariat was contacted in order to request the release of the documents. In many cases, this endeavour led to the release of the relevant documents allowing for the completion of the next stage of analysis (described in the final section of this chapter).

In cases where the General Secretariat deemed the release of censored documents inappropriate due to the sensitive nature of the information contained therein, the overall completeness of the documentary evidence available for each proposal was assessed; and if too many relevant documents were missing, the proposal was discarded from the dataset in order to avoid introducing bias into the data obtained. In sum, 16 separate proposals were analysed, with a total of 47 distinct controversies identified across these proposals. All of these proposals fall under the codecision procedure with the qualified majority voting rule.

It is important to consider whether the selection criteria based upon the availability of Council records affect the type of proposal included in the dataset, and whether this might bias the cases selected. In order to assess whether this was an issue, it was necessary to examine the types of proposals being discarded due to this selection process. Table 3.2 presents information relating to the proposals that were retained and those that were eliminated in the reduced dataset.

As Table 3.2 demonstrates, the proposals that were retained tended to be related to the first community pillar, whereas those discarded tended to be related to the second (common foreign and security policy) and third (police and judicial cooperation in criminal matters) community pillars. It is not surprising that second and third pillar legislation tends to be subject to more censorship, given the sensitive nature of the topics covered under these pillars. The

number of controversial issues per proposal is similar in both sets of proposals, suggesting that the proposals retained are not fundamentally different to those discarded with respect to the amount of controversy observed during negotiations. The fact that the proposals in the reduced dataset mostly relate to the first pillar must be noted when considering the implications of the findings presented in the following chapters.

Table 3.2: Characteristics of discarded and retained post-2004 proposals

Proposal	Community pillar	Policy area	Issues
<u>Proposals retained:</u>			
LIFE	1	Environment	3
Rabit	3	JHA	1
Air	1	Environment	2
Broadcasting	1	Culture	5
Carems	1	Environment	5
Airport charges	1	Transport and telecommunications	4
Emissions	1	Environment	4
Payments	1	General Affairs	4
Pesticides	1	Agriculture	2
Post	1	Internal Market	2
Rail	1	Transport and telecommunications	1
Reduced mobility	1	Transport and telecommunications	1
Spirits	1	Agriculture	2
Vehicles	1	Environment	3
Waste	1	Environment	4
Water	1	Environment	4
<u>Proposals dropped:</u>			
Illegals	3	JHA	5
Mergers	1	Internal Market	1
Pensions	1	Employment	4
Int. prop. rights	3	JHA	2
Working time	1	Employment	2
ERDF	2	General Affairs	4
ENPI	2	General Affairs	3
VIS	3	JHA	3

SELECTION OF RELEVANT EXPERTS

In order to construct a spatial representation of the proposals under consideration in this study, it was necessary to conduct a series of semi-structured interviews with the experts involved in the negotiation of said proposals. The selection of appropriate experts is therefore central to producing an accurate spatial representation of the proposals of interest. The chosen experts had to have been involved in the negotiations for the proposals under consideration, as this is crucial to their ability to provide the information needed. Furthermore, the experts had to be able to substantively justify the information they provided in interviews.

A series of interviews were conducted for each proposal in the dataset in order to assess the validity of the information provided by each individual expert. The congruence observed between the information offered by each expert for a particular proposal provided reassurance that the data collected represented an accurate picture of the proposals under consideration. Thomson (2006) conducted a validity study comparing the information collected through the interview process with Council records of the negotiations, and found a high level of consistency between the two data sources. This independently corroborates and validates the interview data obtained. Table 3.3 summarizes the institutional affiliation of the experts interviewed. The majority of interviewees are from member state permanent representations, but experts from the Commission, Parliament, General Secretariat, and interest groups are also represented.

Table 3.3: Institutional affiliation of experts interviewed

Time period	Commission	Member state representations	General Secretariat	European Parliament	Interest Groups	Total
EU-15	5	27	2	1	3	38
Post-2004	22	127	-	42	-	191
Total	27	154	2	43	3	229

SEMI-STRUCTURED INTERVIEWS: MEASURING POLICY SCALES, ACTOR POSITIONS AND ISSUE SALIENCY

Once the appropriate experts had been identified, they were contacted and asked to participate in a semi-structured interview. In total, 229 interviews were conducted by the

scholars involved in the data collection process. The interviews took one hour and twenty minutes on average, and during the interviews, experts were asked detailed questions regarding the controversies that arose over the course of negotiations, actor positions on these controversies, and the saliency that actors attached to their positions. The details of this data collection process and the manner in which experts were asked to conceptualise the proposals under consideration are now discussed.

IDENTIFYING CONTROVERSIAL ISSUES

The first aspect of the legislative proposal that was important to establish was the number of controversial issues that arose over the course of negotiations. Establishing the major controversies around which negotiations were structured is important because it related directly to the dimensionality of the policy space for the proposal under consideration. Correctly accounting for the dimensionality of the policy space under negotiation is central to the accurate specification of actor preferences required in order to evaluate the relative accuracy of competing models of the legislative process (Junge and König 2007).

The initial part of each semi-structured interview was dedicated to the specification of the most important disagreements that arose during negotiations for the proposals under consideration. This involved the interviewer actively engaging with the experts involved, in order to identify the most salient controversies that arose and to construct policy scales representing these controversies. The experts were first asked to identify the separate issues that arose during negotiations, then each of these issues was taken individually, and the expert was asked to identify the most extreme policy alternatives applicable to the issue of interest. The extreme policy alternatives were placed at the end points (0 and 100) of a 100-point policy scale. This produced a stylised representation of the controversies that arose during the negotiations for each proposal in the dataset.

Thomson and Stokman (2006) identify the following important criteria that must be met by the issues specified: 1) each issue specified should represent a major controversy that arose during negotiations on which actors took different policy positions; 2) each policy position on the issue specified should represent an alternative possible outcome for the issue under consideration; and 3) the specification of the issue had to adhere to the assumption that the actors involved have single-peaked preference functions.

The first criterion relates to the fact that the manner in which issues are specified in the analysis is a stylised representation of the negotiation process (Thomson 2011), and the actors involved must have taken different positions on the issue involved. This helped to simplify the representation of negotiations and focused experts on the most salient aspects of the negotiation process. The second criterion ensured that actor positions specified later in the interview process represented a possible policy outcome on the policy scale under consideration. The third criterion ensured that the positions on the policy scale were ordered and that positions further from an actor's position are less preferable compared to those closer to an actor's position.

ACTOR POSITIONS

Following the identification of the most salient issues around which negotiations were structured, experts were asked to identify the policy positions that the various actors involved in the negotiation process took with regard to these issues¹¹. The positions of interest were the *initial* policy positions, which were taken by actors at the outset of negotiations. The decision to focus upon initial policy positions was made in order to simplify the modelling process and, as such, necessarily ignores the fact that actors can change their policy positions over the course of negotiations. Arregui *et al.* (2004) and Arregui (2009) show that in many cases, actors do shift

¹¹ This study focuses upon policy positions rather than policy preferences, as empirically distinguishing between the two is difficult, and negotiations are assumed to revolve around stated policy positions rather than around background policy preferences.

their policy positions over the course of negotiations, but the assumption made here is that these shifts are in reaction to the initial policy positions and negotiation strategies of other actors in the policy-making process. The models presented later in this thesis attempt to capture this process in a variety of ways, but require actors' initial positions to be placed as inputs in order to model the decision-making process.

Figure 3.1 below demonstrates the general structure of each of the issues in the dataset. The example taken here is from the water standards proposal introduced to improve water quality across the EU, and the issue of interest concerns whether or not to alter the existing list of hazardous and priority hazardous substances. Three distinct positions were taken by member states on this issue. Those actors at position 0—the Commission and most member states—did not want to alter the existing list. Those at position 100 wanted to include new substances on the list (Sweden, Denmark, and France), and at position 20, the Belgian delegation put forward a compromise position that was to include a review clause, so that the issue of adding substances to the list would be revisited at a later date. The final agreement reached in the Council corresponding to the Belgian position was to include this review clause.

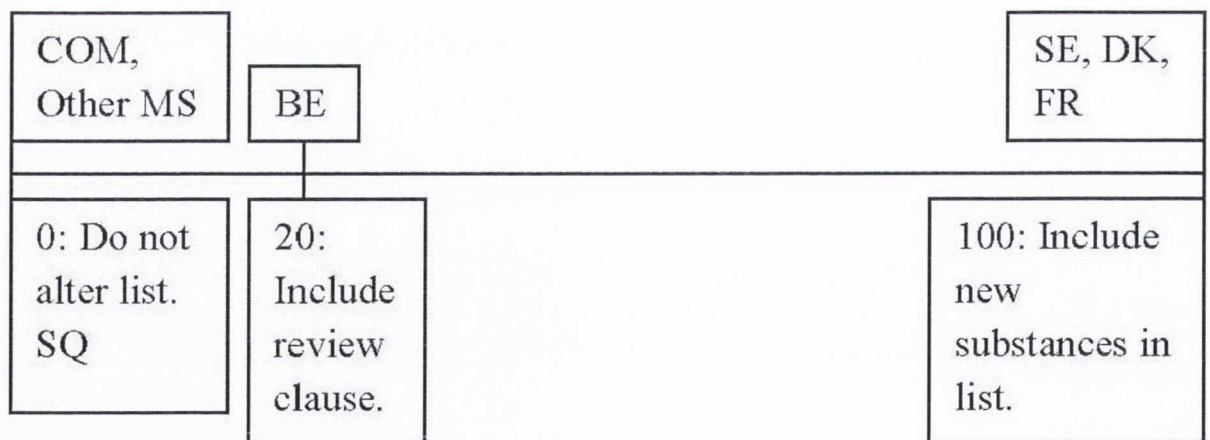


FIGURE 3.1: WHETHER TO ALTER THE EXISTING LIST OF HAZARDOUS SUBSTANCES ALLOWED ENTER THE WATER SYSTEM.

When identifying actors' initial policy positions, it was important that interviewees were able to substantiate their judgments by giving concrete reasons for the positions taken by the

actors involved. This usually required elaborating upon the impact that a particular policy choice would have on the actor under consideration. For example, in the controversy illustrated in Figure 3.1, the Danish, French, and Swedish delegations were found to advocate adding new substances to the list. The substantive reason given by interviewees for this judgement was the fact that the Danish, French, and Swedish delegations argued that the existing list allowed certain chemicals, proven to be dangerous to citizens' health, to enter the water system. This was in contrast to other member states that perceived no need to extend the list, as the health risks involved were acceptably low, or the scientific evidence demonstrating such risks was insufficiently convincing. The expert judgments that the Danish, French, and Swedish delegations took a different position to other actors on this particular issue were thus justified, with substantive reasons relating to the impact of the policy decision under consideration.

For particular issues, certain actors were found to have no expressed policy position. There is some debate in the academic literature as to how to interpret these missing positions. König *et al.* (2005) argue that actors with missing positions are in fact strategically hiding their preferences, and as such, missing positions should be interpreted as missing data, which can be imputed using different methods. However, Thomson (2011) argues that missing positions are better interpreted as cases in which actors are indifferent with regard to the outcome of a particular issue. This interpretation of missing positions is justified by the argument that certain actors do not take positions on certain policy questions. For instance, landlocked countries such as Austria and Luxembourg have little substantive interest in proposals relating to the common fisheries policy, and thus, they are presumably indifferent to the outcome of negotiations for these proposals. This study follows Thomson (2011) in assuming that missing positions represent indifferent actors in the negotiation process.

Experts were also asked to estimate the initial policy positions of the Commission and Parliament. It is assumed that these institutions are unitary actors, as they must present a single policy position when negotiating with the other institutions in the legislative process (Thomson

and Stokman 2006). While it is clear that differences of opinion can exist within both the Commission and Parliament, it is assumed that the position taken by each of these institutions is the result of the internal political processes within these institutions, and such conflicts are resolved internally. Many scholars have investigated the internal politics of each of these institutions, and much has been learned about the processes that shape the positions taken by these institutions.¹² However, for the sake of this study, each is assumed to be a unitary actor with a single policy position.

The final position of importance in the policy space that interviewees were asked to identify was that of the reference point. The reference point is the state of affairs that would accrue, should no agreement be reached in negotiations. The reference point is closely related to the concept of the status quo that is found in many application of spatial analysis in political science, but not identical. The status quo represents the current state of affairs at a given point in time and, in most cases, is the same as the revision point that would apply if negotiations fail. However, on certain controversies, such as whether or not to continue funding a particular program, the reference point and status quo differ (Stokman and Thomson 2004). In these cases, the revision point is the discontinuation of the program if no agreement is reached, whereas the status quo is the program as it stands while negotiations are taking place. In certain cases, no reference point can be identified because it is unclear where it should lie on the policy scale in question. This is especially the case where failure to reach an agreement leads to a reversion to national standards, which represent different points on the policy scale in question for different actors. In such cases, no reference point estimate is appropriate, so none is given (Thomson and Stokman 2006).

An important aspect of the interview process for collecting these data was that the experts interviewed had to be able to justify the information they were providing. They were asked to give substantive reasons as to why they were placing actors where they were placed.

¹² See the previous chapter for an in-depth discussion of these literatures.

The interviewees' ability to provide this information allowed the interviewer to assess how credible the responses were, and thus how accurate a picture of negotiations was being provided. In the water standards issue mentioned above for instance, this meant that when providing position estimates for actors, the interviewees had to justify why the French delegation wanted to include new chemicals on the agreed upon list. Interviewees argued that the French took this positions, as they were aware of new scientific research that demonstrated the dangers posed by certain chemicals not on the list. The French position was thus justified in terms of substantive reasons which clearly differentiate them from the other delegations who thought the list was fine as it was. In situations where the interviewee was unable to justify the estimates being provided, or could not remember the specific details relating to a particular case, the interviewer consulted other experts to acquire the necessary information. This process of acquiring substantive justifications for the information being provided ensured that the resulting representation of negotiations is as accurate as possible.

SALIENCY

Accounting for the role played by the saliency actors attached to an issue under negotiation is important when modelling the decision-making process, as it accounts for the relative importance each actor attaches to the positions taken during negotiations (Junge and König 2007). In the models presented in this thesis, saliency is assumed to represent the curvature of an actor's utility loss function (Achen 2006a). Interviewees were asked to estimate actor saliency by suggesting a saliency score for each position on a 0 to 100-point scale. A score of 100 attached to a policy position represents a situation in which the actor attaches the utmost importance, has a very steep loss function, and experiences large utility losses as a policy outcome diverges from its initial position. In contrast, a score of 0 represents a situation in which actors attach no importance to its policy position or to a situation where an actor has no position on the issue under consideration, with a flat loss function, and little or no utility losses, as a policy outcome diverges from the initial position.

When assessing saliency scores with interviewees, the most important factor was the relationship between the scores calculated for different actors across a particular issue and between issues within a proposal, rather than the absolute values given (Thomson and Stokman 2006). In order to obtain an accurate assessment of the relative saliency score of the actors involved, interviewees again had to provide substantive reasons for the estimates they provided, and were asked detailed questions regarding the relative relationship between these estimates.

In the example of the water standards proposal mentioned above, each actor attached a different saliency weight to its relative position on whether or not to alter the existing list of hazardous substances allowed to enter the water system. Table 3.4 summarises the saliency measures for this particular issue. As can be seen, there is significant variation in the saliency scores across different actors, with the Parliament and Commission attaching high saliency scores to their policy position, whereas the Baltic States (Latvia, Lithuania and Estonia) attach relatively low saliency scores to their policy positions.

Table 3.4: Saliency scores attached to whether or not to alter the existing set of hazardous substances allowed to enter the water system.

Saliency score	Actor
100	EP
90	COM
70	NL, UK
50	DK, FR, SE
40	BE, DE, ES
30	AT, EL, IE, IT, PL
20	CY, CZ, FI, HU, LU, PT, SK
10	BU, EE, LV, LT, MT, RO, SI

ACTOR POWER

Some concept of actor power is included in each of the substantive chapters in this thesis. Power is measured in two distinct manners, each of which seeks to capture different aspects of actors' ability to influence the negotiation process. The simplest measure of actor power used in the analyses that follow is the population of the member states under

consideration, which is used as a proxy to represent the political power of a state. Measuring power in terms of population size has a long history in the international relations literature. Scholars such as Morgenthau (1967), German (1960), and Singer *et al.* (1972) all refer to population as one of the determinants of state power. When studying the EU, population has been used as a proxy for member state power in a number of different studies (Aksoy 2010a; Arregui and Thomson 2009; Dür and Mateo 2010; Mattila 2006).

The second manner in which actor power is measured is through the use of voting power indices. The use of power indices to analyse the distribution of voting power between member states in EU politics is well established in the academic literature (Aleskerov *et al.* 2002; Bindseil and Hantke 1997; Felsenthal and Machover 1997; Hosli 1995; 1996; 1999; Lane and Maeland 2000; Nurmi *et al.* 1998; Widgrén 1994; 1995). The index to be used in this study was proposed by Shapley and Shubik (1954) and utilises cooperative game theory methods to capture actors' *a priori* voting power. To construct an *a priori* measure of relative voting power, the index assumes that all countries are preference neutral; all coalitions between member states are equi-probable and actor power is based on the "pivotalness" of that actor in a particular voting situation—that is, the probability that an actor will turn a losing coalition into a winning one. By comparing the relative "pivotalness" of different actors, a basic measure of the different *a priori* voting power that each actor has under a given set of voting rules is obtained.

There are a number of criticisms of voting power indices that must be addressed. Garrett & Tsebelis (1999b, pp.334-36) argue from a non-cooperative game theory perspective that because these indices contend that all possible states of the world are equally probable, they fail to capture an accurate picture of the actual negotiation dynamics at work in the Council. The implication is that these indices are not very useful for examining voting power because voting power is more than just the number of votes each actor possesses in relation to other actors. In reply to this criticism, it can be argued that because it is *a priori* voting power

that is of interest, one should not take account actor preferences and the pay-offs involved in a particular negotiation scenario, as allowed for in non-cooperative game theory (Lane & Berg, 1999, p.311). Including information about actor policy positions on each of the proposals in the dataset when calculating actors' relative *a priori* power is not appropriate, as these positions are specific to a particular proposal under negotiation, and a measure of power that does not vary across proposals is required for the purposes of this study. This is where its advantage lies when analysing the distribution of power between actors.

MEASURING MEMBER STATE NEGOTIATION ACTIVITY IN TERMS OF INTERVENTIONS

The research design presented above for constructing a spatial model of the decision-making process is well established in the literature on EU decision making. In contrast, the research design necessary for the measurement of micro level member state negotiation behaviour in terms of the interventions made over the course of negotiation as developed in this thesis is new to the literature and is now explored.

An intervention is defined as any recorded statement by a member state during legislative negotiations that seeks to change the Commission proposal as it stands. These statements are of direct relevance to the negotiation process because they represent member states' attempts to communicate their positions on various controversies to other member states and actors involved in the negotiation process. Interventions can be made at different levels of negotiation within the Council and at different stages in the negotiation process, and thus represent a micro level measure of member state negotiation activity over the course of negotiations. Significant challenges are associated with collecting intervention data, which have to date limited their use in quantitative studies of the legislative process in the EU. The data collection process used in this study to extract these data proceeded in a number of steps.

The first step in this process involved the identification of the date of each meeting that took place for the proposal under consideration, and the level within the Council at which these

meetings took place. This information is contained in the agendas of Council meetings, which are available online.¹³ These meeting agendas were used to construct a record of the negotiation process for each proposal in the dataset that allows one to track the proposal through different levels of negotiation in the Council.

Once data on how the proposal of interest moves through the Council had been collected, the next step in the data collection process involved matching the Council documents produced at these meetings by the General Secretariat to the meetings identified. This was important because it linked the information regarding the level at which negotiations took place to information about what was discussed at particular meetings available in the Council documents.

In order to collect data on member state interventions, it was necessary to analyse Council records pertaining to the proposals under consideration in the dataset, to extract intervention data, and to match this with the date and level data already collected. The General Secretariat records member state interventions in the footnotes of legislative documents that are produced over the course of negotiations. In total, 487 separate documents across the 16 proposals of interest were examined. Each time a member state makes an intervention, the General Secretariat notes the substantive point being made and tags the member state making the intervention in a systematic manner employing a set of officially utilised abbreviated labels. Table 3.5 reproduces these abbreviations, along with the member states they represent.

¹³ The Consilium Web site has a database of all Council meeting agendas dating back to January 1999: <<http://www.consilium.europa.eu/showPage.aspx?id=643&lang=EN>>.

Table 3.5: Member state abbreviations in Council documents

AT	Austria	EL	Greece	PL	Poland
BE	Belgium	HU	Hungary	PT	Portugal
CY	Cyprus	IE	Ireland	SI	Slovenia
CZ	Czech Republic	IT	Italy	SK	Slovakia
DK	Denmark	LV	Latvia	ES	Spain
EE	Estonia	LT	Lithuania	SE	Sweden
FI	Finland	LU	Luxembourg	UK	United Kingdom
FR	France	MT	Malta	BG	Bulgaria
DE	Germany	NL	Netherlands	RO	Romania

Note: These abbreviations are the official abbreviations used in all EU documentation as dictated by the inter-institutional style guide available here: <<http://publications.europa.eu/code/en/en-370100.htm>>.

These abbreviations are useful because they can be utilised to extract intervention data in a systematic and replicable manner using computer-aided analysis of the documents of interest. The first step in this process was to convert all documents to .txt files, which were then read into concordance software. Concordance software (Watt 2009) was utilised to search the pre-processed Council records for mentions of the member state abbreviations using a preset dictionary, and each time an abbreviation was found, a record of the position of the abbreviation in the document was added to a dataset of member state interventions. These data were then matched with the date and level data collected in the first step to complete the dataset with interventions coded by the member state making them, the meeting and level within the Council at which the intervention were made, and the date on which the meetings took place. Once this process had been completed, the interventions dataset were merged with information contained in the larger dataset. The resulting dataset formed the basis of the analyses presented in Chapters 5 to 7.

While the interventions data collected were for the most part freely available online, certain legislative documents were subject to censorship due to the sensitivity of member states' policy positions stated within. The next section outlines how this censorship was accounted for in the research design and data collection process.

STRATEGIES FOR DEALING WITH THE CENSORSHIP OF LEGISLATIVE RECORDS

As mentioned in the case selection section above, in certain instances, censorship was an issue with regard to accessing the Council documents necessary for measurement of member state intervention activities. Censorship can take two distinct forms: one in which the documents of interest are unavailable in any form, and one in which the documents of interest are available in redacted form. When the documents of interest were unavailable in any form, the case selection criterion elaborated upon in the first section of this chapter was applied, and proposals in which a large number of documents were unavailable were eliminated from the dataset.

When the documents involved were subject to redaction, the problem of censorship was less acute. The redaction in the documents of interest simply involved the replacement of member state identity tags from the statements of interest with the word 'DELETED'. The fact that member state identities were consistently replaced in this manner allowed the textual analysis applied to the documents to identify the level of missing data for each proposal in the dataset. This measure of 'missingness' was used to impute the missing data, based upon the assumption that the missing member state identifications data should be proportional to the observed data for any particular proposal.¹⁴ Each of the analyses presented later in the thesis was conducted using both the original dataset without imputations and the new dataset with imputations, with no significant changes to the results produced. Due to the stability of results across both datasets, only the original dataset is used in the analyses that are presented in each

¹⁴ It is acknowledged that the assumption that missing data are proportional to the observed data might overlook the fact that different member states, with different cultures of transparency, might demand different levels of censorship, depending upon the information under consideration. The fact that censorship decisions are taken by the General Secretariat, rather than member states themselves, should ameliorate this to some degree, as the General Secretariat plays the role of neutral arbiter in such cases and aims to apply the transparency regulations in a consistent manner. The need for consistent application of the transparency rules is set out in Regulation No. 1049/2001.

chapter, in order to avoid making assumptions about the distribution of the missing data involved.

The interventions data collected through the application of this research methodology add significant detail to the existing picture of legislative negotiations at different levels of negotiation in the Council. The data is utilised extensively in the chapters that follow in order to shed new light upon the manner in which the institutional structure of the Council impact upon the decision-making process and the legislative outputs produced.

CONCLUSION

The research design presented in this chapter first elaborated upon the manner in which a spatial model of legislative politics in the EU has been constructed, then explained how the new aspects of the legislative process examined in this thesis have been integrated into this model. It first discussed the case selection criteria used to identify the legislative proposals that are included in the dataset. It then explored how various data collection methods, from semi-structured interview of experts involved in negotiation to content analysis of negotiation records, were implemented to construct a detailed data-laden picture of the negotiation process. The detailed datasets produced form the basis of the analyses presented in the chapters that follow.

CHAPTER 4: ACCOUNTING FOR THE INFLUENCE OF INSTITUTIONAL RULES AND THE POLICY SPACE IN LEGISLATIVE NEGOTIATIONS

INTRODUCTION

The European Union is a large and complex international organisation that, since its inception, has grown in both membership size and the effects of that membership upon those involved. It has developed from a relatively loose organisation with few formal powers at its inception, to the most advanced example of international cooperation in terms of scope, levels of integration and the degree to which decision-making power is ceded to the supranational level. As a legislative body, the EU brings together actors as diverse as the 27 member states, the directly elected European Parliament, and the European Commission, all of which play varying roles in creating EU legislation. The relative influence of these different actors within the legislative process is largely dependent on the rules of the legislative game, which structure the relations between the actors and determine when and how they can bring their policy positions and power to bear on the decision-making process. The rules themselves also vary, depending upon which legislative procedure is in use, with important differences between the consultation and codecision procedures (see Chapter 1). The differences between the consultation procedure and the codecision procedure, and the exact impact that these differences have upon an individual actor's ability to influence legislative outcomes are explored in this chapter.

The complex structure of the legislative game is matched by the complexity of the political goals that legislative proposals seek to address. The scope of the EU legislative remit has grown to a size where it now deals with issue areas as diverse as agriculture, foreign and security policy, internal market regulation, and justice and home affairs, to name but a few. When negotiating a particular piece of legislation, the actors involved will confront issues

such as: how far-reaching the scope of the legislation should be; what the appropriate level of delegation to the European level is; and how an initiative will be funded. These issues arise alongside many others specific to the legislative proposal itself. The complex nature of legislation at the EU level and the importance that actors attach to such legislation are not surprising, given that legislation decided upon at the EU level has a significant impact on domestic-level actors and interests. The multi-issue nature of legislative proposals in the EU is something that has been somewhat neglected by existing models of the legislative process.

This issue is of direct relevance to those seeking to model legislative decision-making in the EU. Many competing spatial models of the legislative process have been dedicated to examining how the rules of the legislative game affect legislative outcomes, and these models have enjoyed mixed empirical success in predicting legislative outcomes (Crombez 1997; 2001; Steunenberg 1997; Tsebelis and Garrett 2000; 2001; Steunenberg and Selck 2006). One issue with many of these existing models of legislative procedures within the EU is that they are one-dimensional in scope. That is, when they consider a legislative proposal, each controversial issue under consideration is dealt with independently, with actor preferences on one issue having no effect on actor behaviour on other issues within the same proposal. Given the complex nature of the proposals under consideration, this is a weakness that must be addressed. This chapter addresses these shortcomings by exploring the theoretical and empirical differences between one-dimensional models of legislative decision-making that considers each controversy that arose during negotiations on an individual basis, and two-dimensional models of decision-making that demonstrates the implication of extending the policy space beyond one dimension¹⁵.

¹⁵ Benoit and Laver (2006) discuss the implications of multi-dimensional conceptualisations of politics in great detail and argue that one must be careful when implementing such models in order to avoid logical inconsistencies. They advise that the pros and cons of utilising a multi-dimensional conceptualisation of

A further weakness of existing procedural models of EU decision making is that they ignore the importance of issue saliency in legislative negotiations. This is problematic, as one can imagine many cases in which the importance an actor attaches to different issues within a proposal will vary, and their willingness to compromise on a particular issue will depend on how important a position is to an actor on that issue, relative to their position on other issues that arise during negotiations. While some existing models account for the dimensionality of a proposal (Steunenberg and Selck 2006; Junge & Konig 2007), the saliency that each actor attaches to each dimension has thus far been modelled as equal for all issues across a proposal. This chapter seeks to address this weakness in the current literature by implementing a model that accounts for the saliency that each actor attaches to each of the issues under negotiation, and in doing so, will shed light upon whether the multi-issue nature of EU negotiations and the relative saliency that actors attach to these issues impact legislative output.

The chapter is structured as follows. The first section outlines existing procedural models of legislative decision-making in the EU which utilise a one-dimensional spatial model of negotiations. The second section examines the implications of extending the model to a two-dimensional issue-space and accounting for issue saliency, and then the third section presents the formal aspects of the procedural models under consideration. The final section then applies these models to a dataset on EU decision-making and compares the performance of the one-dimensional models with findings on the performance of the two-dimensional models.

politics is best assessed through investigation of the effects that extending models to multiple dimensions have on the empirical results that are produced. This chapter aims to do exactly that.

Two variants of the one-dimensional procedural model are examined here, which differ in terms of the decision procedure under consideration (see Chapter 1 for an in-depth discussion of the different legislative procedures under consideration). The first of these procedures to be considered is the consultation procedure. There are four stages of importance in the consultation procedure. In the first stage, the Commission puts forward a proposal to the Council. In the second stage, the members of the Council consider possible amendments to the proposal. In the third stage, the members of the Council vote on the amendment using the unanimity rule. If the amendment is approved, that ends the game because the Council has approved the amended legislation. In the fourth and final stage, assuming that no amendment has been successful, the Council members vote on the proposal using the appropriate voting rule, which can be either unanimity or qualified majority voting, as previously mentioned (Crombez, 1996).

Under the codecision procedure, it becomes more difficult to identify the stages involved in the legislative process. One significant difference between the two procedures is that the agenda-setting power of the Commission is reduced to some degree. Under codecision, the Council and Parliament have the ability to independently amend a proposal in a conciliation committee when an agreement cannot be reached on the original Commission proposal. This essentially gives the Council and Parliament *ex post* amendment capabilities, provided that they can agree upon a conciliation committee compromise. The existence of a conciliation committee in the event of deadlock on the Commission proposal implies that it is more difficult to identify the different stages of the legislative process relevant to constructing a formal model. Tsebelis and Garrett (2000; 2001) argue that the Commission is not relevant under codecision, whereas Crombez (2003) and Steunenberg (2001) contend that the Commission retains agenda-setting power. If the Commission is not the agenda setter,

then either the Council President (Steunenberg 1994) or the Parliament (Steunenberg 1997) must occupy this role. When the predictive accuracy of these models was examined (Steunenberg and Selck 2006), the Parliament model put forward by Steunenberg (1997) performed best, so this model is implemented here and is now explored in greater detail.

According to Steunenberg (1997), under codecision, the legislative outcome is determined in a bargaining game between the Council and the Parliament. In the first stage of the legislative game, the Parliament puts forward a proposal. In the second stage, the Council President considers any amendments to the proposal, and the Council members vote on the proposal. In the final stage of the game, the Parliament votes upon the proposal set forth by the Council. This model specification implies that the Commission has little influence over the final legislative outcome.

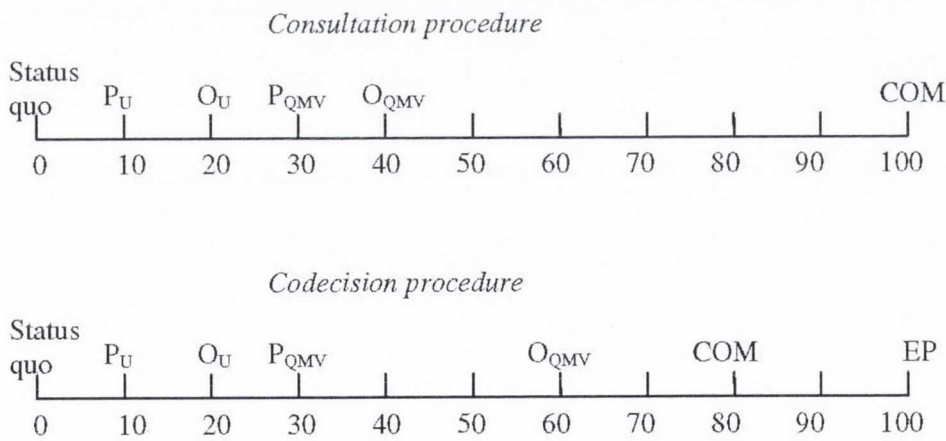


FIGURE 4.1. PREDICTIONS OF A PROCEDURAL MODEL

Note: Adapted from König and Proksch (2006).

Figure 4.1 demonstrates the procedural models at work under different decision-making rules. The distribution of positions, with the status quo at one end and the Commission at the other, is for illustrative purposes only and can vary across issues and proposals. In general, however, the Commission is seen as the driver of European integration

and thus tends to put forward proposals that entail significant change from the status quo. The member states, in contrast, are usually more conservative and take up positions between the status quo and the Commission position. Taking a closer look at Figure 4.1, we can see that under the consultation procedure, with the unanimity voting rule, the most important actors are the Commission (COM) and the member state that is closest to the status quo but between the status quo and the Commission's position. The member state closest to the status quo, called the pivotal member state (P_u), is indifferent to the status quo and position 20 because these are equidistant from the pivot's ideal position (position 10). The Commission, as an agenda setter with its own policy preference at position 100, will put forward a proposal that is closest to its own ideal position and cannot be amended by the Council (position 20).

When qualified majority voting (QMV) is in use, the pivotal actor is the actor that controls the vote that changes a losing minority into a blocking minority. The vote threshold for the EU-15 is the 26th vote, given that 62 out of 87 votes are required to fulfil a qualified majority. For the EU-25, this threshold is the 90th vote because 232 out of 231 votes are required for a qualified majority. With the EU-25, there is also a requirement that the winning coalition contain at least 13 member states and 62% of the EU population. A further consideration that the Commission has when making a proposal under QMV is that it is possible for the Council to amend any proposal if there is unanimous agreement. This implies that the unanimity pivot still has some influence over the prediction. Returning to Figure 4.1, the Commission as agenda setter, again trying to minimise the distance between the proposal put forward and its own preferred position, will make a proposal at position 40. The pivotal member state is indifferent to this position and to the possible unanimously supported amendment at position 20.

With the codecision procedure, the Parliament is considered the agenda setter (Steunenberg 1997). Under the unanimity rule, the bargaining game is between the unanimity pivot in the Council (P_u) and the Parliament (EP). In Fig. 4.1, the unanimity pivot is indifferent to the status quo and to position 20. Given that the Parliament is at position 100 and is the agenda setter, the model prediction is position 20, which is acceptable to both the pivotal Council member and the Parliament. Under QMV, the QMV pivot is indifferent to the status quo and to position 60. Again, given that the legislative game is a bargain between the QMV pivot and the Parliament as agenda setter, the model prediction is at position 60.

EXTENDING ACTOR PREFERENCES TO TWO DIMENSIONS AND ACCOUNTING FOR VARIANCE IN ISSUE SALIENCY

Most of the existing applications of the procedural models outlined above are one-dimensional in scope¹⁶. That is, they take each issue within a proposal individually and work out the equilibrium position given the distribution of actor positions on that particular issue. When one moves to extend the models such that they considers multiple issues within a given proposal simultaneously, the question of how to deal with issue saliency (the weight attached to each dimension by each actor) arises (Enelow & Hinich, 1984). To date, most two-dimensional variants of the procedural model have assumed that each actor values each unit of distance on a dimension equally. This specification of the procedural models will be implemented in order to assess how extending these models to two dimensions affects their predictive power. The first manner in which increasing the number of dimensions affects the decision-making process is that it increases the area of an actor's acceptance set. This is demonstrated in figure 4.2 below:

¹⁶ Steunenberg and Selck (2006) and Junge and König (2007) represent two important exceptions.

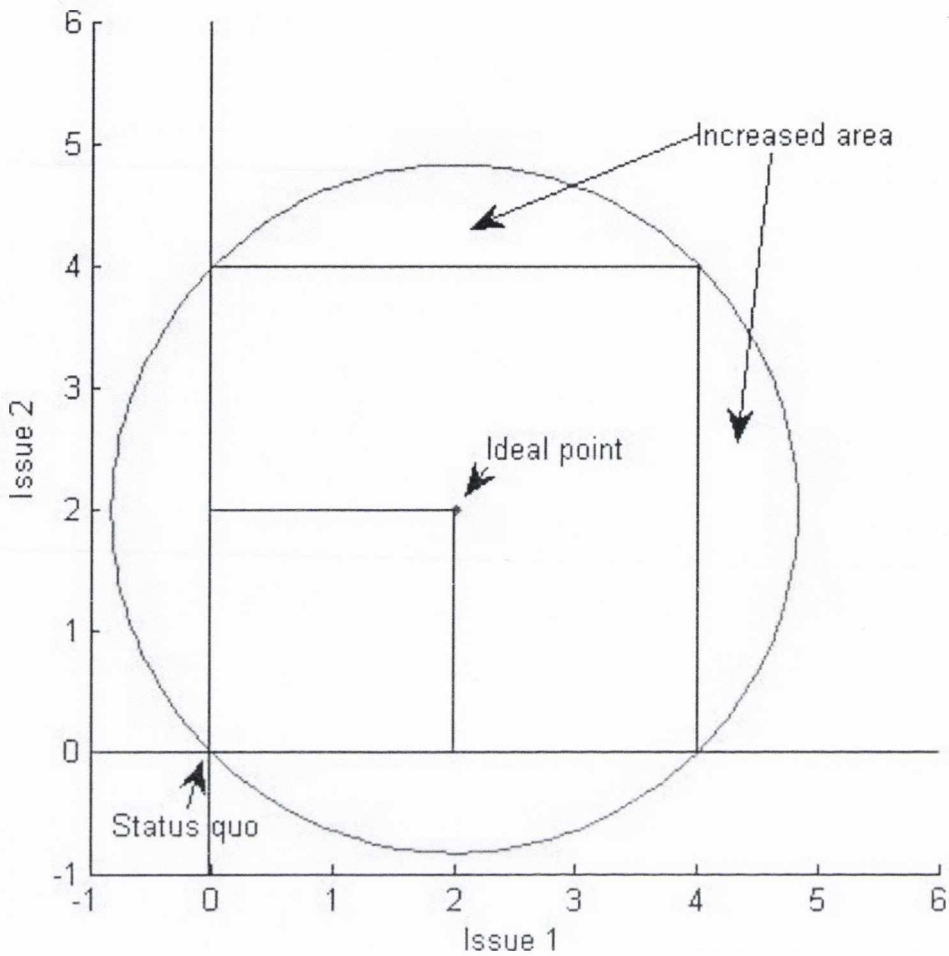


FIGURE 4.2: ACTOR PREFERENCES IN TWO DIMENSIONS.

The increased size of the acceptance set in two dimensions is demonstrated by the difference between the indifference curve and the larger square contained within this indifference curve. If issues are dealt with on an individual basis, the actor's acceptance set for each issue is the set of points along each axis that the actor prefers to the status quo at 0, which in this case is equivalent to the sides of the bigger square. However, when issues are considered together, the size of the acceptance set increases to include every point within the actors' indifference curve. The increased size of the acceptance set when dimensions are considered together suggests that in two-issue proposals, the ability of the agenda setter to pull the final outcome toward its preferred position is increased, *ceteris paribus*.

Figure 4.2 implicitly assumes that the saliency of each dimension is equal. Junge & König (2007) point out that in the EU context, ignoring issue saliency has a significant impact on the predictions produced by spatial models of the decision-making process. In light of their findings, this chapter utilises a two-dimensional procedural model that takes issue saliency into account. When one allows the saliency of each dimension to vary, a rather different indifference curve emerges. Figure 4.3 represents such a case:

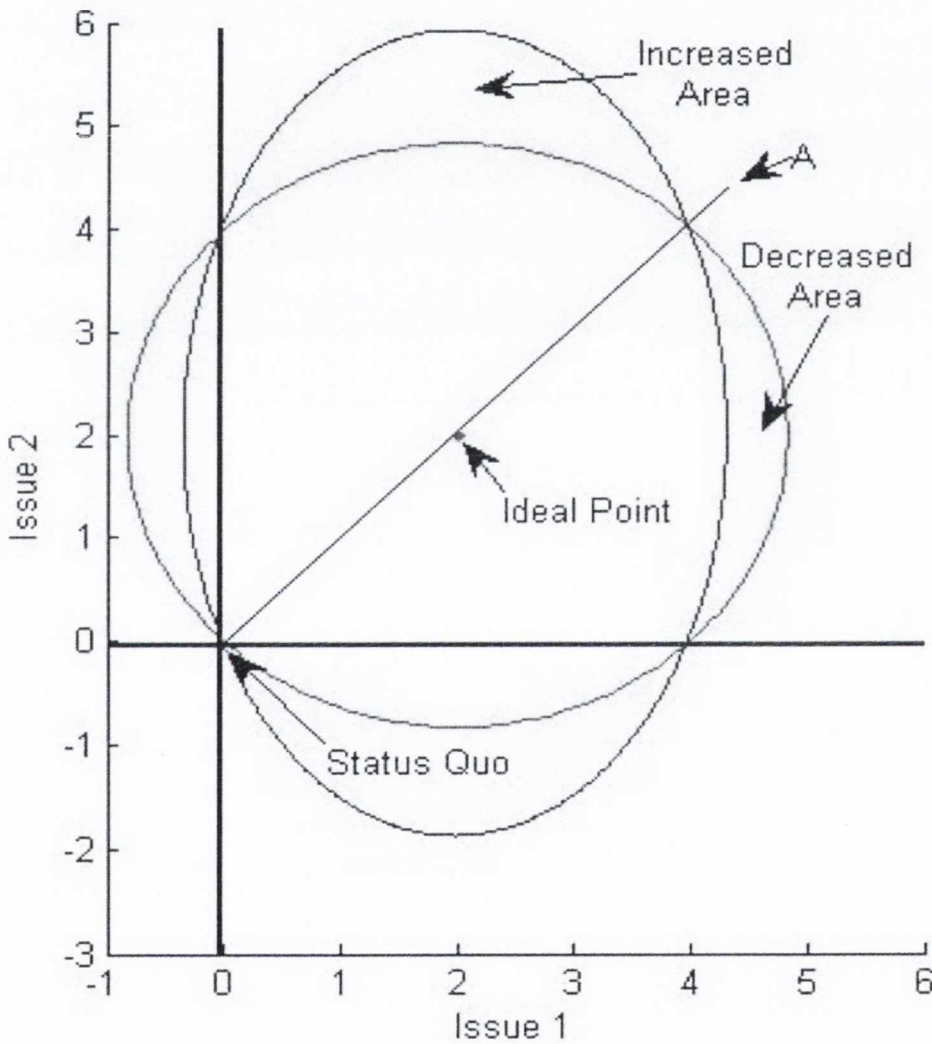


FIGURE 4.3: ACTOR PREFERENCES IN TWO DIMENSIONS WITH ISSUE SALIENCY.

In Figure 4.3, the ellipse represents the indifference curve of the actor in question when issue 1 is considered more salient than issue 2. The difference in saliency has the effect of squeezing the indifference curve along the issue 1 axis, thus creating an ellipse instead of a circle. The indifference ellipse demonstrates the fact that the actor is willing to give up more than one unit of issue 2 for every unit of issue 1, as negotiations move away from the actor's ideal point. The effect of this change on the power of the agenda setter to pull the final outcome towards its ideal point is dependent on the position of the agenda setter's ideal point relative to the actors' new indifference curve. Line A, which is a straight line passing through the status quo and the actors' ideal point, distinguishes the two opposing effects that issue saliency can have on an agenda setter's power. When the agenda setter's ideal point is above line A, their ability to pull the final outcome towards their ideal point increases, as the actor is willing to give up more ground on issue 2 than on issue 1. The opposite can be said when the actor's ideal point is below line A, in which case, the actor's agenda setting power decreases for the same reason. This specification of actor preferences shall be implemented in the third model in order to assess how accounting for issue saliency affects the accuracy of the procedural model predictions.

Figures 4.2 and 4.3 have demonstrated the important effects of increasing the dimensionality of the issue space and varying issue saliency on the power of the agenda setter to influence decision-making outcomes in its favour. The next section outlines the formal aspects of the game theoretic model discussed in Section Two.

FORMAL SPECIFICATION OF A PROCEDURAL MODEL

The procedural model is specified as follows and is very similar to the model put forward by Crombez (1996) and Steunenberg (1997), but with actor preferences specified differently depending upon which particular aspect of the specification of the policy space is

under consideration. \mathfrak{R}^m is a m -dimensional policy space in which each dimension represents a particular issue within a proposal. The status quo is represented by sq , where $sq \in \mathfrak{R}^m$. Let $ms \in N$ represent a member state with separable weighted Euclidean preferences over the policy space \mathfrak{R}^m . Member state ms 's preferences are represented by a utility function¹⁷ $U_{ms}(x)$, where $x \in \mathfrak{R}^m$. The set of points $P_{ms}(sq)$, preferred to the status quo by player ms is represented by $P_{ms}(sq) = \{x \mid U_{ms}(x) > U_{ms}(sq)\}$. The member state is part of the Council, C , whose decisions are made under a voting rule v , which—in the case of the EU—can either be unanimity ($v=u$) or qualified majority voting ($v=qmv$). Under a particular voting rule, the winset W_C^v , for a group of players C is equal to the intersection of the preferred set $P_i(sq)$ of each player in C , $W_C^{qmv} = \bigcap_v P_i$, which satisfies that voting rule.

Under consultation with the unanimity voting rule, the unanimity set, which is the set of points that cannot be changed with the unanimity rule, is represented by $U = \{x \mid W_C^u(x) = \emptyset\}$. Working backwards through the game, in the final stage, the Council adopts a proposal when $p \in W_C^{qmv}$. In the third stage of the game, the Council members will prefer the amended proposal p' to the Commissions' proposal when $p' \in W_C^u(p)$. In the second stage of the game, a member state will attempt an amendment when $W_C^u(p) \neq \emptyset$. In the first stage of the game, the Commission, com , as agenda setter with perfect knowledge, will anticipate the member states' move in the second stage of the game and—in order to maximise its own utility—will release a proposal p^* such that the equilibrium of the game is:

$$p^* = \begin{cases} \max(U_{com}(x) \mid W_C^{qmv} \cap U) & \text{if } W_C^{qmv} \neq \emptyset; \\ q & \text{if } W_C^{qmv} = \emptyset; \end{cases}$$

¹⁷ Note that the dimensionality of the policy space and issue saliency are not explicitly mentioned in the formulas that follow because these formulas describe sets of points preferred to the status quo, rather than explicitly specifying the utility function.

When the unanimity rule is in use, the equilibrium proposal put forward by the Commission becomes:

$$p^* = \begin{cases} \max(U_{com}(x) | W_C^u \cap U) & \text{if } W_C^u \neq \emptyset; \\ q & \text{if } W_C^u = \emptyset; \end{cases}$$

When the codecision procedure is modelled in such a way that the Parliament is seen as the agenda setter in place of the Commission, the amendment proof set within the Council becomes the set of positions that cannot be changed by the Parliament or by a qualified majority of the Council (Steunenberg 1997). Formally, this is expressed as $A = \{x | P_{pres}(x) \cap P_{ep}(x) \cap W_C^{qmv}(x) = \emptyset\}$. In the final stage of the game, the Parliament will accept any amendment made by the Council when $p' \in P_{ep}(p) \cap W_C^{qmv}(p)$. In the third stage of the game, the Council will accept an amendment to the initial proposal when $p' \in P_{ep}(p) \cap W_C^{qmv}(p)$. In the second stage of the game, the Council Presidency considers the Parliament's proposal and puts forward a change when $P_{pres}(p) \cap P_{ep}(p) \cap W_C^{qmv}(p) = \emptyset$. Given that the Parliament is a rational actor with perfect information, it will anticipate the Council Presidencies' options and put forward an equilibrium proposal in the first stage of the game, such that:

$$p^* = \begin{cases} \max(U_{ep}(x) | x \in P_{ep} \cap P_{pres} \cap W_C^{qmv} \cap A) & \text{if } P_{ep} \cap P_{pres} \cap W_C^{qmv} \cap A \neq \emptyset; \\ q & \text{if } P_{ep} \cap P_{pres} \cap W_C^{qmv} \cap A = \emptyset; \end{cases}$$

Under the unanimity voting rule, the amendment proof set is equal to $A = \{x | P_{pres}(x) \cap P_{ep}(x) \cap W_C^u(x) = \emptyset\}$, and the Parliament will put forward an equilibrium proposal such that:

$$p^* = \begin{cases} \max(U_{ep}(x) | x \in P_{ep} \cap P_{pres} \cap W_C^u \cap A) & \text{if } P_{ep} \cap P_{pres} \cap W_C^u \cap A \neq \emptyset; \\ q & \text{if } P_{ep} \cap P_{pres} \cap W_C^u \cap A = \emptyset; \end{cases}$$

These models are used to generate predictions regarding the outcomes of a large selection of legislative proposals, which were negotiated both before and after the enlargement of the EU from fifteen to twenty-seven member states. The models are implemented in three distinct ways, which vary from one another in terms of how actor preferences are specified. Model one is uni-dimensional in scope, model two extends the policy space to two dimensions, and model three includes a measure of issue saliency for each actor when specifying their indifference curves. The predictions made by each model are then compared to actual outcomes in order to assess the accuracy of the model predictions obtained. The next section describes the data that will be used to test the decision-making models under consideration.

THE DATA

In order to test the accuracy of these models of the legislative process, it is necessary to employ data regarding the positions, power and preference intensities of the actors and institutions involved in the legislative process (Thomson *et al.* 2006). The research design used to create this dataset was described in detail in the previous chapter. The data were generated using semi-structured expert interviews with those involved in the legislative process and contain information on the initial positions of the parties involved in legislative negotiations for each proposal. They also contain information on the number of actors who took positions and the salience each actor attached to the issue at hand. These data have been used to test the various models of decision making under consideration.

One limitation of this dataset is that the proposals included were initiated and decided between 1999 and 2004. In mid-2004, the EU expanded to include ten new member states, and in 2007, this number again increased to include an additional two member states. This membership enlargement should have a significant effect on the legislative game by

increasing both the QMV threshold and the number of actors who must be included in the acceptance set for any particular proposal. The change in membership, rather than being problematic, allows for a comparative exploration of the effects that increasing the number of actors involved has on the decision-making process.

As mentioned in the previous chapter, the dataset has been expanded to include post-enlargement cases. This chapter utilises a subset of this data which includes 62 issues across 31 proposals, both before and after enlargement. This subset of proposals was chosen as it represents the cases in the dataset in which two distinct controversial issues arose during negotiations and as such corresponds to the two-dimensional model under consideration.

When it comes to making predictions with the procedural model, it is necessary to have a measure of the status quo or reference point, so that the pivotal actors can be identified. It is also necessary to have positional information on the Commission, when the consultation procedure is in use, and positional information on the Parliament, when the codecision procedure is in use. Cases where this information is not available were dropped for the one-dimensional variant of the model. It should be noted that the number of issues for the two-dimensional variant of the procedural model is generally greater than the number of issues for the one-dimensional variant. This is due to the fact that the two-dimensional variant of the model can produce predictions when information regarding the agenda setter's (Commission or Parliament) preferences is missing for one dimension, in contrast to the one-dimensional model. In such cases, the Commission/Parliament is indifferent between all proposals located along the missing dimension when considered alone, but is not indifferent to the relative position of the Council's winset along the dimension for which it has a preference. Therefore, as long as the Commission/Parliament has a position on one dimension

within a proposal, the closest point to the Commission/Parliament's preferred set that lies within the Council winset can be found and thus a prediction can be made.

Another issue that must be accounted for involves missing data for some actor positions. When there is a large number of missing actor positions on an issue, this will affect the usefulness of the relative power measures and produce undesirable effects when it comes to identifying the pivotal actor. Therefore, cases that are missing more than five actor positions for the EU-15 and seven actor positions for the EU-25 are also dropped. In cases where the number of actors with missing positions is below the abovementioned threshold, indifferent actors are assigned a position halfway between the reference point and the agenda setter's position. This allows for the inclusion of these cases without missing actors' positions driving the model predictions. Keeping this in mind, the relative predictive performance of the models under consideration is now explored.

RESULTS

The tables below represent the findings when the competing models were applied to the data. The table presents the mean absolute error (MAE) of the predictions made by the one-dimensional (model 1) and two-dimensional (model 2) procedural models.¹⁸ The MAE is calculated by finding the average absolute distance between each models predictions and the final legislative outcome on each issue in the dataset. Table 4.1 compares the performance of model 1 and 2 both before and after enlargement, whereas table 4.2 compares the performance of model 1 and model 3.

¹⁸ The mean absolute error is a commonly used measure for the success of these models and allows for easy cross-comparison between models (Achen 2006b: 275).

Table 4.1: Model 1 and 2 mean prediction errors for the EU-15 and the EU-25.

Model	All	CNS QMV	CNS Unan.	COD QMV	COD Unan.
<u>EU-15:</u>					
Model 1	49.61	58.53	40.21	42	-
sd	35.47	29.24	43.26	30.77	-
n=	(38)	(19)	(14)	(5)	-
Model 2	44.21	41.45	52.43	32.83	-
sd	26.55	28.96	27.19	12.43	-
n=	(42)	(20)	(14)	(6)	-
p-value=	0.0009	0.01	0.002	0.35	-
<u>EU-25:</u>					
Model 1	48.4	58.13	-	52.2	34.57
sd	37.76	30.97	-	49.94	37.05
n=	(20)	(8)	-	(5)	(7)
Model 2	49.2	51	-	41.6	52.57
sd	25.94	23.15	-	25.83	31.56
n=	(20)	(8)	-	(5)	(7)
p-value=	0.32	0.44	-	0.09	0.11

Note: Cells contain mean absolute errors with the standard errors and number of observations in parenthesis below errors. The differences between model predictions were tested using a Wilcoxon signed-rank test.

As can be seen in table 4.1, there are some interesting differences between the accuracy of the competing model predictions. Starting with all the EU-15 cases, it can be seen that model 2 outperforms model 1 with a MAE of 44.21 compared to a MAE of 49.61 respectively. Although this is not a very big difference, the model predictions are found to be statistically different. This finding suggests that accounting for the multi-dimensionality of the policy space associated with a particular proposal can improve the overall accuracy of the procedural model predictions.

When one disaggregates the finding according to the decision rule and legislative procedure that is applicable, the findings are somewhat more mixed. Under the consultation

procedure with the qualified majority voting rule, model 2 performs better than model 1 with a MAE of 41.45 compared to a MAE of 58.53. However, under the consultation procedure with the unanimity voting rule, model 1 performs better than model 2, with a MAE of 40.21 and 52.43 respectively. Both sets of model predictions are found to be statistically different from one another using a Wilcoxon signed-rank test.

Under the codecision procedure with the qualified majority voting rule, model 2 performs better than model 1 with a MAE of 32.83 versus a MAE of 42. While this finding seems to support the idea that a two-dimensional conceptualisation of the policy space improves model prediction, it should be noted that the Wilcoxon signed-rank test cannot statistically distinguish between each models' predictions.

When one considers the post-enlargement cases in the aggregate, no statistically significant difference can be found in the predictions between models 1 and 2 and the MAEs are very similar. None of the disaggregate results are statistically different from one another either, suggesting that post-enlargement, accounting for the multi-dimensional nature of proposals does not change the predictive accuracy of the models to a large degree. Indeed, when one looks at the MAEs, one finds improvements under consultation and codecision with QMV, but no improvements under codecision unanimity. Overall then it seems that in the aggregate, and under QMV accounting for the multi-dimensional characteristics of the policy space improves the predictive accuracy of the procedural models under consideration, while the opposite was found for the unanimity voting rule under consultation.

Moving on to table 4.2 which compares the MAEs of the one-dimensional models (model 1) to the MAEs of the two-dimensional models with issue saliency (model 3), it can be seen that across all the EU-15 cases, model 3 with a MAE of 34.43, performs much better model 1, which has a MAE of 49.61 when errors are aggregated across all decision-making

procedures. The differences in model performance were found to be statistically different between the two models. This suggests that for the pre-enlargement cases it is important to account for the dimensionality of the policy space and associated issue salencies, but does not account for differences in the decision-making procedure in use.

Table 4.2: Model 1 and 3 mean prediction errors for the EU-15 and the EU-25.

Model	All	CNS QMV	CNS Unan.	COD QMV	COD Unan.
<u>EU-15:</u>					
Model 1	49.61	58.53	40.21	42	-
sd	35.47	29.24	43.26	30.77	-
n=	(38)	(19)	(14)	(5)	-
Model 3	34.43	30.55	42	33.33	-
sd	26.13	22.65	33.08	22.32	-
n=	(40)	(20)	(14)	(6)	-
p-value=	0.05	0.02	0.94	0.35	-
<u>EU-25:</u>					
Model 1	48.4	58.13	-	52.2	34.57
sd	37.76	30.97	-	49.94	37.05
n=	(20)	(8)	-	(5)	(7)
Model 3	39.47	39.75	-	50	32.08
sd	30.84	25.33	-	38.3	36.07
n=	(18)	(8)	-	(4)	(6)
p-value=	0.198	0.26	-	0.60	0.84

Note: Cells contain mean absolute errors with the standard errors and number of observations in parenthesis below errors. The differences between model predictions were tested using a Wilcoxon signed-rank test.

When model performance is disaggregated across the different procedures under different decision-making rules pre-enlargement, the finding for all cases is supported by the finding for the cases using the consultation procedure for the EU-15. Under the qualified majority voting rule, model 3's MAE is 30.55 compared to 58.53 for model 1, with model errors being statistically different to one another. Under the unanimity voting rule, the MAE's

are 42 and 40.21 respectively, but are not statistically different. The first finding represents a significant improvement in terms of model predictions and suggests that it is important to account for the dimensionality of the negotiation space and the saliency attached to each dimension matters when modelling the consultation procedure with qualified majority voting. The second finding suggests that accounting for the dimensionality of the policy space and issue saliency does not drastically change model predictions.

Under the codecision procedure, the findings are similar, with model 3 outperforming model 1 under the qualified majority voting rule. The model 3 has a MAE of 33.33 while model 1 has a MAE of 42, although the difference in model prediction errors is not statistically significant. It should be noted that the number of cases under this decision procedure is smaller than under the consultation procedure, so the model performance estimates are less certain.

Following enlargement the model performance mirror those of the pre-enlargement cases for the most part, with the MAEs of model 3 being lower than those of model 1. When one considers all predictions without reference to the decision-making procedure in use, the model 1 has a MAE of 48.4, while the model 3 has a MAE of 39.47, although the prediction errors are not statistically significantly different from one another. The fact that the differences in model predications is not significant suggests that accounting for the dimensionality of the policy space under negotiation and issue saliency at a minimum does not negatively affect model prediction errors.

Under the consultation procedure with QMV, model 1 has an MAE of 58.13 whereas model 3 has a MAE of 39.75. The differences in model predictions under the consultation procedure were not found to be statistically different. These findings again suggest that

modelling proposals as multi-dimensional policy spaces with issue saliency does not harm model predictions.

When one looks at the results for the codecision cases after enlargement with the qualified majority voting rule, the model 1 performs worse with a MAE of 52.2 versus a MAE of 50 for model 3. The model predictions under this combination of legislative procedure and voting rule were not found to be statistically different, suggesting that although the MAE is better for model 1, model prediction errors are not that different overall. Under the codecision procedure with the unanimity voting rule, model 3 again performs better, with a MAE of 32.08 versus an MAE of 34.57 for model 1. Again note that the sample size is small for this set of prediction errors.

The next step in the analysis compares the two-dimensional model without issue saliency (model 2) to the two-dimensional model with issue saliency (model 3). This analysis established whether accounting for issue saliency improves the overall predictive accuracy of the procedural model. Table 4.3 presents the results of this analysis.

Starting with the EU-15 cases, in the aggregate it can be seen that model 3, which includes issue saliency, performs better than model 2 which does not. Model 3 has a MAE of 34.43 compared to a MAE of 44.21 for model 2. Importantly, the model predictions are found to be statistically different. This finding suggests that issue saliency has an important effect on the accuracy of the procedural model, and should be included when modelling actor preferences.

Table 4.3: Model 2 and 3 mean prediction errors for the EU-15 and the EU-25.

Model	All	CNS QMV	CNS Unan.	COD QMV	COD Unan.
<u>EU-15:</u>					
Model 2	44.21	41.45	52.43	32.83	-
sd	26.55	28.96	27.19	12.43	-
n=	(42)	(20)	(14)	(6)	-
Model 3	34.43	30.55	42	33.33	-
sd	26.13	22.65	33.08	22.32	-
n=	(40)	(20)	(14)	(6)	-
p-value=	0.04	0.09	0.3	0.34	-
<u>EU-25:</u>					
Model 2	49.2	51	-	41.6	52.57
sd	25.94	23.15	-	25.83	31.56
n=	(20)	(8)	-	(5)	(7)
Model 3	39.47	39.75	-	50	32.08
sd	30.84	25.33	-	38.3	36.07
n=	(18)	(8)	-	(4)	(6)
p-value=	0.96	0.48	-	0.35	0.79

Note: Cells contain mean absolute errors with the standard errors and number of observations in parenthesis below errors. The differences between model predictions were tested using a Wilcoxon signed-rank test.

When one looks at the pre-enlargement results for the consultation procedure, it can again be seen that model 3 performs better, with a MAE of 30.55 for under QMV, and a MAE of 42 under the unanimity voting rule. This compares favourably with model 2, which has a MAE of 41.45 under QMV and a MAE of 52.43 under unanimity. When one applies a Wilcoxon signed-rank test to distinguish between the model predictions, the first of these findings relating to the QMV rule is found to be statistically significant, whereas the second finding relating to the unanimity voting rule is not. These findings thus add some further support to the idea that accounting for issue saliency when modelling actor preferences is important.

Under the codecision rule pre-enlargement, model 2 is found to out-perform model 3, with an MAE of 32.83 and 41.6 respectively. While this finding contradicts those under consultation, it should be noted that the number of cases here is quite low, and model predictions were not found to be statistically different from one another.

When one considers the post-enlargement cases, a similar set of results are observed, although these results should be considered weaker, given that the signed-rank test could not differentiate between model predictions in the aggregate and when such results were disaggregated according to the legislative procedure and voting rule that is applicable. In the aggregate, model 3 is found to outperform model 2 with a MAE of 39.47 compared to a MAE of 49.2 respectively. This again lends support to the idea that issue saliency is important to account for.

Disaggregating this finding, it is observed that under the consultation procedure with QMV, model 3 again performs better, with a MAE of 39.75 versus a MAE of 51 for model 2. When one considers the codecision cases, the findings are more mixed with model 2 performing better under QMV, and model 3 performing better under unanimity. It should again be noted that the number of cases here is quite small.

On balance, the overall picture that emerges from tables 4.1-4.3 is that accounting for the dimensionality of the issue space and the saliency that actors attach to the issues under negotiation at best significantly improves model predictions, and at worst does not adversely affect them. The implications of these findings are considered in the conclusion.

CONCLUSION

This chapter has examined the legislative process in the EU, and in particular has considered whether the dimensionality of the policy space, and the saliency that actors attach

to particular issues, have an effect upon the predictive accuracy of the procedural models under consideration. Two existing procedural model of decision-making (relating to the consultation and codecision procedures) were outlined and implemented in three distinct ways to take account of multiple issues and issue saliency. These models were then applied to a dataset that included proposals decided both before and after enlargement. The aggregate findings presented for the models suggest that modelling the decision-making process in a way that accounts for the dimensionality of the policy space, and the saliency that different actors attach to these issues, improves model predictions at best, and does not change them at worse.

The findings presented for the models of the consultation procedure are similar to the aggregate findings, with the two-dimensional model that accounts for issue saliency performing better pre- and post-enlargement under the qualified majority voting rule, and with no significant differences found under the unanimity voting rule pre-enlargement. Under the codecision procedure, the results are more mixed across the EU-15 and EU-25 cases, yet one must allow for the fact that the number of cases associated with these findings is relatively low.

One possible explanation for the more mixed results for the post-enlargement cases is that the number of cases is quite low for each individual legislative procedure. Unfortunately this is unavoidable given the current availability of data. If the results are indicative of the underlying patterns in prediction errors that would be observed were more cases included, the rather poor predictive power of the models could be due to the fact that the agenda setter finds it more difficult to identify the winset within the Council post enlargement, given the increased number of member states that must approve a Commission proposal. When the agenda setter cannot correctly identify the winset within the Council, then it will have more

difficulty assessing where the equilibrium proposal lies, and this thus opens up the possibility for Council or Parliament amendments in later stages of the game. Nevertheless, when one considers the aggregate results for the post-enlargement cases, the difference in model performance is not statistically significant. In light of these findings, one must decide whether the more complex but complete picture of the policy space is preferable to the simpler but less complete picture provided by the one-dimensional model.

A model of the negotiation that accounts for the dimensionality of legislative negotiations and issue saliency allows for the fact that negotiators observe and act upon the trade-offs inherent in negotiations where multiple issues are at stake. The theoretical arguments for accounting for the dimensionality of negotiations have long been established (Plott, 1967; McKelvey, 1976; Tollison and Willet, 1979; Riker, 1986, 1993; Tsebelis, 1997). The empirical evidence relating to EU negotiations in particular also suggests that negotiators trade positions and engage in logrolling during negotiations (Arregui *et al.* 2006; Junge and König 2007). This suggests that a spatial model of the decision-making process that accounts for the dimensionality of legislative negotiations seems appropriate. The empirical findings presented here lend some support to this view, and in light of these arguments, a conceptualisation of legislative negotiations that accounts for the dimensionality of the policy space is implemented where appropriate in the chapters that follow (specifically Chapters 6 and 7). This shall provide a more comprehensive model of EU negotiations and account for the theoretical arguments and empirical evidence presented in this chapter.

CHAPTER 5: RELATIVE POWER AND THE INTERNAL STRUCTURE OF THE COUNCIL OF MINISTERS OF THE EUROPEAN UNION.

INTRODUCTION

Political scientists have long held an interest in the way in which political institutions transform actors' divergent legislative policy positions into legislative outputs. In the case of the European Union (EU), this has led scholars to focus upon the different political institutions involved in the legislative process, including the Commission, the Council of Ministers, and the European Parliament. Of these institutions, the Council of Ministers is arguably the most important legislative body, serving as the central arena in which the policy positions of member states are directly represented in the EU decision-making process.¹⁹ The importance of this institution implies that careful consideration of how its members negotiate and decide upon the legislative proposals put before them is an important area for scholarly attention.

This chapter examines the role that differences in member state power play in determining decision-making outcomes in the Council of Ministers, and how the institutional structure in which decision-making is taking place influences the use of this power. For the purposes of this chapter, power is conceptualised with reference to Weber's definition of power as a member states' potential to transform its policy demands into decision-making outcomes, even when other member states have opposing policy demands (Weber 2007[1914]; Thomson 2011). This is a useful definition of power, as it captures a number of intuitive aspects of the concept that are relevant to the exercise of power within the Council of Ministers. It conceives of power in terms of an actor's *capabilities* to affect outcomes even in the face of opposition. This first aspect of this definition that is useful for the purposes of studying legislative decision-making, as it is defined in terms of influencing 'social' or collective actions. This draws attention

¹⁹ In recent years this view of the relative importance of the competing EU institutions has come under some criticism given legislative reforms such as the Nice and Lisbon treaties that have increased the usage of the codecision procedure and thus increased the relative importance of the Parliament. This chapter acknowledges these changes, but is interested in the decision-making process *within* the Council rather than the negotiations between the Council and the Parliament.

to the fact that exercising power in the legislative process is done in order to influence the content of legislative outcomes, which are inherently collectively decided outcomes, given that the approval of more than one member state is needed for legislation to be passed. Power is thus thought to be a relational concept that describes a member states capability to influence other member states in situations where collective action is required.

The second aspect of Weber's definition that is relevant to Council decision-making is that it accounts for Barry's (1980) important distinction between power and luck (Thomson 2011). The fact that power is defined with the stipulation that it is exercised 'even when other member states have opposing policy demands', draws attention to the fact that outcomes can sometimes be close to a member state's position even when that member state has not exercised any influence. Barry's distinction between power and luck again stems from the idea that reaching political decisions require collective action, and can thus be considered a public good. Public goods by their very nature are non-divisible and non-excludable. Once a decision has been reached, the costs and benefits from the decision cannot be withheld from other actors involved in the decision-making process. If an actor's initial position is close to other powerful actors or coalitions, then that actor can free ride on the negotiation efforts of the others and still attain the desired outcome. The key reason this can be attributable to luck is because a particular member state has little control over the initial positions taken by other member states. A member states initial position is assumed to be exogenously determined by the internal political processes within that state, and this assumption implies that such a position is not amenable to outside influence. In such cases, according to Barry, a member state attaining its preferred outcome by free riding on the efforts of others can be described as lucky rather than having exercised power to attain their goals.

In order to distinguish between power and luck empirically, one must therefore account for the influence of other actors in the negotiation process over legislative outcomes in terms of their relative policy positions and the saliency that they attach to the issues under negotiation.

The research design that is implemented in this chapter captures Barry's distinction by explicitly accounting for the influence of all member states' positions on the decision-making outcome, and the saliency that they attach to their position on the issue under negotiation.

When considering legislative decision-making in the Council, the vote weights that each member state is assigned under the particular legislative procedure and voting rule that is in use can be used as a measure of the relative power of member states to empirically capture Weber's definition of power²⁰. Voting weights capture member states' own assessments of their relative power under a particular legislative procedure, as they represent the weights that member states decided upon when negotiating the EU treaties, and define the extent of member state voting capabilities when formal votes are taken in the Council. Crucially, the number of votes a member state possesses is determined *a priori*, and can thus be used as an measure of their capabilities to influence negotiations, even if these capabilities are not exercised. Measuring power using vote weights as initial inputs thus captures the relative power of member states as they estimate it.

This chapter makes a distinction between the influence of voting power over outcomes and the actual exercise of voting power in terms of formally voting for or against a particular proposal. Empirical studies of Council decision making have noted that the explicit use of voting power by member states is relatively rare, despite the fact that the influence of each member state varies *a priori* with the amount of voting power in its possession and the voting rule in use (Mattila & Lane 2001; Mattila 2004; 2006; 2009; König & Junge 2009). This chapter will contend that while the practice of voting 'no' or abstaining, which represent the explicit use of voting power, is relatively rare, this does not necessarily imply that power has no influence over the decision-making process. Power is still likely to have been influential in situations where no

²⁰ Vote weights are referred to as basic inputs as they represent the inputs for voting power indices that are the actual measure used in the analysis presented in this Chapter. A discussion of why it is appropriate to construct voting power indices rather than relying on the raw number of votes at each member states' disposal is elaborated upon below.

formal vote has been taken or in situations where a formal vote showed little formal opposition to a proposal. This is due to the fact that decision making always takes place in the shadow of the vote. Member states are aware of the relative power of each negotiator and can anticipate the likely result of a vote were one to be taken. They thus react to one another as if a vote were going to take place, even if a vote does not occur. For this reason, it is important to assess the influence of differences in member state voting power despite the fact that formal votes are relatively rare.

The chapter is structured as follows. The next section summarises the academic literature regarding the role that voting power plays in legislative negotiations. Following that, a brief description of how negotiations proceed through the different levels of negotiations is given, and specific testable hypotheses are developed regarding how the process of decision-making in the Council is likely to vary, depending upon the level at which controversial issues are resolved. Once the theoretical expectations have been outlined, an example detailing how a particular legislative proposal was negotiated within the Council will be given. The following section outlines how informal bargaining within the Council shall be captured using models from cooperative game theory. The data section will detail how the data under consideration were collected. The section following that describes and explains the results obtained when these data were analysed. The final section draws conclusions from the analysis.

RELATING MEMBER STATE POWER IN THE COUNCIL TO THE DECISION- MAKING PROCESS

A large volume of academic literature has sought to investigate the decision-making process in the Council, although little consensus has arisen concerning exactly how the Council transforms member states' initial policy positions on different legislative proposals into final agreements. There is much speculation as to what particular mechanism best describes how legislative decisions are made. Some studies have focused upon the formal institutional rules of decision making in determining decision outcomes (Crombez 1996; 2001 2003 Steunenberg

1997; Tsebelis and Garrett 2000; 2001; Tsebelis 2002). The previous chapter in this volume examined the role that the formal legislative rules play in determining decision-making outcomes, with a specific emphasis upon the dimensionality of the policy space and the role of saliency in the decision-making process. It was found that accounting for the dimensionality of the political space and issue saliency is important, but in line with the previous research mentioned above, the accuracy of procedural models as predictors of decision-making outcomes was called into question.

In contrast to the procedural model approach explored in the previous chapter, other scholars have focused upon either informal bargaining (Achen 2006a; Thomson 2010; 2011), or the influence that norms of cooperation and deliberation have on decision makers (Lewis 1998; 2003; 2005; Niemann 2004). These approaches share a common assumption that the formal decision-making rules and sequence of moves in the legislative game are less important in determining legislative outputs than informal aspects of the legislative process. These informal processes are the subject of this chapter.

While much progress and understanding has been gained from existing studies of the legislative process, most of the academic literature fails to consider the inner structure of the Council, and whether or not the process of decision making varies, depending upon the level at which decisions are made²¹. This chapter seeks to address this question directly by focusing upon how the process of decision making, and agreements reached at different levels of negotiation within the Council, are influenced by differences in member states' voting power resources. The exact role that differences in member state voting power play in the negotiation process is contested in the existing literature in this area.

²¹ Two important exception here would be Jeffery Lewis (1998; 2003; 2005), who has drawn attention to the role that the Committee of Permanent Representatives play within the Council decision-making process, and Juncos and Pomorska (2006) who consider how the decision-making process varies at the working group level.

The aforementioned authors who focused upon more informal style bargaining in the Council have drawn attention to factors such as actors' relative political power and instrumental rationality in determining decision-making outcomes (Moravcsik 1998; Lewis 2005; Achen 2006a). In this tradition, the legal rules of political institutions reflect the underlying distribution of power between the actors involved. In the EU case, this approach holds that the distribution of votes between member states in the Council is a direct reflection of their relative political power. Decision-making processes are characterised by informal bargaining between member states, with outcomes reflecting the distribution of policy positions, the relative saliency that actors attach to their policy positions²², and political power on any particular issue. When this type of bargaining is taking place, negotiators are thought to abide by a 'logic of consequence', in which rational actors pursue policy preferences utilizing whatever resources (read voting power) they have at their disposal (March and Olsen 1998).

In contrast to this view of decision making, other scholars have argued that the distribution of policy positions and voting power alone cannot explain the legislative process within the Council (Lewis 1998; 2002; 2003; Joerges & Neyer 1997; Jacobsson & Vifell 2007). According to these scholars, while bargaining power and self-interest are thought to matter to some degree, one should also consider the role that socialization, norms of cooperation and agreement, and consensus style decision making play in determining legislative outcomes. Actors are thought to abide by a 'logic of appropriateness', in which actions are governed by identities, norms of behaviour, and rules dictating appropriate types of behaviour (March and Olsen 1998). In this image of Council bargaining, norms of cooperation and consensus style decision making limit the explicit use of voting power to coerce those with alternative policy positions in legislative negotiations, as this type of behaviour is deemed inappropriate.

²² The interpretation of the concept of saliency in this chapter is analogous to the interpretation in Thomson and Stokman (2006) and Achen (2006), in that it is thought to describe the "sharpness in the curvature of an actor's loss function. Actors with a high saliency score attached to their position experience greater losses from deviations from that position compared to actors with lower saliency scores. The importance of accounting for saliency in multi-dimensional policy spaces is discussed in detail in the previous chapter.

If the use of power to coerce actors during negotiations is deemed inappropriate when a 'logic of appropriateness' is at work, this should affect the influence of differences in member state power over the decision-making process. Specifically, when a 'logic of appropriateness' forestalls the use of power to coerce other actors in the decision-making process, this should level the playing field between big and small member states, as the larger member states will no longer be legitimately able to use differences in power to influence smaller member states. Consensus style decision making implies each actors' voice in the decision-making process should *a priori* have equal influence, thus neutralizing to some extent the influence of differences in member state voting power. This proposition is tested in this chapter by first identifying a set of scope conditions that is expected to affect the type of decision-making logic at work at each level of negotiation in the Council, and then linking the type of decision-making logic at work to the use of power to influence the legislative process at these levels of negotiation.

SCOPE CONDITIONS THAT RELATE TO THE USE OF POWER AT DIFFERENT LEVELS OF NEGOTIATION IN THE COUNCIL

While these differing views of the type of decision-making logic at work in the legislative process have enlightened our understanding of the way in which legislation is produced within the Council, some controversy exists regarding whether or not the legislative process varies at different levels of decision making within the Council. Lewis (2005) suggests a number of scope conditions which can be utilised to determine the type of bargaining and decision-making logic that is likely to be at work at different levels within the Council. These scope conditions include the level of insulation from outside influence, the level of rotation of negotiators at a given level, and the density of issues under consideration. It is useful to consider each of these scope conditions individually as they inform the discussion of each level of decision making in the Council elaborated upon below.

The level of insulation that characterises a particular level of decision making is thought to affect the type of bargaining that is taking place, as it relates to the ability of other actors and interests to monitor negotiator activities within a certain context. Stasavage (2004) argues that negotiation behaviour is affected by less insulated decision-making contexts as such contexts encourage “posturing” by negotiators who are aware of the audience that might be watching. This awareness leads negotiators to present unyielding positions over the course of negotiations so as to appear as effective and committed bargainers. In contrast, when a decision-making context is more insulated, negotiators can speak frankly and in confidence that what is said within these contexts will not be reported to outsiders. They have little incentive to posture and take hard bargaining positions, as no audience is present to witness such behaviour (Lewis 2005). In light of these arguments, the level of insulation can be expected to influence the type of bargaining that takes place at a particular level of negotiation within the Council.

The level of rotation of negotiators associated with a particular level of decision making in the Council is also thought to affect the decision-making process at work. When negotiator rotation is relatively low, one can expect that negotiators form bonds with one another and have time to internalize norms of behaviour and the consensus style decision making thought to be at work at certain levels of negotiation in the Council. In contrast, when negotiator rotation is high, there is less scope for these norms and negotiation styles to develop, as different negotiator continuously rotate in and out of a particular legislative setting. The level of rotation associated with a particular level of negotiation within the Council can thus be expected to affect the type of decision making that takes place at that level, and thus the use of power by member states to influence the legislative process.

The final scope condition that is expected to affect the type of decision making at work at a particular level of negotiation within the Council is the level of issue density associated with that level (Lewis 2005). When the issue density associated with a level of decision making is high, the intensity of contact between actors at these levels of negotiation is expected to be

greater than at levels with lower issue density. This is due to the fact that a larger number of issues from distinct policy areas will be present on the legislative agenda. When a larger policy remit is under negotiation, negotiators must maintain near constant contact with one another in order to ensure progress in negotiations across the diverse policy areas under consideration. In contrast, at levels of negotiation associated with lower levels of issue density, negotiators have a much narrower policy remit, and thus the intensity of their contact is likely to be lower. In light of these arguments, the level of issue density, and the associated intensity of contact between negotiators at a particular level of decision making in the Council can be expected to affect the type of decision making that takes place at that level.

While Lewis (2005) suggests that these scope conditions are a way to determine whether the bargaining process is better characterised by 'hard bargaining' or 'problem solving', here they will be used to distinguish between setting in which either a logic of consequence or a logic of appropriateness are at work. There are compelling reasons to support this application of Lewis' scope conditions to March and Olsen's (1998) argument. Firstly, when actors engage in hard bargaining, they act as utility maximisers with ordered preferences over outcomes that are determined by relative power and the use of strategic rationality (Lewis 2005). There is clearly a logic of consequence at work when this form of bargaining is taking place.

Secondly, in contrast to the hard bargaining image of Council decision making, when the bargaining process is better characterised by 'problem solving', and socialization and norms of behaviour are influencing decision makers, a logic of appropriateness should be at work. Actors adhering to norms of behaviour are less concerned with ordered preferences and the strategic use of relative power, and are more concerned with the appropriate form of behaviour in the context in which they find themselves negotiating. They adhere to norms of agreement and consensus style decision making because it is deemed inappropriate to act contrary to these norms. The scope conditions utilised by Lewis (2005) to distinguish between hard bargaining

and problem solving, are thus thought to be appropriate to distinguish between situations in which a logic of consequence and a logic of appropriateness are at work.

The argument elaborated upon above leads to the following set of expectations with regard to the type of decision-making logic at work in a particular legislative setting within the Council. When a negotiation forum is characterised as being less insulated, with more rotation of negotiators, and with a relatively low level of issue density, it is expected that negotiations will more closely adhere to the logic of consequence rather than the logic of appropriateness (Lewis 1998; 2005; Juncos & Pomorska 2006). In contrast, when a negotiation forum is characterised as being more insulated, with less rotation of negotiators, and with a relatively high level of issue density, it is expected that negotiations will more closely adhere to the logic of appropriateness. These scope conditions shall now be used to classify each level of negotiation within the Council into settings in which the use of power to influence decision-making outcomes is more or less likely. The division of negotiations between three distinct levels of decision making within the Council thus allows one to analyse how differences in member state power impact upon the decision-making process. The next section presents a discussion of the internal structure of the Council, and describes how the role of power in the negotiation process and the type of decision-making logic at work is expected to vary depending upon the level of decision making under consideration.

ACCOUNTING FOR THE COUNCIL STRUCTURE AND ITS INFLUENCE ON THE USE OF POWER IN THE NEGOTIATION PROCESS

The Council is divided into three distinct levels through which a proposal is passed before an agreement can be established. These levels are the working group level, the Committee of Permanent Representatives (Coreper) level, and the ministerial level. Each level brings together different member state representatives of varying levels of seniority, who attempt to formulate the Council's position for any particular proposal under consideration. Importantly, the ability of each individual member state to influence the policy agreement is

mediated by the institutional environment in which they find themselves, and by the relative voting power of the member states involved. To account for this influence, it is important to consider the structural aspects of the Council and the way in which different levels of decision making, from bureaucratic to ministerial level, impact upon the legislative process.

It is important to note that the manner in which the decision-making process is elaborated upon in this section is necessarily stylized, before discussing each of these levels in more detail. For the purposes of this chapter, each level of decision making is assumed to be relatively independent from the other levels within the Council. Despite this assumption, it must be acknowledged that over the course of negotiation, each of the levels under consideration interacts continuously, with the lower levels taking decisions in the shadow of the higher levels of decision making in the Council. The decision to treat each level of negotiation in a relatively independent manner is a simplifying assumption that stems from the difficulty associated with formally accounting for the interactions between these levels. Future research should further investigate the interactions between different levels of decision making in the Council, in order to shed light on how these interactions shape policy outcomes and actor behaviour. Unfortunately, capturing these interactions is beyond the scope of this chapter, which has the more pragmatic goal of assessing how the role of power in determining legislative outputs varies depending upon the level of involvement of each individual Council level in the decision-making process. In light of this caveat, each level of decision making in the Council is now explored in more detail.

The first important level of decision making within the Council is the working group level. Working groups consist of government officials from either the permanent representations situated in Brussels or national ministries of the member states, and representatives from the Commission and General Secretariat (Häge 2007). These groups meet often and are seen as 'arenas where draft legislation begins to be firmed up and moves towards compromise solutions take place' (Fouilleux *et al.* 2005). These working groups represent the

working horses of the Council, and Häge (2008) estimates that 42.8% of all legislative acts are decided upon at this level.

With regard to the scope conditions of interest, Juncos and Pomorska (2006) present evidence that the working group level is characterised by a relatively low level of insulation. They note incidents in which negotiators at this level have been reprimanded by Coreper level colleagues, and national capitals, suggesting that working group level negotiators are not insulated from outside influence. Rotation of working group negotiators is thought to be relatively high, given that those that attend meetings can be attached to either the permanent representations or national ministries or agencies, depending upon the proposal under consideration (Häge 2007). Similarly, issue density is thought to be quite low at the working group level, given the high level of specialisation of the negotiators involved, and limited policy scope of individual working group configurations (Häge 2007). When insulation is low, rotation is high, and issue density is low, the following hypothesis is expected to hold²³:

H1: Differences in member state voting power affect outcomes at the working group level of negotiation.

The intermediate level of negotiation within the Council is represented by Coreper. The work of Coreper is split into two separate configurations, Coreper I and Coreper II, each of which deals with a distinct set of EU policy areas. Coreper I is attended by the deputy permanent representatives of each member state and addresses more technical issue areas, such as the single market, the environment and transport. In contrast, Coreper II is attended by member state ambassadors to the EU, who primarily work on issues concerning the external relations of the EU, such as trade and foreign policy (Lewis 2003). Häge (2008) estimates that 22.2% of all legislative acts are decided upon at this level of negotiation within the Council.

²³ As further support for this expectation, Naurin (2010) conducted a carefully constructed study that examined the role of deliberation and arguing in the decision-making process at the Working group level within the Council. He found that while arguing and deliberation do occur, they are most common when the stakes under negotiation are not particularly high.

Coreper differs from the working group level in terms of the scope conditions of interest. Coreper is attended by senior-ranking member state representatives who are based in Brussels at the permanent representations, and meet on a weekly basis (Hayes-Renshaw & Wallace 1997; 2006). The fact that negotiators are based in Brussels suggests that they are relatively insulated from outside pressures (Lewis 2005). The fact that negotiators generally hold their positions in Brussels for relatively long periods of time suggests a low level of rotation of negotiators (Hayes-Renshaw & Wallace 1997; 2006). With regard to the level of issue density at the Coreper level, Coreper is uniquely placed within the Council due to the fact that it simultaneously acts as the interface between the lower working group level and the higher ministerial level, while also handling a large cross-section of issue areas (Häge 2008). The relatively large cross-section of policy dealt with by each Coreper configuration gives the Coreper officials involved a broad overview of the legislative proposals under consideration at any particular time within the Council. This suggests a relatively high level of issue density is present in Coreper negotiations. When insulation is high, rotation is low and issue density is high, the following hypothesis is expected to hold:

H2: Differences in member state voting power will not affect outcomes at the Coreper level of negotiation.

The highest level of negotiation within the Council is the ministerial level, which is composed of government ministers representing different policy portfolios from each member state. These ministers make the final decision on a particular proposal, and if an agreement cannot be reached at this level, an agreement is unlikely to be reached. Unlike the Coreper level, which has a very broad policy remit, the Council of Ministers is composed of representatives elected at the national level, and is divided along sectoral policy lines. The Council of Ministers is the arena in which the final vote on a proposal is taken, using either a unanimity or qualified majority voting rule, depending on the proposal under consideration. It is estimated that 35% of all legislative proposals are decided upon at this level within the Council (Häge 2008).

With regard to the scope conditions under consideration, the fact that government ministers reside in and conduct their day-to-day business in national capitals suggest that the ministerial level of negotiations within the Council is not very insulated from outside pressures. The fact that ministers generally hold their positions for a relatively long period of time suggests that the level of rotation of negotiators at the ministerial level of negotiation is relatively low (see Huber and Martinez-Gallardo (2008) for an excellent study of the length of ministerial tenure). The fact that the ministerial level of negotiation is divided along policy sector lines, and meetings are attended by the relevant government minister from each member state suggests that issue density is relatively low (Hayes-Renshaw & Wallace 1997; 2006). When insulation is low, rotation is high and issue density is low, the following hypothesis is expected to hold:

H3: Differences in voting power will affect outcomes at the Council level of negotiation.

Table 5.1 summarizes the scope conditions of interest and the expected influence of differences in member state voting power across the different levels of negotiation in the Council of Ministers.

Table 5.1: Scope conditions influencing the role played by power at each level within Council.

Level within Council:	Insulation:	Rotation:	Issue Density:	Role of power in negotiations:
Working Group	Low	High	Low	Important
Coreper	High	Low	High	Less important
Ministerial	Low	Low	Low	Important

The path that a particular proposal can take through the different levels of negotiation can vary to a great extent. Generally, when a proposal is brought forward by the Commission, it is first considered at the working group level. Working group attachés will gauge the positions of the other member states, the Commission and the Parliament, and then make attempts to find common ground and establish an agreement. Any issues that cannot be resolved at the working

group level are brought to Coreper. A similar process of discussion occurs at this level, and a list of "A" points representing issues resolved, and "B" points representing outstanding issues is created for the consideration of the Council of Ministers. At the ministerial level, any remaining issues are discussed, and if an agreement is reached, the Council's position is established. Should agreement remain elusive, the Council of Ministers can either agree to shelve the legislation indefinitely, or to return it to the lower levels for further negotiation and consideration.

The question as to what determines the legislative arena in which an issue is finalized has received some attention in the academic literature. It has been claimed that in general the working groups deal with more 'technical' issues, whereas the Coreper and Ministerial levels focus upon more 'political' issues (Radaelli, 1999). Indeed Fouilleux et al. (2005) report that when decision makers themselves were interviewed and asked what type of issues the working groups deal with, virtually all interviewees reported that working groups deal solely with technical aspects of the proposal under consideration, whereas the Coreper and Ministerial level address more political questions.

In contrast to this commonly held perception, when Fouilleux et al. (2005) examined the issues under consideration, they found that the major factor that dictates whether an issue is dealt with at the working group level or passed up to the Coreper level is whether or not an agreement can be reached by the working group. The authors draw attention to a series of examples to support this argument. One of these is a case discussed by Geddes and Guiraudon (2004), relating to the negotiations for a racial discrimination directive. One of the issues that arose during negotiations for this proposal was how to define a case of discrimination. The UK and the Netherlands held that discrimination could be proved through the use of statistics, whereas France, Spain and Sweden held that this was a dangerous way to demonstrate racial discrimination. When discussing this particular controversy with a stakeholder involved in working group level negotiations, the stakeholder initially stated that the issue was political, so must have been resolved in Coreper, yet in reality, the issue was resolved at the working group

level. The fact that an essentially political issue was resolved at the working group level (in spite of the impressions of the stakeholders involved in negotiations at this level) suggests that the distinction between technical and political issues is not clear cut (Fouilleux et al., 2005). This finding is reassuring for the current argument, as it suggests that whether or not an issue is deemed to be 'technical' or 'political' is a post-hoc judgement based upon at what level an issue is resolved, rather than an inherent characteristic of the issue being discussed. Working groups deal with both 'technical' and 'political' issues, with the major determinants of whether or not an issue can be resolved at this level being relating to factors other than how 'political' an issue is deemed to be.

Fouilleux et al. (2005) also investigated the type of issues that are likely to be left to Ministers to decide. It was found that in general, issues relating to budgetary matters and issues in which there are intersectoral trade-offs are usually left to Ministers to decide. These issues are discussed in earlier rounds of negotiations at lower levels within the Council, but discussions usually revolve around generating an idea of the different positions being taken on an issue, rather than finalizing an agreement. Yet even in these cases, the authors found that a clear distinction between 'political' and 'technical' issues was difficult to defend, as cases were found in which working group officials had a clear influence over the decisions being made.

In light of this discussion, this chapter shies away from distinguishing between different *types* of issues and generating expectations about where they are likely to be finalized. Instead, the chapter will analyse whether the heterogeneity of actor positions at the beginning of negotiations has an effect upon the involvement of each level of negotiation within the Council. This allows one to abstract from the substantive nature of the issues under consideration, and instead focus upon the potential for conflict between member states and how this gets played out within the Council. The expectation that will be tested is that issues with a higher degree of heterogeneity in initial positions will tend to have higher levels of Coreper and Ministerial involvement. Before discussing the research design that will be implemented in order to

investigate these research questions, it is useful at this stage to explore one of the proposals in the dataset in detail in order to illustrate the research design in action.

THE COUNCIL AT WORK: THE PROPOSAL FOR ENVIRONMENTAL QUALITY STANDARDS IN THE FIELD OF WATER POLICY

In 2006, the European Commission introduced a proposal for a directive, which aimed to introduce environmental quality standards in the field of water policy across the EU. This proposal came under the codecision procedure, and a qualified majority voting rule was in use in the Council. Four main controversies arose during the negotiation of this proposal.²⁴ They included:

- 1) Whether or not the directive should include specific measures to ensure water quality;
- 2) Whether or not to alter the agreed list of priority and priority hazardous substances;
- 3) Whether or not measurements from sediment and organisms should be allowed as tests for mercury, chlorine and organic chemicals in water; and finally,
- 4) Whether or not an article on trans-boundary pollution should be included.

Figure 5.1 represents the path that each of these issues took through the different levels of decision making within the Council, during the negotiations for a Council agreement. The x-axis represents the total number of meetings that took place before a agreement was reached within the Council. The y-axis represents the level within the Council at which each issue was discussed. The vertical line represents the time at which the European Parliament delivered its first reading opinion. It should be noted that not every issue was discussed at each meeting and at each level. This is demonstrated by the fact that the points along the x-axis at which each issue arose are different depending on the issue under consideration.

²⁴ The way in which these issues were identified and the data were collected is described in chapter 3.

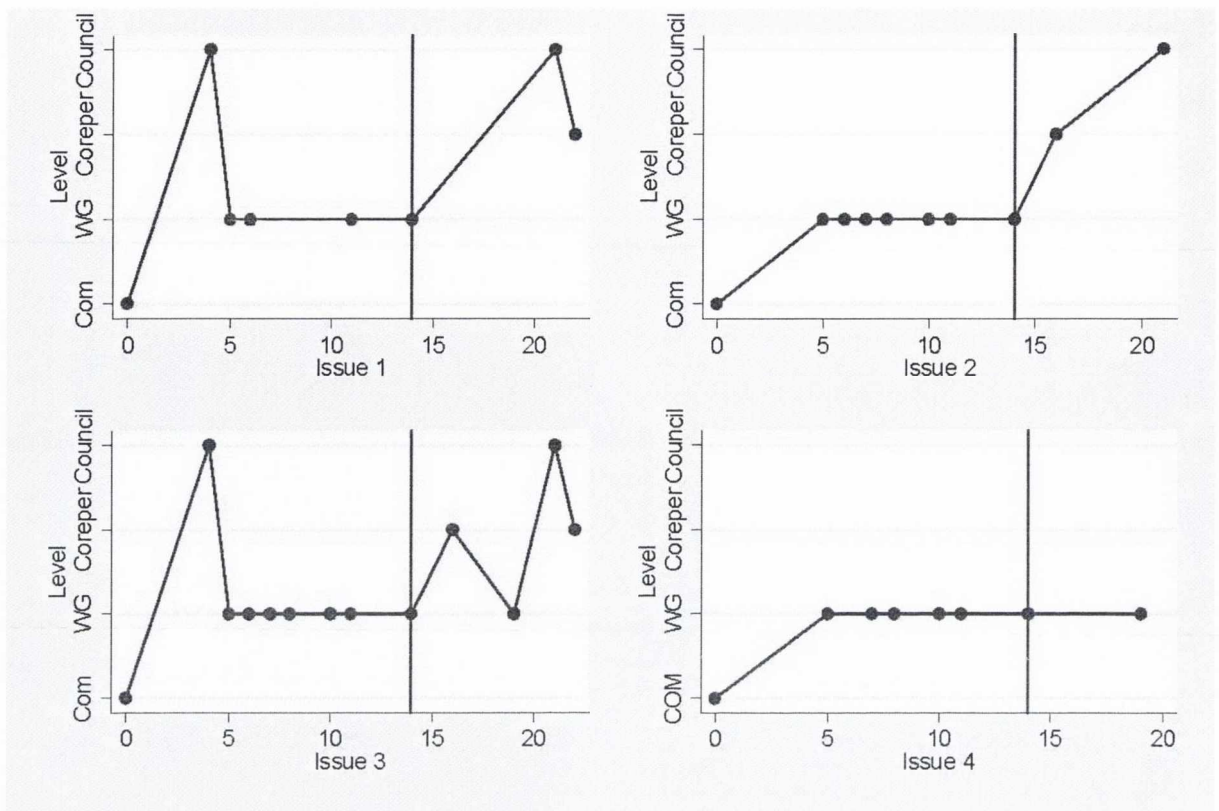


FIGURE 5.1: CONTROVERSIAL ISSUES IN THE WATER STANDARDS PROPOSAL

Note: The x-axis in the above figure represents the order of meetings at which this particular proposal was discussed. The y-axis is the level of negotiation at which a meeting took place.

Looking at issue one, concerning whether or not the directive should include specific measures to ensure water quality, it can be seen that member state delegates within the Council discussed this issue seven times in total over the course of the negotiations. The issue was first discussed at the ministerial level before being passed to the working group level, where it was discussed at three meetings before the Parliament delivered its first reading opinion. Following the Parliament's first reading opinion; the issue was again discussed at the ministerial level before an agreement was finally reached at the Coreper level. The Council agreed not to include any specific measures to ensure water quality.

Issue two, concerning whether or not to alter the agreed list of priority and priority hazardous substances, was first discussed at the working group level following the introduction of the proposal by the Commission. The issue then arose at six working group meetings, before the Parliament delivered its first reading opinion. Following this, the issue was passed to the

Coreper level, before an agreement was finally reached at the ministerial level. The Council agreed to include a review clause that implied the list of priority and priority hazardous substances was fixed for the time being, but open to revision at a later date.

Issue three, concerning whether or not measurements from sediment and organisms should be allowed as tests for mercury, chlorine and organic chemicals in water, was the most controversial issue in the proposal examined here. It was discussed at a total of eleven meetings. The issue first arose at the ministerial level at the same meeting in which issue one arose, before being passed to the working group level, where it was discussed at six separate meetings. The Parliament then delivered its first reading opinion. Following the Parliament's first reading opinion, the issue was passed to the Coreper level, before returning to the working group level for further discussion. Then, the ministerial level took up the issue, before finally passing it back to Coreper, where an agreement was formulated. The agreement reached was that member states could use these different measures at their own discretion.

Issue four, concerning whether or not an article on trans-boundary pollution should be included, appears to have been a good deal less controversial than issue three. Discussion of this issue remained at the working group level throughout the negotiation process. The issue arose at five working group level meetings before the Parliament delivered its first reading opinion. An agreement was finally reached at a working group meeting following the Parliament's first reading opinion. It was agreed to include an article on trans-boundary pollution.

CAPTURING INFORMAL BARGAINING IN THE LEGISLATIVE PROCESS

The influence of voting power on negotiations at different levels of decision making within the Council will be explicitly modelled in order to capture the different theoretical expectations outlined above. In order to test these expectations, a spatial modelling approach is employed because it features a number of advantages that make it well suited for the task at hand. The most obvious advantage of using this framework is that the models to be used

explicitly state the factors that are expected to determine particular decision outcomes, and specify how they interact to generate such outcomes. A further advantage is that these models generate predictions that are testable against actual outcomes. This is a significant advantage for the approach, as it allows for both cross-model comparisons to be made in order to assess relative model performance, and also measures the accuracy of such models. Using this approach thus generates insight into how the process of decision making is influenced by disparities in member state voting power at different levels within the Council.

In order to examine how actor positions, voting power and the saliency they attach to a particular issue influence the final decision outcome, three variants of a model that approximates the Nash bargaining solution (NBS) will be employed (Van den Bos 1991; Achen 2006a)²⁵. The first model (base model) will predict outcomes as a compromise solution between actor positions with each position being weighted by the *a priori* voting power of each actor. This model seeks to capture the influence of voting power alone over legislative outcomes, and should perform well at levels of negotiation where a pure logic of consequence is at work, as power is the main determinant of decision outcomes. The second model (power-saliency weighted model) explicitly account for the role of voting power and issue saliency in determining the Council's agreement at each level, and should perform well at levels of negotiation within the Council where a logic of consequence is thought to be at work. The third model (saliency weighted model) will equalise voting power between the actors involved, representing the expectation that at certain levels of negotiation, voting power should matter less in determining the Council's agreement. This model should perform well at levels of decision making at which a logic of appropriateness is thought to be at work. The influence of

²⁵ It should be noted that both variants of the NBS model place emphasis on the role that informal bargaining plays within the Council. This is in contrast to certain non-cooperative game theoretic models that exist in the academic literature, which explicitly model the roles played by different actors in the decision-making process (see, for instance, Crombez 1996; Steunenberg & Selck 2006). These models were the subject of the previous chapter.

differences in member state voting power at each level within the Council can thus be captured, by comparing the relative performance of each of these models at each level.

The first of these models, referred to the base model, models the captures of the negotiation process as a compromise agreed upon by actors, which is simply the weighted average of their initial positions, with the weights assigned to each actor reflecting their voting power²⁶ (Stokman & Van den Bos 1994; Van den Bos 1991). The base model is represented with the following formula:

$$Prediction_a = \frac{\sum_{i=1}^n Position_{ia} Capabilities_i}{\sum_{i=1}^n Capabilities_i}$$

where $Prediction_a$ is the model prediction for a particular issue a ; and $Position_{ia}$ represents the policy position of actor i on issue a . The capabilities or power of actor i is represented by $Capabilities_i$.

The second variant of the NBS model weighs actor positions by their relative voting power and the level of saliency they attach to transforming their initial positions with regard to a proposal into the Council's agreement. This model is operationalised as the mean of actors' positions on each issue considered separately, weighted by their effective capabilities (Van den Bos 1991; Achen 2006a). The power-based NBS model is represented by the following formula:

$$Prediction_a = \frac{\sum_{i=1}^n Position_{ia} Capabilities_i Saliency_{ia}}{\sum_{i=1}^n Capabilities_i Saliency_{ia}}$$

where $Prediction_a$ is the model prediction for a particular issue a ; and $Position_{ia}$ represents the policy position of actor i on issue a . The capabilities or power of actor i is represented by $Capabilities_i$, and $Saliency_{ia}$ represents the level of salience actor i attaches to issue a .

²⁶ The relative power of actors is theoretically different from a count of votes and is accounted for by using a Shapley-Shubik voting power index (Shapley and Shubik 1954).

This particular model takes the positions of all actors into account for a particular issue and weighs them by the *a priori* voting power each actor possesses, due to the formal voting rules (distribution of voting power), and the level of importance (saliency) each actor attaches to transforming their initial position into the Council agreements. By allowing for the fact that informal bargaining takes place within the Council, this weighted variant of the NBS model addresses actor preference intensities, rather than focusing solely upon differences in member state voting power under any given decision-making rule. This rather simple equation captures the essence of bargaining that takes place within the Council, by accounting for positions, actor power and issue saliencies.

A third variant of the NBS model, in which the *a priori* power of the member states is equalised, will also be employed. As mentioned previously, a large amount of literature supports the idea that explicit voting power is not very important in determining decision-making outcomes in many cases, and member states rarely vote against a proposal, even when the final outcome does not adhere to their initial policy positions (Mattila 2004, 2006; 2009; König & Junge 2009). This variant of the model, which excludes the impact of differences in *a priori* member state voting power, is represented by the following formula:

$$Prediction_a = \frac{\sum_{i=1}^n Position_{ia} Saliency_{ia}}{\sum_{i=1}^n Saliency_{ia}}$$

Where again, $Prediction_a$ is the model prediction for a particular issue a ; and $Position_{ia}$ represents the policy position of actor i on issue a . $Saliency_{ia}$ represents the level of salience actor i attaches to issue a .

Achen (2006a) has improved the theoretical underpinnings of the NBS model by showing that the prediction generated by this model is an approximation of the Nash bargaining solution (Nash 1950), when the costs associated with disagreement loom large over the decision-making process. The assumption that the disagreement outcome is generally highly

undesirable in legislative decision making within the EU is defensible on empirical grounds, where it has been observed that negotiators place great emphasis on the need to reach an agreement, even in the case of unpopular legislation (Mattila and Lane 2001; Mattila 2004; 2009). A breakdown of negotiations does not leave parties in the same position as they were before negotiations began and incurs costs. Member states are likely to have invested considerable effort into trying to find agreement, and failure to reach an agreement damages existing relationships, and can lead to knock-on effects in concurrent negotiations in other policy areas. The high levels of interdependence between member states in the negotiation process across all policy areas thus lead them to strive for agreement, even when some member states are likely to incur significant costs because of said agreement.²⁷ These member states support agreements that incur costs in the knowledge that at some future point they will benefit from others doing the same.

While the three variants of the NBS model are not new to the academic literature on Council decision making, the way in which they are employed here to examine the influence of differences in member state voting power at different levels of decision making within the Council is an innovation. To date, there has been a large amount of empirical work testing the accuracy of the power-weighted and power-saliency-weighted NBS models. Indeed, when the accuracy of the power-saliency-weighted NBS model was compared to a selection of competing models of EU decision making, the power-saliency-weighted NBS model performed best (Thomson *et al.* 2006). The saliency weighted NBS model has not been as extensively tested, but Thomson (2008c) found that it performed almost as well as the power-saliency weighted NBS model in terms of the accuracy of its predictions. This chapter adds to the tradition of competitive model testing by conducting similar tests to those mentioned above, but on a new

²⁷ This line of argument is similar to that made by Moravcsik (1998) who appeals to the high levels of interdependence between EU member states as the causal mechanism which leads them to pursue a strategy of 'diffuse reciprocity' when negotiations are taking place.

dataset that specifies the level within the Council at which a particular controversial issue is decided. The next section details how the dataset under consideration was constructed.

THE DATA

In order to test the competing models of EU decision making outlined in the previous section, it is necessary to collect information regarding relative actor power, actor positions on the issues involved in the proposals under consideration, and also the saliency that these actors attach to the issues involved. A number of selection criteria were used to identify the proposals of interest, which were discussed in detail in Chapter 3. The first of these was that the proposals must have been initiated after 2004. This was due to the fact that before this date, data on the number of meetings at each level within the Council are either unavailable or difficult to acquire. The accuracy of the data concerning the level at which an issue is resolved within the Council is obviously essential for the research question under consideration; therefore, case selection was limited to post-2004 cases. A further selection criterion was that each proposal under consideration had to have attracted some public attention during its negotiation. This was important as some minimum level of conflict is necessary during negotiations in order for bargaining over outcomes to take place (Thomson & Stokman 2006). All the proposals under consideration come under the qualified majority voting rule, as it is under this particular voting rule that there are differences in member state voting power. A total of 18 separate legislative proposals are in the dataset. The proposals cover a large variation of policy areas, including employment, the environment, transport, agriculture, justice and home affairs, the internal market, and culture.

The research methodologies associated with measuring member state policy positions on the proposals in the dataset, and the saliency scores associated with these policy positions is described in detail in Chapter 3. The relative voting power capabilities of the member states involved are accounted for using a Shapley-Shubik voting power index (Shapley & Shubik,

1954). The capabilities attributed to the various member states in the decision-making process are based on their relative voting power in terms of the number of votes they possess within the Council. The Shapley-Shubik index is constructed by listing all possible winning coalitions for a particular issue and then identifying critical voters in each coalition, a critical voter being a member state that changes a losing coalition into a winning coalition. A member states' voting power is calculated as the ratio of critical votes to total possible votes for that particular issue.²⁸ Under the codecision procedure, with the QMV rule, a winning coalition consists of a qualified majority of the Council; under unanimity, it consists of a unanimous Council (Pajala *et al.* 2002).

In order to examine the influence of differences in member state voting power at different levels within the Council, documents²⁹ that recorded the discussions at various meetings within the Council have been examined through a process of content analysis. These documents contain information on actors' positions on the controversial issues that arise during negotiations. They also allow one to follow the controversial issues that were raised during negotiations and to identify the level within the Council at which they are resolved. By matching these data with the interview data collected previously, a very detailed picture of the negotiation process for each proposal under consideration in the dataset has been generated.

ANALYSIS

This section of the chapter first examines whether the heterogeneity of actor positions at the outset of negotiations affects the arena in which an issue gets discussed, before

²⁸ For an extensive discussion of the advantages and disadvantages of voting power indices see Garrett and Tsebelis (1999a; 1999b), Lane and Berg (1999), Holler and Widgrén (1999).

²⁹ It should be noted that a Council document is not produced every time there is a meeting at a particular level within the Council. The documents generally represent Presidency compromise proposals and communications between the different legislative levels regarding the state of the ongoing discussions. The documents do consistently record any changes made to the proposal, and at what level these changes were made, so it is possible to identify when a particular issue is resolved. They also consistently report member state opinions on outstanding issues at various stages during negotiations. When this information is combined with the list of all meetings at which a proposal was discussed, it gives a very detailed picture of the decision-making process at work in the Council.

comparing the performance of the base model, power-saliency weighted and saliency weighted NBS models in two distinct ways. The first set of analyses, presented in Figure 5.2 compares the heterogeneity of actor positions at the outset of negotiations to the percentage of discussions that took place at each level for each issue in the dataset. Position heterogeneity is measured using the standard deviation from the mean of actor preferences for each issue in the dataset. The percentage was calculated as the number of times an issue was discussed at each level, as a percentage of the total number of times an issue was discussed at all levels within the Council.

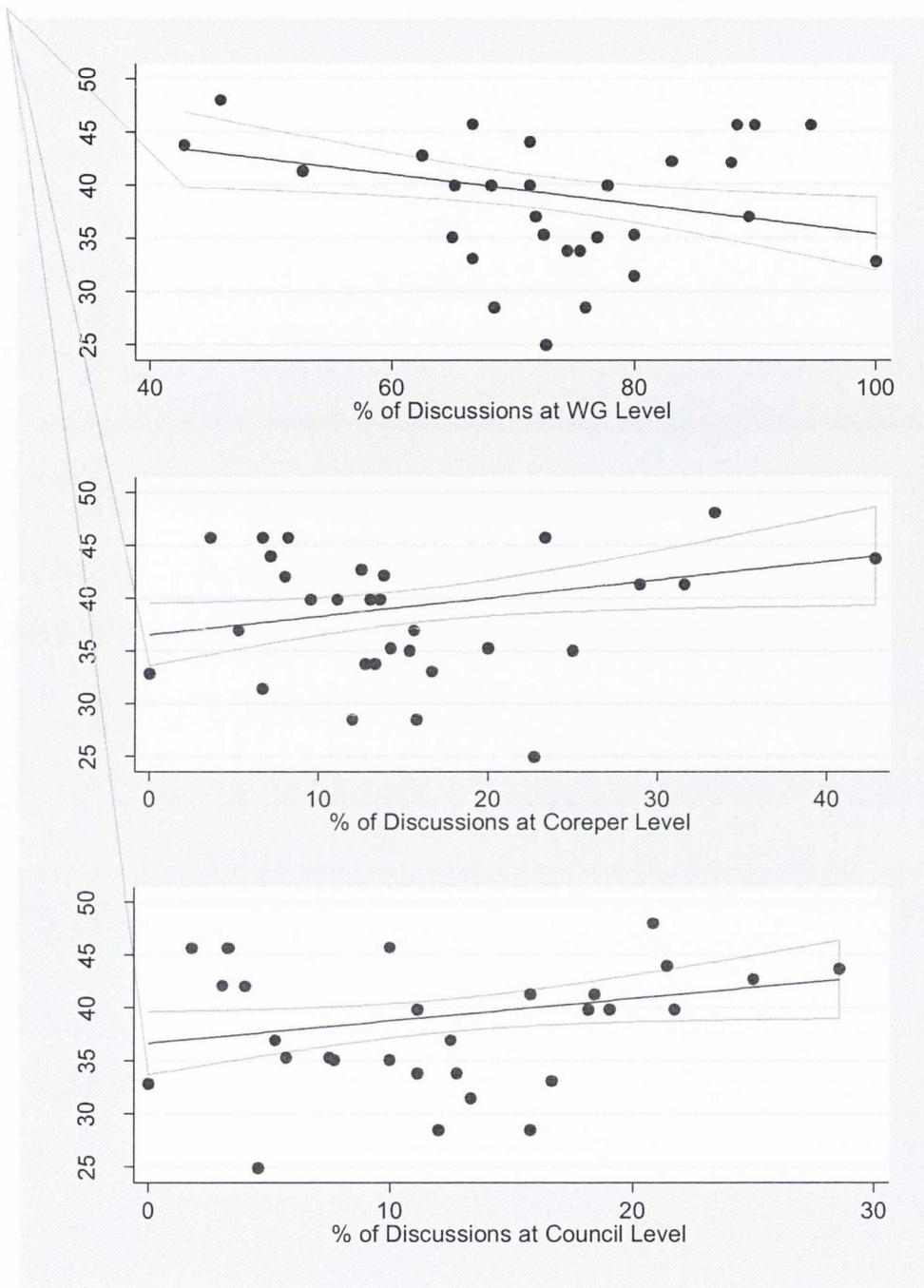


FIGURE 5.2: PERCENTAGE OF DISCUSSIONS AT EACH LEVEL OF NEGOTIATION FOR EACH PROPOSAL V THE HETEROGENEITY OF ACTOR POSITIONS.

Note: The fitted values lines are calculated using OLS, with associated 95% confidence intervals. Each estimate is found to be significant at the $p < 0.05$ level.

As can be seen, there is a clear distinction between the working group level of negotiations and the Coreper and Ministerial level. As the heterogeneity of initial positions increases, the level of involvement of the working group is found to decrease. This suggests that

working groups tend to deal with issues that are subject to less heterogeneous positions at the outset of negotiations. In contrast, when the heterogeneity of initial positions increases the Coreper and Council levels of negotiation tend to be more involved in the negotiation process. This is in line with the idea that the higher levels of negotiation in the Council have the ability to reach compromises that less senior bureaucrats at the working group find difficult to make. The conclusion that can be drawn is that as the heterogeneity of actor positions increases, the involvement of the more senior levels of negotiation in the Council also increases.

Moving on to the role of power at different levels of negotiation in the Council, the analysis presented in table 5.2 shows the mean absolute error (MAE) of each model. The MAE is simply the average distance between a model prediction and the final outcome across all issues in the dataset, and is calculated as follows:

$$\text{MAE}_M = \sum_{i=1}^n |y_i - \hat{y}_i|/n$$

In which M is the model of interest, y_i ($i= 1, \dots n$), is the outcome for issue i , and \hat{y}_i is the model prediction for issue i . A good indication of how important voting power is in determining decision outcomes at each level is gained, by comparing the MAE of each model across the different levels of negotiation within the Council.

Table 5.2: Mean Absolute Errors of Power-saliency Weighted and Saliency weighted Nash Bargaining Solution Models.

Model	All	Working group	Coreper	Council
Base model	20.51	24.17	12.59	22.04
S. E.=	19.04	4.98	3.86	4.2
N=	52	16	12	24
Power-saliency weighted NBS MAE=	24.55	22.59	29.67	23.28
S. E.=	2.63	4.57	4.78	4.24
N=	52	16	12	24
Saliency weighted NBS MAE=	29.42	36.96	24.18	27.00
S. E.=	2.92	5.35	6.23	4.08
N=	52	16	12	24
Base v P. S. weighted NBS p -value	0.001	0.03	0.04	0.06
Base v S. weighted NBS p -value	0.06	0.72	0.02	0.27
P.S. v S. weighted NBS p -value	0.04	0.003	0.41	0.19

Note: Cells contain mean absolute errors, standard errors of MAEs and the number of observations for each mean. Differences in model predictions were tested using a Wilcoxon signed-ranks test.

The first set of results to consider compares the predictive accuracy of the base model to that of the power-saliency weighted model. When one considers all the proposals in the dataset without reference to the legislative procedure or decision rule, it can be seen that the base model outperforms the power-saliency weighted model, with MAEs of 20.51 and 24.55 respectively, with the model predictions being statistically distinguishable from one another.³⁰ This suggests that accounting for differences in actor power is important, and that adding information on issue saliency can have a negative effect on the predictive accuracy of the models.

When one differentiates between model predictions based upon the legislative procedure and decision-making rule, the results are more mixed. When an issue is finalized at the working group level, the power-saliency weighted model performs better than the base model, with a MAE of 22.59 and 24.17 respectively. When an issue is finalized at the Coreper

³⁰ An analysis that compared model MAEs to position heterogeneity was also conducted in order to rule out alternative explanations of model performance, but no significant results were observed.

level, this result is reversed, with the base model having a MAE of 12.59, compared to a MAE of 29.67 for the power-saliency weighted model. When an issue is finalized at the Council level, the base model again performs better, although the difference between MAEs is relatively small (22.04 and 23.28 respectively). A Wilcoxon signed-rank test confirms that it is possible to distinguish between the predictions of each model for all of the subsets of cases mentioned.

When one compares the MAEs of the base model to those of the saliency weighted model, rather more solid findings are observed, with the base model performing better in the aggregate, and under each specification of legislative procedure and decision rule. In the aggregate, the base model has a MAE of 20.51 compared to a MAE of 29.42 for the saliency weighted model. At the working group level, the base model has a MAE of 24.17 compared to a MAE of 36.96 for the saliency weighted model. When issues are finalized at the Coreper level, the base model has an MAE of 12.59 compared to a MAE of 24.18 for the saliency weighted model. Finally, when an issue is finalized at the Council level, the base model has a MAE of 22.04 compared to a MAE of 27 for the saliency weighted model. It should be noted that only the aggregate level model predictions and the Coreper level model predictions were found to be statistically distinguishable from one another. The broader implication that arises from this set of findings is that when modelling the legislative process, it is more important to account for differences in member state power than it is to account for difference in the saliency that each member state attaches to the issues under negotiation.

When one moves to compare the relative performance of the power-saliency weighted and saliency weighted models, it can be seen that the MAE of the power-saliency weighted variant of the NBS model is lower than that of the saliency weighted variant of the model across all controversial issues in the dataset, with MAE values of 24.55 and 29.42, respectively. The difference in model predictions is statistically significant at the $p \leq 0.05$ level. This finding correlates with previous research on the Council and again suggests that differences in member

state voting power are an important factor when predicting decision-making outcomes within the Council (Achen 2006a).

Taking a closer look at the MAE results when sorted by the level at which different issues were decided, some interesting results are observed. At the working group level, a highly statistically significant difference in model performance is observed. The power-saliency weighted NBS model performs best, with an MAE of 22.59, compared to an MAE of 36.96 for the saliency weighted model. This finding is especially striking, given the size of the difference, and lends support to the expectation that differences in member state voting power matters at the working group level within the Council.

In contrast to the findings at the working group level, at the Coreper level, the saliency weighted variant of the NBS model performs better with an MAE of 24.18 compared to the MAE of 29.67 for the power-saliency weighted NBS model, although the difference in model predictions is not statistically significant. This finding could be indicative of the fact that a logic of appropriateness is at work at the Coreper level, leading to consensus style decision making, yet contradicts the fact that the base model performs best in predicting the outcome of issues decided upon at the Coreper level.

At the ministerial level, the power-saliency weighted version of the NBS model outperforms the saliency weighted version of the model, with MAE values of 23.28 and 27.00, respectively. Again it should be noted that the difference in model performance is not statistically significant. The fact that the power-saliency model performs better on average suggests that at the ministerial level member states utilise differences in voting power to influence the decision-making process.

The results presented above give an indication of overall model performance, when one assumes that the level at which an issue is finally resolved is the most important indicator of the use of power in the decision-making process at work at a particular level within the Council.

Such an approach necessarily excludes the influence of all previous rounds of negotiations in which the issue arose, on the final agreement. In order to further explore the results above, and illustrate the role that differences in voting power play at the different levels of negotiation in the Council, figure 5.3 compares the differences between model errors for each issue in the dataset to the percentage of times each issue was discussed at each level within the Council³¹. The difference between model errors for each controversial issue in the dataset is calculated by simply subtracting the saliency weighted model error from the power-saliency weighted model error. The percentage was calculated in the same way as in Figure 5.2. When the difference between model errors is above zero on the y-axis, this implies that the error of the saliency weighted NBS model was greater than the error of the power-saliency weighted NBS model; and when the difference between model errors is below zero on the y-axis, the opposite is true.

³¹ This analysis focuses upon the power-saliency and saliency weighted models, as these models have the strongest theoretical justifications, and are most relevant to the research question under consideration (Achen 2006).

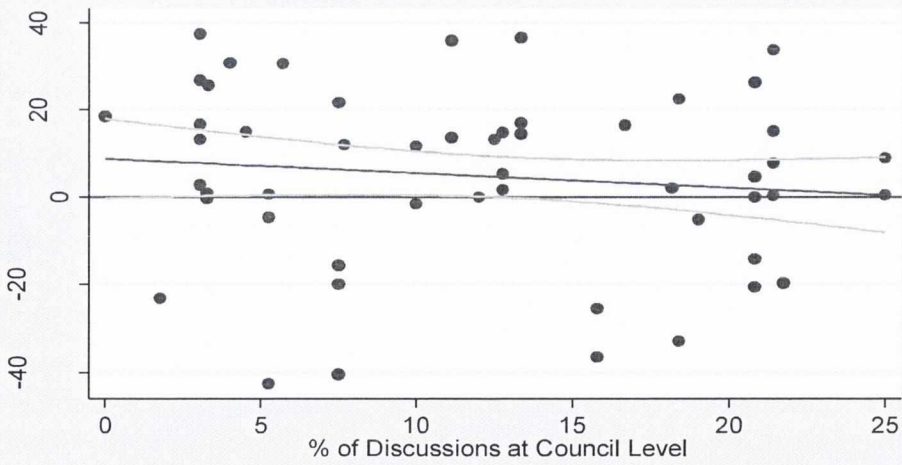
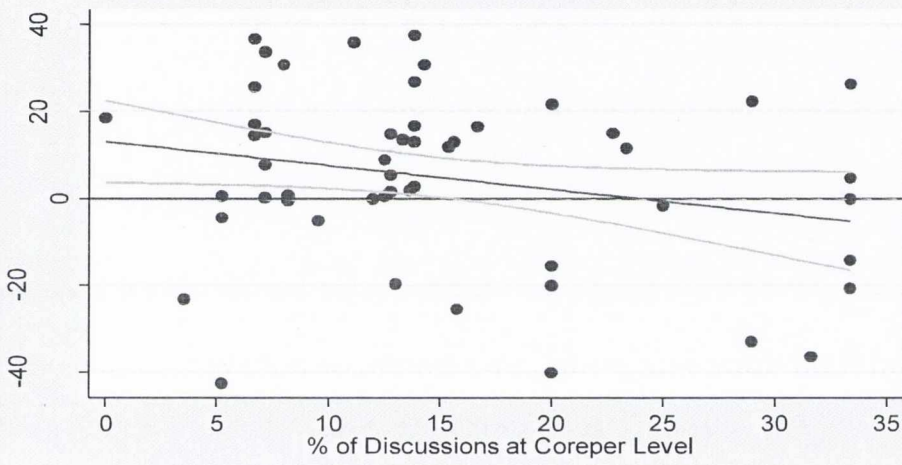
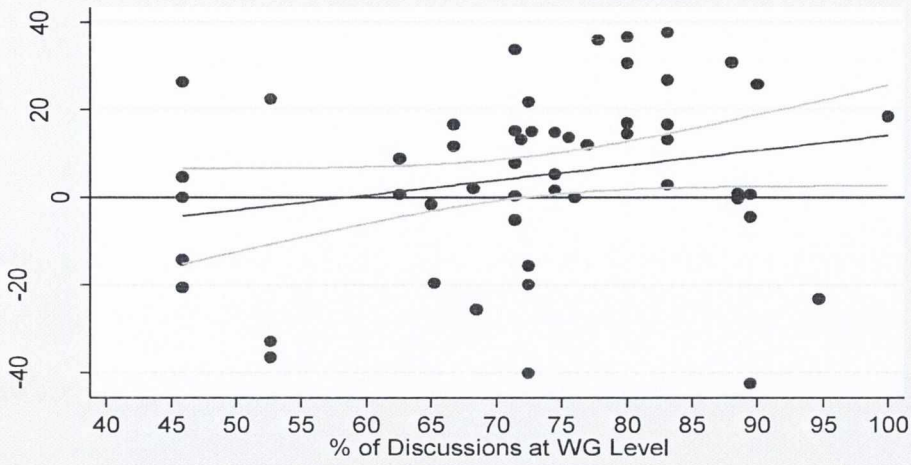


FIGURE 5.3: PERCENTAGE OF DISCUSSIONS AT EACH LEVEL OF NEGOTIATION FOR EACH PROPOSAL V DIFFERENCE IN NBS MODEL ERRORS.

Note: When a point prediction is above the 0 line in each panel, this implies that the power-saliency weighted model outperformed the saliency weighted model. The fitted values lines are calculated using OLS with robust standard errors, with associated 90% confidence intervals.

The first panel in figure 5.3 considers the influence of the working level of negotiation upon relative model errors. The fact that the x-axis observation values begin at the forty percent mark is an indication that the majority of discussion for all of the controversial issues in the dataset takes place at the working group level. The diagonal line sloping upwards represents the fitted values for all observations. The majority of the points on the graph fall above zero on the y-axis, suggesting that on average, the power-saliency weighted version of the NBS model is better at predicting the agreement of the Council than the saliency weighted version, when the whole course of negotiation is taken into account. This relationship is statistically significant at the $p \leq 0.1$ level when over seventy two percent of all negotiations take place at the working group level³². This is in line with the findings already presented above regarding the influence of differences in member state voting power at the working group level. What is more surprising is the fact that the fitted values line slopes upwards. This suggests that, as the percentage of times an issue is discussed at the working group level increases, the influence of differences in member state voting power over the agreement increases. The fact that differences in voting power seems to matter more when the percentage of times an issue is discussed at the working group level increases again lends support to the argument that differences in member state voting power influence decisions made at the lowest levels of negotiation within the Council.

The second panel in figure 5.3 considers the influence of the Coreper level of negotiation upon relative model errors. The fitted values line in this panel slopes downwards, suggesting that as the percentage of discussions at the Coreper level increases, the influence of differences in member state voting power decreases. The differences in model errors are found to be statistically different from zero at the $p \leq 0.1$ level when between zero and about fifteen percent of all discussions take place at the Coreper level. This is in line with hypothesis two presented above, and suggests that differences in member state voting power matter less at this level of negotiation.

³² Note that the graph displays 90% confidence intervals, rather than 95% confidence intervals.

The third panel of figure 5.3 considers the influence of the ministerial level of negotiation upon relative model errors. The fitted values line in this panel again slopes downwards, suggesting that as the percentage of discussions at the ministerial level increases, the influence of differences in member state voting power decreases. When one considers the 90% confidence intervals associated with the fitted values line, this finding is only found to be significant when between about two and thirteen percent of all discussions are at the ministerial level. This finding should be seen as suggestive rather than conclusive, given the weak levels of significance observed.

CONCLUSION

This chapter sought to explore the role that differences in member state voting power have on the process of negotiation at three distinct levels of decision making within the Council. Three hypotheses regarding the possible impact of differences in voting power on the decision-making process were explored. These competing expectations were framed within the context of scope conditions that are thought to determine whether differences in member state voting power need to be considered to understanding the process of decision making within the Council.

The first theoretical expectation put forward was that the heterogeneity of actor positions at the outset of negotiations would affect the involvement of different levels of negotiation in the Council. The evidence presented demonstrated that this expectation was fulfilled, with more heterogeneity of initial positions leading to greater levels of involvement of the more senior Council levels. This is an interesting finding, as it suggests that the type of issue (technical or political) is less important than the initial potential for conflict represented in the distribution of initial positions taken by actors. It supports Foullieux *et al.*'s (2005) idea that higher levels of negotiation can deal with technical issues and lower levels of negotiation can deal with political issues.

The second theoretical expectation put forward was that differences in member state *a priori* voting power at the working group level should have an influence over the legislative process. The theoretical reasoning behind this expectation was that in contexts in which negotiators are relatively less insulated from outside influence, with a high rotation of personnel, and a low level of issue density, a logic of consequence drives the negotiation process and encourages the use of power to influence decision-making outcomes. The empirical evidence presented above provides relatively strong evidence that this is indeed the case, and differences in member state voting power do have an effect on the bargaining process at the working group level.

The third theoretical expectation put forward was that differences in member state voting power matter less at the Coreper level of negotiation, due to the fact that a logic of appropriateness influences the way in which member state negotiate. This expectation emerges from the fact that negotiators are relatively insulated from outside influence, are resident in Brussels for long periods of time, and deal with a broad policy remit with a high level of issue density. The empirical evidence presented provided little support for this expectation. The base model, which accounts for differences in member state power, but not issue saliency performed best, while the differences in performance between power-saliency and saliency weighted model was not found to be statistically significant. The fact that the base model performs considerably better than the other models suggests that power is important in determining outcomes at this level of negotiation. While the set of scope conditions identified suggest that it should play less of a role than at other levels of negotiation, the empirical evidence seems to contradict this expectation. This finding implies that those seeking to account for the decision-making process within Coreper should pay close attention to the role of power in determining legislative outcomes.

The fourth theoretical expectation examined was that differences in member state voting power should again matter at the ministerial level of negotiation. The theoretical

reasoning behind this expectation was similar to that behind the first theoretical expectation, where low levels of insulation from outside influence, high rotation of personnel, and a low level of issue density, lead to a logic of consequence driving the negotiation process. The empirical evidence regarding this expectation was mixed, with the first analysis (table 5.2) supporting the hypothesis, while the second analysis (figure 5.3) contradicted it.

More broadly speaking, the fact that both models that accounted for difference between member state voting power performed well compared to the model that ignored these differences implies that power plays an important role in determining legislative outcomes in the Council. This suggests that scholars who study decision making in the Council need to pay careful attention to the role that voting power plays in determining legislative outcomes. While previous studies have found that the explicit use of voting power is rare (Mattila and Lane, 2001; Mattila, 2004), this chapter has shown that the underlying power structures within the Council do impact upon the decision-making process, and that the role played by voting power in EU decision making varies, depending upon what level within the Council at which decisions are being made.

While this chapter has demonstrated the importance that differences in member state power have on the negotiation process in the Council, a number of caveats should be mentioned. The first of these is the fact that the issues identified in the dataset explored in this chapter have been selected because of their controversial nature, which implies that they generate some disagreement between the member states involved. This might affect the results slightly in favour of the base model and the power-saliency weighted NBS model, as the actors involved will be more likely to use power to influence outcomes in their favour when there is a large amount of disagreement on a particular issue, and the actors involved attach a high saliency to their respective positions.

Further evidence that this might be an issue is provided by the fact that for any particular proposal, various other issues that are not accounted for in the current dataset can be seen to have arisen during negotiations, when one examines the Council negotiation records. These issues usually get resolved at lower levels within the Council, and by excluding them the dataset might preselect cases in favour of models that account for the use of power in the negotiation of controversial issues.

Despite the above caveats, the analyses presented in this chapter suggest that the role played by differences in member state voting power at each level of negotiation within the Council varies to some degree. This can be attributed to variation in the different scope conditions, which influence the way in which negotiators interact in the legislative process. The next chapter further examines the process of negotiations by considering how member state negotiators behave during negotiations. In particular it looks at the factors that influence a negotiators decision to make interventions over the course of negotiations. Explaining member state behaviour in this way should shed more light upon the legislative process within the Council, and the role played by different levels of decision making in determining legislative outcomes.

CHAPTER 6: INTERVENTIONS AND NEGOTIATION IN THE COUNCIL OF MINISTERS³³

INTRODUCTION

The Council of Ministers is one of the key arenas in which legislative negotiations take place in the European Union (EU) (Naurin and Wallace 2008). It is the primary institution through which member states can express their positions on proposals put forward by the Commission, and also serves as the arena where member states directly vote upon legislation. While the EU is often criticised for having a democratic deficit when it comes to its citizens having a say in legislative outputs (Follesdal and Hix 2006; Majone 1998; Moravcsik 2004), it is in the Council where citizens' domestic-level government representatives can make national policy positions known and thus influence the legislative process. Therefore, the relative influence that each member state can exert on the legislative process within the Council is of fundamental importance to the democratic legitimacy of the institution as a whole.

The most direct way in which member states' can exert influence over the legislative process is by making interventions to express their policy positions during legislative negotiations. Over the course of legislative negotiations within the Council, member state representatives discuss the proposals put forward by the Commission, propose amendments to different aspects of the proposal that they believe are appropriate, and obtain a general view of other member states' policy positions³⁴. The Council thus functions as the arena in which a member state government expresses its policy positions to other member states, and it is the primary forum in which a member state government can attempt to influence legislative

³³ This chapter, in paper form, has been conditionally accepted for publication in *European Union Politics* 13(1) (2012).

³⁴ The manner in which member states make interventions in the Council is influenced by the rules of procedure relating to Council discussions. The rules of procedure dictate that, unless indicated otherwise by the Council Presidency, member states should only intervene when proposing changes to the proposal under negotiation and remain silent otherwise (2004/338/EC annex 4; 2009/937/EU annex 5). This implies that member state interventions are in most cases attempts to change the Commission proposal under negotiation, rather than expressions of agreement. This is important for the argument made below.

decisions. An individual member state's ability to influence the legislative process is predicated upon its willingness to intervene during negotiations³⁵.

The hierarchical internal structure of the Council also allows member states to make interventions at ministerial, Coreper, or working group level³⁶. Each of these levels of negotiation is thought to have an impact upon legislative decisions reached in the Council, and member state behaviour is thought to vary depending upon the level of decision making within the Council under consideration (Lewis 1998; 2003; Juncos & Pomorska 2006; Häge 2008; Chapter 5 of this study). In light of these arguments, this chapter will argue that a member state's decision as to whether or not to make an intervention during negotiations is influenced both by the structural aspects of the policy space associated with the particular proposal under negotiation, and by the structural aspects of the institutional environment within which the member state finds itself negotiating.

The chapter is structured as follows. The next section outlines the current state of the academic literature dedicated to the study of the legislative process within the Council. The section following that will detail the theoretical argument under investigation, by focusing upon the effect that structural elements of the negotiation process have on member state intervention behaviour. Once the theoretical elements of the chapter have been explained, the research design to be used to investigate the different hypotheses is described in greater detail. Then, a

³⁵ Investigating member state influence in this manner necessarily excludes bargaining that takes place outside official Council meetings. While it is acknowledged that this bargaining takes place, data on such bargaining is difficult to obtain, and the reliability of such data would be questionable. In light of this, the focus here is limited to member state interventions in Council meetings.

³⁶ This chapter shall focus upon the Coreper and working group level, as data on member state interventions at the Council level is difficult to obtain. Information on member state behaviour at the ministerial level is usually limited to formal statements entered in the Council records after agreement has been reached. These statements are fundamentally different to the interventions under consideration in this chapter, as they are made after, rather than before agreements have been reached. Given this difference between these formal statements and the interventions under consideration in the chapter, it was thought to be inappropriate to analyse the ministerial level in the same manner as the working group and Coreper level within the Council. For an interesting analysis of the formal statements made by member states at the Ministerial level within the Council, see Hagemann (2008).

series of empirical analyses are presented, with the final section providing a discussion and some conclusions based upon these findings.

MEMBER STATE AGENCY IN COUNCIL DECISION MAKING

Academic interest in and the study of the Council of Ministers have proliferated in recent years, and much progress has been made on understanding the factors that affect both the legislative process, and the relative influence of member states upon the legislation produced. A number of different schools of thought have evolved regarding which factors influence the legislative process. One approach to understanding legislative negotiations in the Council has been to analyse the effect that the institutional context has upon the legislative process (Crombez 1996, 2001; Tsebelis and Garrett 2000). Within this school of thought, scholars have focused upon the sequencing of moves in the legislative game, and have constructed detailed game theory models of the decision-making process at work both within the Council and between the Council, the Commission, and the European Parliament. While these models provide interesting insight into the effect that legislative rules have upon the legislative process, when empirically tested, they have had some difficulty in accurately predicting legislative outputs (Steuenenberg & Selck 2006; Chapter 4 of this study).

A second set of scholars have focused upon the role played by informal bargaining between member states in the decision-making process (Bueno de Mesquita and Stokman 1994; Achen 2006a). These authors have argued that institutional rules in the Council reflect the underlying distribution of power between the actors involved, and that legislative outputs are determined by the distribution of voting power between member states, their relative policy positions on the issues under consideration, and the relative saliency that they attached to transforming these policy positions into decision-making outcomes. In this view of the negotiation process, legislative outcomes are not determined by the sequence of moves in the legislative game, but rather by informal bargaining between actors who take into account

relative voting power, policy positions, and issue saliency. An implication that emerges from this view of legislative decision making in the EU is that examining the actual behaviour of member states during the negotiation process is an important area for study. This chapter focuses upon a particular type of member state behaviour that lies at the heart of bargaining: the interventions they make during negotiations in order to express their policy positions.

Most of the abovementioned literature assumes that policy outcomes within the Council are determined by some combination of member states' policy positions, their voting power, and the saliency that they attach to their policy positions on each relevant policy dimension. However, it is possible to theoretically differentiate between member states' policy positions, on one hand, and their ideological positions on the other. According to Hinich and Munger (1997), one can differentiate between a lower dimensional *ideological space* common to all proposals in which every actor is located, and a higher dimensional *policy space* that is particular to any proposal under negotiation. This distinction seems especially appropriate in the case of the EU. Two important *ideological dimensions*³⁷ are thought to underlie EU negotiations: the left-right dimension and the pro-/anti- EU integration dimension (Hix 1999b; Hix and Lord 1997; Marks and Wilson 2000). In contrast, between one and five salient *policy dimensions* have been identified when negotiating particular proposals within the Council (Thomson *et al.* 2006).

The manner in which the ideological space is linked to the policy space in the Council remains a matter of contention. In relation to the left-right dimension, Thomson (2009) finds that it has little direct influence over the structure of the policy space within the Council. In contrast, when examining dimensions relating to the pro-/anti- EU integration dimension, some degree of influence was found, although not all of the variance in policy positions could be explained by these conflict dimensions. These findings lend support to the idea that the effect of

³⁷ Some would argue that the pro-/anti- EU integration dimension is not inherently ideological, yet it has been consistently found to underlie patterns of conflict in EU negotiations. For this reason, it is thought of as a background dimension relevant to the *ideological space*, rather than a foreground dimension relevant to the *policy space* for the proposals under consideration.

ideology on member state intervention behaviour is indirect, but the manner in which ideological positions translate into policy positions needs to be explored.

Following from Hinich and Munger's distinction between the ideological space and the policy space, Ringe³⁸ (2005) argues that these distinct spaces are linked through a series of focal points, which negotiators use to translate their *ideological positions* into *policy positions*. These focal points structure and simplify the dimensionality of the policy space, by expressing actors' fixed *ideological positions* in terms of latent *policy positions*, which only become operationalised through engagement with other actors in negotiations (Jones 1994). In effect, focal points translate member states' ideological positions into policy positions on particular issues, by indicating the location of a member state's policy position relative to those of other actors on a particular issue (Ringe 2005). Importantly, it is argued that a member state's ideological position is exogenous to the policy-making process, whereas its policy position is endogenously determined during the policy-making process, when negotiating with other actors and interacting within the institutional environment of the Council.

Focal points, as conceived of by Ringe, are supplied by actors to shape the policy space, but the exact positioning of these focal points should be affected by a number of structural aspects of the institutional environment within which negotiations take place (Arregui 2008). In effect, the institutional context helps shape the policy space by empowering certain actors within negotiations. Shepsle (1979) argues that the institutional structure³⁹ has an important impact upon the negotiation process, by determining which actors are able to set the agenda and to propose changes to legislation (in the form of interventions made during the negotiation process). The institutional structure of the EU provides certain institutional actors with this

³⁸ While Ringe's (2005) study examines the role that focal points play in parliamentary debate in the European Parliament, the theoretical argument is clearly relevant to negotiations in the Council, where similar focal points should structure the dimensionality of the policy space.

³⁹ It is thought that by restricting which actors can propose changes to legislation, the institutional structure induces equilibrium outcomes, which would otherwise be susceptible to the cycling problems associated with multi-dimensional bargaining spaces (Shepsle 1979).

agenda-setting power, with the Commission and Parliament in particular holding important positions in the legislative process (Crombez 1996, 2001; Pollack 2003). If these institutional actors are indeed empowered by the institutional structure of negotiations, one would expect that their policy positions would act as important focal points around which negotiations are structured.

This study will engage with the idea of focal points at both the ideological level and the policy level to determine how each level influences member states' intervention behaviour during negotiations. It will identify a set of important focal points and the influence that the institutional structure of the Council is expected to have over the positioning of these focal points, and then examine whether these focal points influence negotiation behaviour when they interact with member states' own policy positions. It will also examine whether the ideological dimensions thought to be important in determining the location of these focal points have *direct* effects on member state intervention behaviour during negotiations, independent of the influence of these focal points. If no direct effect is found, the suggestion is that member states' ideological positions manifest themselves through focal points, which in turn influence member state intervention behaviour. This would be an intriguing finding, as it would imply that negotiators can mitigate the direct effects of ideology upon negotiations by using focal points to shape discussions in a way that minimises such effects.

THEORY & HYPOTHESES

This chapter argues that the number of interventions made by member states over the course of negotiations is dependent upon the interaction of their policy positions on a particular proposal with structural features of the legislative arena within which they negotiate. The first set of structural factors to be explored are those specific to the proposal under consideration, which in essence relate directly to the *policy level* in the focal points argument. Following Ringe's (2005) argument regarding focal points and given the importance ascribed to

institutional structure in shaping negotiations (Shepsle 1979), as presented in the previous section, four important focal points seem relevant to the Council negotiation process. The policy positions of the Commission and the Parliament are obvious candidates for focal points, given the significant roles that these institutions play in the negotiation process. Furthermore, the status quo, which represents the state of affairs that would be the case should agreement on a proposal remain elusive, should also be an important focal point in negotiations (Steunenberg 1994; Tsebelis 1994; Crombez 1996). Finally, the expected outcome should also act as a focal point around which negotiations become structured.

It is important to note that it is the interaction of the positions of the Commission and Parliament, the status quo and the expected outcome with the policy positions of member states that is thought to influence whether or not a particular member state will make an intervention. Thus one must consider the relationship between these positions, rather than each position individually, to generate the theoretical hypotheses of interest. The interaction between a member state's policy position and these focal points of interest is now explored.

The first institutional actor, whose position on a particular proposal should serve as a focal point when interacting with the policy positions of member states, is that of the Commission. The Commission plays a primary role in the legislative process as the proposer of legislation and is considered representative of the collective interests of the EU as a whole (Pollack 2003). In general, the Commission's policy position is contained in the initial legislative proposal introduced at the beginning of negotiations. Over the course of negotiations, member states that disagree with the Commission's position, as put forward in the proposal, are likely to intervene in an attempt to change the proposal⁴⁰. In essence, a member state's intervention is an attempt to provide an alternative focal point to that implied in the Commission proposal, and as the distance between a member state's policy position and that of the Commission increases, the

⁴⁰ This expectation is in line with the Council rules of procedure, which hold that member states should only make interventions when they disagree with the proposal as it stands, and remain silent otherwise (2004/338/EC annex 4; 2009/937/EU annex 5).

likelihood that that member state will intervene to provide such a focal point should increase. If the Commission's policy position influences member state negotiation behaviour in this manner, one would expect the following hypothesis to hold:

H1: As the distance between a member state's policy position and that of the Commission increases, the likelihood that that member state makes an intervention increases.

The second institutional actor whose policy position on a proposal should act as a focal point during negotiations is the European Parliament. The Parliament is an important institutional actor under the codecision procedure⁴¹, which requires the assent of both the Council and Parliament in order to pass legislation (Crombez 2000a; Napel and Widgrén 2006). A member state's proximity to the Parliament's policy position should therefore influence member state intervention behaviour. Two distinct hypotheses can be elaborated upon regarding the influence of the Parliament's policy position. The first of these holds that member states closer to the Parliament make more interventions. While the assent of the Parliament is required for agreement to be reached, no Parliamentary representative is present at the negotiations within the Council. Given the significance of the Parliament in legislative negotiations, one would expect that member states with policy positions closer to that of the Parliament would intervene more, in order to signal their support for the Parliament's position during negotiations within the Council. As such, the Parliament's position acts as a focal point around which negotiations become structured. This leads to the following hypothesis:

H2a: As the distance between a member state's policy position and that of the European Parliament increases, the likelihood that that member state makes an intervention decreases.

A second competing hypothesis can also be elaborated with regard to the influence that proximity to the Parliament's policy position has over member state intervention behaviour.

⁴¹ The proposals considered in this study are limited to those under the codecision procedure, as this is now the most prominent legislative procedure used in the EU legislative process.

Member states with policy positions further from the Parliament could intervene more in an attempt to move the Council common position further from the Parliament's position, as they anticipate the strong influence that the Parliament has over final negotiation outcomes. These member states try to establish a strong Council position in opposition to the Parliament, thus counteracting the Parliament's bargaining strength at later stages in the negotiation process. If member states act upon this type of logic, one would expect the following hypothesis to hold:

H2b: As the distance between a member state's policy position and that of the European Parliament increases, the likelihood that that member state makes an intervention increases.

A third potential focal point that should affect a member state's willingness to intervene during negotiations is the status quo. The status quo represents the state of affairs that would endure, should agreement on a particular proposal remain elusive. This point in the policy space is thought to have an important impact on legislative decision making, as member states are believed to compare any possible agreement to the legislation that is already in place, in order to assess whether the new agreement is an improvement upon that which already exists (Crombez 1996; Tsebelis and Garrett 2000; Achen 2006a; Steunenberg and Selck 2006). Those member states with policy positions close to the status quo are relatively conservative with regard to legislating in a particular policy area, and should intervene more, in an attempt to block the progress of negotiations thus maintaining the status quo. This leads to the following hypothesis:

H3: As the distance between a member state's position and the status quo increases, the likelihood that that member state makes an intervention decreases.

Member states' expectations regarding the likely outcome of negotiations within the Council should also affect their willingness to intervene during negotiations. Member states with policy positions close to the expected outcome are less likely to intervene, as making an intervention has a cost associated with it in terms of political capital; and when the expected

outcome is close to the member state's policy position, there is less need to incur this cost. In contrast, member states with policy positions far from the expected outcome should be more likely to intervene in an attempt to influence negotiations and to move the expected outcome toward their preferred policy positions. This implies the following hypothesis:

H4: As the distance between a member state's policy position and the expected outcome increases, the likelihood that that member state makes an intervention increases.

A second set of factors affecting member states' intervention behaviour are related to the background ideological positions of member state governments. While Ringe (2005) argues that member state positions on ideological dimensions are mediated through the use of focal points, and Thomson (2009) finds mixed support for the idea that ideological positions shape the explicit policy positions taken by member states, it is important to assess whether these ideological dimensions have a direct effect on member state intervention behaviour. Two relevant ideological dimensions have been identified in the existing literature (Hix 1999; Hix and Lord 1997; Marks and Wilson 2000; Mattila 2004).

The first ideological dimension that might affect a member state's intervention behaviour is a government's position on the left-right dimension. Existing studies of the influence of the left-right dimension on Council decision making have produced mixed results. Some have found evidence that a left-right dimension does structure positions taken in the Council (Hagemann 2008; Hagemann and Høyland 2008), while others find no direct left-right effect on position taking (Zimmer *et al.* 2005; Veen 2011). These mixed results suggest that testing whether a member states position on the left-right dimension affects intervention behaviour is a worthwhile endeavour. In general, left-wing governments are thought to prefer over-implemented legislative solutions, whereas right-wing governments are thought to prefer more minimalist legislative solutions (Falkner *et al.* 2005; Falkner and Trieb 2008). It is therefore expected that left-leaning governments, which prefer more intensive regulation

across different policy areas, will be less likely to intervene, so as to advance negotiations. In contrast, right-leaning governments, which prefer less intensive regulation, will be more likely to intervene in an attempt to block the progress of negotiations. This results in the following hypothesis:

H5: As a member state's position on the left-right dimension moves to the right, the likelihood that that member state makes an intervention increases.

The second ideological dimension that might affect a member state's intervention behaviour is the degree to which a government supports or opposes further EU integration. Many studies have examined the effect that Europeanization and integration at the EU level have had on domestic politics within member states (Börzel 1999, 2002b; Falkner *et al.* 2005). Given the important effect that EU integration has on domestic level politics, it is not surprising that this arises as a separate ideological dimension on which member state governments take positions. The argument that a member state's position on the pro- /anti- integration dimension will affect its intervention behaviour stems from the fact that the Commission has a dual role as both the gate-keeper in Council decision making as the sole actor that can introduce legislation and the enforcer of legislation once it has been decided. Existing studies have argued that the Commission generally introduces proposals that seek to increase the level of EU integration, in anticipation of its role as legislative enforcer (Mattila 2004; Thomson *et al.* 2006). The Commission seeks to increase its own policy remit at the enforcement stage, by proposing more integrative legislation at the agenda setting stage. It is therefore reasonable to assume that the proposals under consideration tend to increase the level of EU integration, and member states that are against further EU integration will intervene in order to block such proposals. If member state intervention behaviour is influenced by their position on the integration dimension in this manner, the following hypothesis is expected to hold:

H6: As a domestic government's position on the integration dimension moves towards less integration, the likelihood that that member state makes an intervention increases.

The saliency that a member state attaches to the proposal under consideration is also expected to have an important effect upon their intervention behaviour. Saliency here can be thought of the proportion of an actor's potential capabilities it is willing to mobilise in an attempt to influence the decision outcome in its favour. It is expected that member states that attach more saliency to the proposal under consideration will signal their willingness to use more of their capabilities in negotiations in terms of more interventions over the course of negotiations. This lead to the following hypothesis:

H7: As the saliency a member state attaches to a proposal increases, the likelihood that that member state makes an intervention increases.

A number of control variables should also be included to account for differences between member states and differences between proposals in the dataset. The first variable to control for is the relative size of member states. In general, larger member states represent a larger cross-section of domestic interests and are thus more likely to be affected by the passing of legislation (Arregui and Thomson 2009). This should lead larger member states to intervene more often, in an attempt to influence legislation so as to protect these more diverse domestic interests. This leads to the following hypothesis:

H8: As a member state's population increases, the likelihood that that member state makes an intervention increases.

It is also important to control for both the number of controversies that arise for a particular proposal, as well as the length of the individual proposal under consideration. More controversial issues should lead to more interventions by member states, as they seek to influence negotiations in their favour. Similarly, because the proposals in the dataset range from eight to sixty seven pages in length, one would expect that longer proposals should *a priori*

contain more potential for member states to find an issue upon which they disagree, thus leading to more member state interventions. These factors result in the following control hypotheses:

H9: As number of controversial issues in a proposal increases, the likelihood that a member state makes an intervention increases.

H10: As the length of a proposal increases, the likelihood that a member state makes an intervention increases.

A dummy variable distinguishing new member states from old member states is included to allow for the fact that new member states might behave differently in legislative negotiations, as they take time to learn norms of behaviour in the Council. The overall length of the negotiation process is also controlled for as an exposure variable in the analysis presented below. The logic behind controlling for the length of the negotiation process for any particular proposal is that the longer the negotiations take, the more opportunity each member state has to intervene. Controlling for exposure is therefore an important consideration when modelling count data (Long and Freese 2006).

RESEARCH DESIGN

In order to test the above hypotheses, the controversies that arose during the negotiations for the proposals in the dataset are conceived of on policy scales, which are then amalgamated in order to construct the policy spaces relevant to the proposals under consideration. This research design procedure for analysing EU decision making is described in detail in Chapter 3⁴².

⁴² Focusing on actors' initial positions necessarily ignores the fact that actors can change their positions over the course of negotiations. This simplifying assumption about the decision-making process implies that accounting for issues like logrolling between negotiators is beyond the scope of this particular study.

The proposals in the dataset were chosen based upon a number of selection criteria, and represent a subset of the larger dataset used in previous chapters. There are a total of 16 separate proposals examined in the dataset, which were made by the Commission between 2004 and 2008. This time period was chosen as the Council documents required for the analysis of member state interventions, which are available online, are most complete⁴³. A total of 48 distinct controversies across these proposals were identified and included in the dataset. Proposals were selected based upon the fact that they were of at least some political importance to member states, and were subject to at least a minimal amount of disagreement during negotiations. Only choosing controversial proposals is likely to have some effect upon the results obtained, as controversy implies an inherent degree of disagreement between negotiators, which will affect the likelihood of member state interventions. This choice is however justifiable, as we are interested in explaining member state intervention behaviour when there are substantive issues at stake, over which member states have varying policy positions. If no disagreement exists over a proposal, member states have no incentive to intervene, and the proposal is likely to be nodded through without much debate, thus leaving little to explain.

In order to identify the number of interventions made by each member state at each level of negotiation within the Council, the records of negotiations kept by the General Secretariat were analysed and the necessary data were extracted. In total, 487 separate documents across the 16 proposals of interest were examined. These documents contain detailed footnotes that record member states' interventions over the course of negotiations. These footnotes identify both the member states that are making interventions and also the level of negotiation within the Council at which the interventions took place. Member state

⁴³ These documents are used to identify the actor making an intervention, and the level at which interventions are made. Council records before 2004 are available, but much of the salient information is censored, and in some cases the documents must be requested directly from the General Secretariat, rather than being available online. These requests take considerable time to process; it was therefore decided to limit the analysis to proposals decided after 2004.

interventions are tagged in a consistent manner using abbreviated country labels (DE refers to Germany, FR to France etc.), and these tags were used to create a dictionary that allowed for the extraction the relevant intervention data using concordance software (Watt 2009). This allowed for a large number of documents to be analysed and the relevant data to be extracted in a time efficient and replicable manner. The resulting dependent variable capturing member state intervention behaviour was constructed as a simple count of member state interventions, with each intervention observation being coded by the level within the Council at which the intervention was made. This produces a measurement with units of analysis at the member state – proposal level. These new data help establish a much more detailed picture of the process of negotiation that took place for the legislative proposals under consideration⁴⁴.

The top half of Table 6.1 presents summary statistics for the dependent variables associated with member state intervention behaviour. There are three distinct but related dependent variables presented in the analysis below. The first and second variants of the dependent variable divide observations into interventions made at the working group and Coreper level of negotiation within the Council. Coding interventions in this manner allows for one to differentiate between the roles played by each level of negotiation in the decision-making process, and should shed light upon how member states' negotiation behaviour vary depending

⁴⁴ While a large amount of data on interventions is made available in these documents, there is an issue with data censoring on documents that the Council consider could be damaging to member state interests if they were made public. The documents still provide information regarding when an intervention is made, but the identity of the member state making the intervention is unavailable. While this may introduce bias into the estimates produced in the analysis below, the bias is likely to underestimate the effect of the variables of interest. Importantly, the censorship of these documents is not due to differences in how strongly held member state preferences are, but is instead due to the General Secretariat's interpretation of Council Regulation (EC) No. 1049/2001, article 4, which relates to exceptions to the public provision of Council documents. Censorship is beyond the direct control of the member states, and this should alleviate any missing data bias due to the strength of member state preferences over the issues discussed in the censored part of the documents under consideration. In order to assess the effect of the missing data on the analysis, a test was performed in which the missing data were assumed to have a distribution proportional to the observed data. These new data were then added to the dataset of observed interventions, and the negative binomial regression models were run. No significant changes in the findings were observed with these new data, and so the analysis presented below uses only the observed intervention data in order to avoid making assumptions regarding the distribution of missing data.

upon the level of negotiation at which they choose to intervene. The third variant of the dependent variable is the total number of interventions made by each member state over the course of the entire negotiation process for the proposals under consideration. This variable thus measures the total amount of effort each member state puts into affecting the negotiation process for each proposal in the dataset.

Table 6.1: Summary Statistics

Variable	Average	S. D.	Min	Max
<u>Dependent:</u>				
WG Interventions	4.83	10.68	0	62
Coreper Interventions	2.36	4.85	0	41
Total Interventions	7.19	12.05	0	63
<u>Independent:</u>				
COM Distance	73.08	49.97	0	200.00
EP Distance	92.27	48.93	0	183.30
SQ Distance	55.52	52.83	0	173.21
NBS Distance	55.85	34.33	0	152.37
L-R Position	11.80	3.19	5.78	16.37
Integration Position	7.11	3.09	1.92	14.87
Saliency	41.04	21.78	0	100
Population	18.59	22.75	0.40	82.50
Proposal Length	34.84	13.39	16.00	67.00
New Member State	-	-	0	1
No. of Proposals	16	-	-	-

Table 6.1 also presents summary statistics for the independent variables examined in the analysis, which were constructed as follows. The distance between member states' most preferred policy positions and those of the Commission, Parliament and the status quo at the proposal level is simply the Euclidean distance between the two points of interest in an n-dimensional policy space (Hinich and Munger 1997).

The distance between a member state's most preferred policy position and the expected outcome is calculated using a Nash bargaining solution (NBS) formula to estimate the expected outcome (Nash 1950). The NBS has successfully been used to predict legislative outcomes in a number of studies of EU decision making (Bueno de Mesquita and Stokman 1994; Achen

2006a), and thus, it is thought to be an appropriate measure of the outcome expected by member states at the outset of negotiations. This particular model takes the policy positions of all actors into account for a particular issue and weighs them by the *a priori* voting power of each member state, due to the formal voting rules (distribution of voting power) and the level of saliency each actor attaches to transforming its initial policy position into the Council's agreement (Van den Bos 1991; Achen 2006a). The relative voting power capabilities of the member states in the model are accounted for using a Shapley-Shubik voting power index (Shapley and Shubik 1954)⁴⁵.

A member states position on the right-left and pro-/anti- integration dimensions were taken from Benoit and Laver (2006). These ideological measures contained in this dataset have been used extensively in examining the role played by ideology in EU politics. The variables are constructed by weighing the position of all governing parties on the relevant dimension by the number of cabinet seats they hold in government. The measure of the saliency a member state attaches to each proposal is constructed using issue level saliency data collected when conducting the semi-structured interviews mentioned above. The proposal level saliency measure is constructed as the mean of a member states' issue level saliency scores for each proposal.

The control variables were constructed as follows. The variable measuring the number of issues that arose in a particular proposal is simply a count of the number of controversial issues identified by interviewees for each proposal. The variable representing member states' population is measured in millions and is held constant for each member state in the dataset, as no major population changes occurred during the time period under consideration. These data were taken from the Eurostat dataset. The length of a proposal is controlled for by including a count measure of the number of pages in each initial Commission proposal. The dummy for new

⁴⁵ These indices were calculated using *Powerslave*, (Pajala *et al.* 2002). For an extensive discussion of the advantages and disadvantage of using voting power indices see Garrett and Tsebelis (1999a; 1999b), Lane and Berg (1999), and Holler and Widgrén (1999).

member states is coded 1 for those member states that joined in 2004 and 0 otherwise. The length of the negotiation process is the number of days between the introduction of the Commission proposal and the final decision, and it is included as an exposure variable in the negative binomial regression analysis presented below. The decision to model the dependent variable as count data is significant in terms of the appropriate statistical model to use in the analyses. The next section presents the results of said statistical analyses.

ANALYSIS

It is important to establish whether there are any significant differences in member state intervention behaviour across the dataset under consideration, before examining the determinants of intervention behaviour. Figure 6.1 below presents the mean number of interventions made by each member state at the working group and Coreper levels within the Council. The bounded horizontal lines represent the 95% confidence interval surrounding the mean for each member state. As can be seen in left hand side of panel of figure 6.1, there is variation in the number of interventions made by different member states at the working group level⁴⁶. The largest member states generally make the most interventions, with Italy, France, and Germany making the most interventions on average. This suggests that larger member states tend to be more active at this level of negotiation within the Council.

⁴⁶ It should be noted that the differences in *mean* number of interventions are not statistically significant according to an *ANOVA* test, but as figure 6.1 demonstrates, there is much variance to be explained.

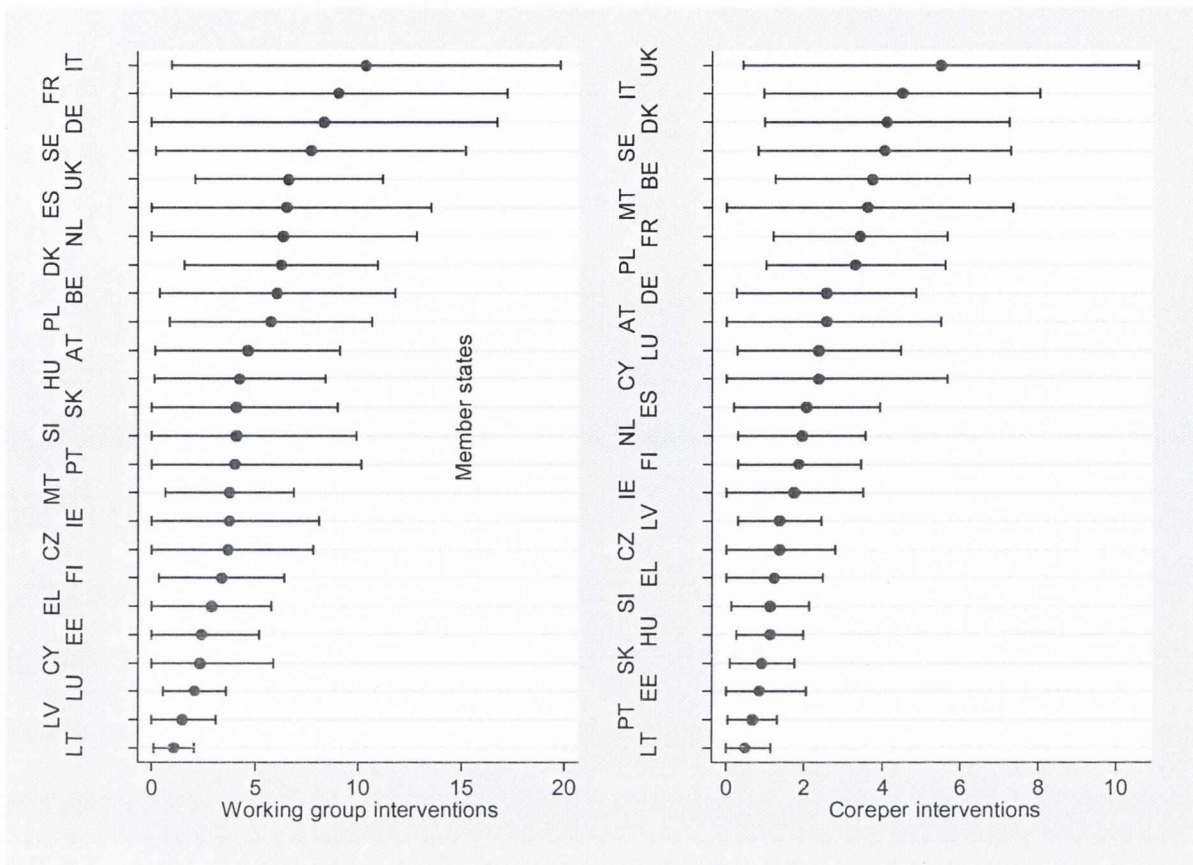


FIGURE 6.1: MEAN NUMBER OF INTERVENTIONS AT THE WORKING GROUP AND COREPER LEVELS OF NEGOTIATION.

Note: The means are surrounded by 95% confidence intervals and are bounded by 0 as it is impossible to make a negative number of interventions.

Interestingly, many of the smaller post-enlargement members seem to have relatively low levels of interventions during negotiations. Of the new member states, Lithuania, Latvia, Cyprus, and Estonia can be found grouped together with the fewest interventions on average. Even Poland, which would be considered a rather large member state, is ranked below such countries as Denmark and Sweden in terms of the average number of interventions. These findings suggest that new member states are still finding their feet in the negotiation process and have yet to develop interventionist styles of negotiation at the working group level.

The right hand side of figure 6.1 presents a similar set of mean interventions and associated standard deviations at the Coreper level within the Council. It should first be noted

that the average number of interventions at this level is smaller than at the working group level. This could be due to the fact that most of the issues that arise at the working group level are resolved at that level, and only issues upon which there is significant disagreement are discussed at Coreper. Even allowing for this, Figure 6.1 suggests that older and larger member states—such as the UK and Italy —on average make the most interventions at this level of negotiation within the Council. These larger member states are joined by Sweden, Denmark and Belgium, all of which make on average about four interventions for each proposal at the Coreper level. Again, it can be seen that the newer member states tend to make fewer interventions at the Coreper level, although Poland and Malta⁴⁷ appear to be relatively assertive.

While Figure 6.1 demonstrates differences in member state intervention behaviour, the next set of analyses examine whether or not the structural features of the negotiation process discussed in the theory section impact upon the number of interventions made by member states. Three distinct negative binomial regression models are presented below in order to assess the impact of these factors⁴⁸. Model One represents the factors that are thought to determine the number of interventions made by member states at the working group level. Model Two represents the factors that determine the number of interventions made by member states at the Coreper level. Finally, Model Three represents factors believed to determine the number of interventions made by member states at both levels of negotiation within the Council. The results presented in Table 6.2 represent the exponentiated constants from the

⁴⁷ Malta is an interesting outlier here, considering its relatively small size as a member state. There are a number of proposals in the dataset that were highly significant for the Maltese government, which meant that it made quite a number of interventions in order to influence the negotiations for these proposals.

⁴⁸ A number of other count models were tested in order to assess model fit, with little change in the results produced. The inflated zero-counts in the data imply that a negative binomial is the most appropriate model to use. While zero-inflated models provide a slightly better fit to the data, there is no theoretical reason why the process generating the zero counts in the data is different from the process generating the interventions; thus, this class of model was deemed inappropriate (Long and Freese 2006). A further validity test excluded two proposals in the dataset that had a large number of interventions and reran the analysis. The coefficients obtained were very similar with higher levels of significance. These results were not displayed as excluding cases with a high number of interventions would constitute selecting on the dependent variable, which should be avoided (King et al. 1994).

model, which are interpreted as incidence rate ratios. In the discussion of results, additional information is provided for interpretation purposes in the form of graphical representations of expected number of interventions at different levels of the independent variable of interest (figure 6.2).

Examining Table 2, the effects of an increase in the distance between a member states' initial policy position and that of the Commission are significant in Models One and Three, with each one unit increase in distance leading to an increase in the expected number of interventions by a factor of 1.012 at the working group level, and by a factor of 1.007 when one does not differentiate between the levels of decision making within the Council. This supports hypothesis H1 that member states tend to react to an increased distance between their policy positions and that of the Commission by making more interventions to influence negotiations in their favour at both these levels of analysis. Interestingly, this variable is not significant at the Coreper level of negotiation.

A member state's distance from the European Parliament has a significant effect upon the likelihood that that member state will intervene in models one and three. This suggests that as the distance between a member state's ideal point and the European Parliament increases by one unit, the expected number of interventions made by that member state decreases by a factor of 0.982 at the working group, by a factor of 0.991 when these levels are combined. Again, no significant effect is observed at the Coreper level. These findings lend support to hypothesis H2a, which holds that the European Parliament's chosen policy position acts as a focal point around which discussions tend to focus, and member states closer to the Parliament intervene more in defence of the Parliament's position.

Table 6.2: Determinants of member state interventions.

	(1) WG Interventions	(2) Coreper Interventions	(3) Total Interventions
Distance to COM	1.012 ^{***} (0.003)	1.000 (0.003)	1.007 ^{**} (0.002)
Distance to EP	0.982 ^{***} (0.003)	0.996 (0.003)	0.991 ^{***} (0.002)
Distance to SQ	1.000 (0.002)	0.994 ^{***} (0.002)	0.999 (0.002)
Distance to NBS	1.025 ^{***} (0.004)	1.006 (0.004)	1.016 ^{***} (0.003)
MS L-R position	1.002 (0.032)	1.016 (0.030)	1.002 (0.025)
MS integration position	1.004 (0.040)	0.990 (0.038)	1.010 (0.033)
Saliency	1.010 [†] (0.006)	1.014 ^{**} (0.005)	1.013 [*] (0.005)
No. of issues	1.472 ^{**} (0.186)	2.056 ^{***} (0.212)	1.586 ^{***} (0.145)
Population	1.012 ^{**} (0.004)	1.007 [†] (0.004)	1.009 [*] (0.004)
Length of proposal	1.028 ^{***} (0.009)	1.041 ^{***} (0.006)	1.031 ^{***} (0.006)
New member state	0.935 (0.239)	0.663 [†] (0.157)	0.807 (0.166)
Constant (not exponentiated)	(not -9.02 ^{***} (0.000)	-10.04 ^{***} (0.000)	-8.698 ^{***} (0.000)
<i>N</i>	400	400	400
Chi 2	252.7	119.7	242.2

[†] $p < 0.1$, ^{*} $p < 0.05$, ^{**} $p < 0.01$, ^{***} $p < 0.001$

Note: Negative binomial regression coefficients exponentiated and interpreted as incidence rate ratios (robust s.e. in parentheses). The likelihood ratio test that $\alpha=0$ is significant ($p \leq 0.001$), indicating that the data is over-dispersed.

The results presented in table 6.2 also demonstrate that the status quo acts as a focal point in negotiations, but only at the Coreper level. Each one unit increase in the distance

between a member state's initial policy position and the status quo implies the expected number of intervention decreases by a factor of 0.994 at the Coreper level. This finding is in line with hypothesis H3 that member states that prefer the status quo to a new agreement will tend to intervene in order to maintain the status quo at the Coreper level.

The influence of member states' expectations also seems to have a significant impact on the likelihood that they make an intervention. The incidence rate ratios reported in the models presented here suggest that each one unit increase in the distance between a member state's initial policy position and the expected outcome increases leads to an increase in the expected number of interventions by a factor of 1.025 at the working group level, and by a factor of 1.016 when one does not differentiate between the levels of decision making within the Council. This is in line with hypothesis H4 that member states close to the expected outcome have less need to intervene in order to influence the decision-making outcome. The findings at the Coreper level are again insignificant.

Interestingly, the role played by ideological level variables such as the right-left position of the government and a government's position on the EU integration dimension, in determining the number of interventions made by a member state, seems to be minimal, with neither variable having a statistically significant effect upon the expected number of interventions made. This suggests that member state intervention behaviour is determined by the structural characteristics of the policy space for each particular proposal under negotiation, rather than by the broader ideological positioning of governments. This is not to say that ideology does not impact the negotiation process; rather, the ideological positions of member state governments tend to manifest themselves through focal points that shape the negotiations for any particular proposal under consideration.

The saliency that a member state attaches to the proposal under negotiation is also found to affect that member state's intervention behaviour, in line with hypothesis H7. At the

working group level, each one unit increase in the saliency a member state attaches to the proposal leads to an increase in the expected number of interventions by a factor of 1.01, although this result is only weakly significant. The results for Coreper level and total interventions are statistically stronger, with each one unit increase in the saliency attached to a proposal leading to an increase in the expected number of interventions by a factor of 1.014 and 1.013 respectively.

Of the control variables, the number of issues identified as having arisen during negotiations, a member state's size, in terms of population, and the length of the initial proposal are significant to varying degrees across all models, with the effects in the expected directions, suggesting that it is important to control for these variables in the analysis. The dummy variable representing new member states is not significant –in line with the findings presented in figures one and two- suggesting that new member states do not behave differently to old member states in terms of intervention behaviour.

Figure 6.2 presents additional information regarding the magnitude of the effect of the distance between a member state's policy position and three of the focal points of interest, alongside the effects of saliency, when considering total interventions⁴⁹. The unbroken line in each panel shows the increase in the expected number of interventions by a member state as the distance from the focal point of interest increases, with the broken line representing the upper and lower bounds of the 95% confidence intervals. The top right panel shows that when a member state has the same position as the Commission, the expected number of interventions made by that member state is approximately four per proposal. In contrast, when a member state is at a distance of 150 policy points from the Commission, the expected number of interventions is close to eight per proposal.

⁴⁹ The effects estimated in figure 6.2 were produced using *Clarify* (Tomz, Wittenberg, and King 2003).

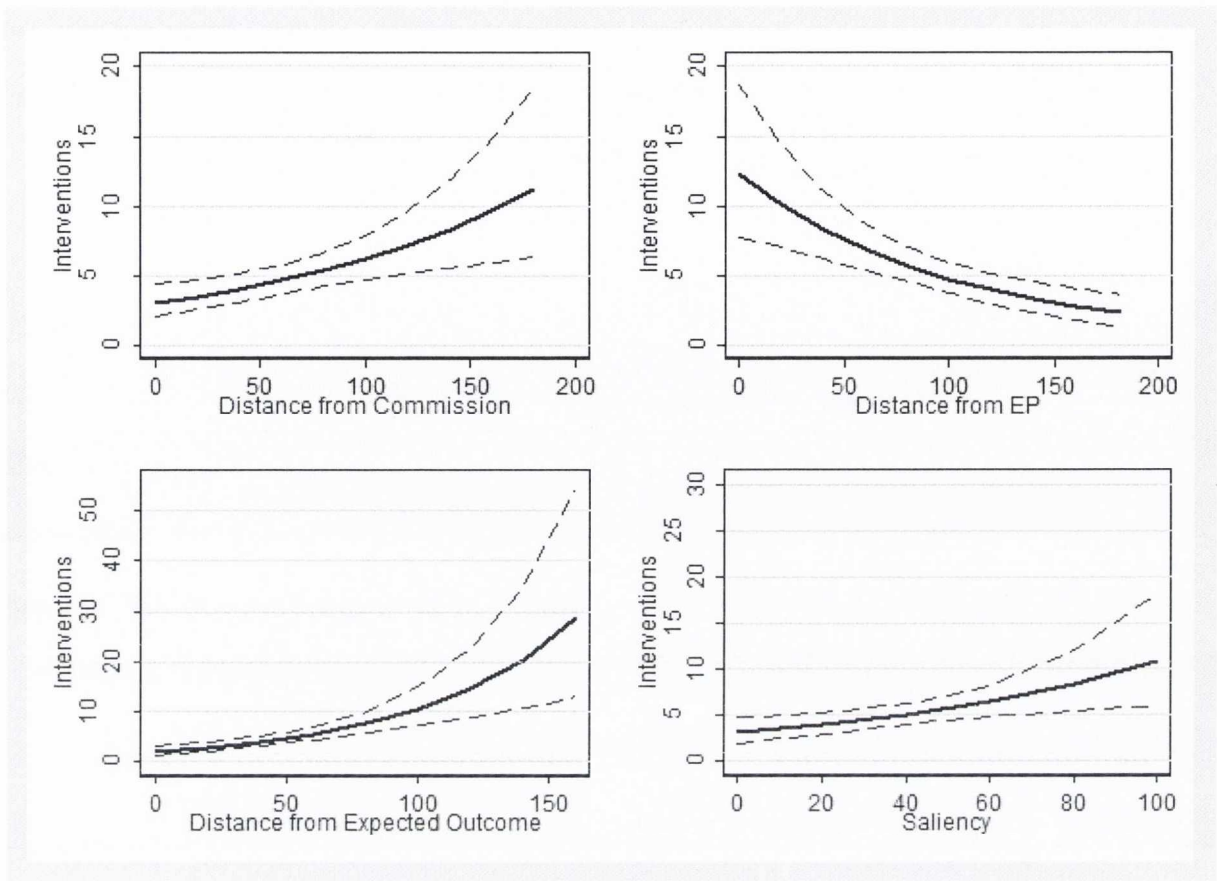


FIGURE 6.2: THE MAGNITUDE OF THE EXPECTED EFFECT OF SIGNIFICANT VARIABLES UPON INTERVENTION BEHAVIOUR

The top left panel shows that as the distance between a member state and the Parliament increases, the number of interventions that such member state is expected to make decreases. A member state with the same policy position as the Parliament is expected to make on average nearly thirteen interventions per proposal, whereas a member state with a distance of 150 policy points between its policy position and that of the Parliament is expected to make around three interventions per proposal.

The bottom left panel shows that as the distance between the expected outcome (NBS) and a member state's policy position increases, the expected number of interventions made by that member state increases. A member state with the same position as the expected outcome is expected to make nearly three intervention per proposal, whereas a member state that is 150

policy points from the expected outcome is expected to make just under fifteen interventions per proposal. Again, this is in line with the theoretical expectations regarding the role that member state expectations play in determining intervention behaviour.

The bottom right panel demonstrates the magnitude of the effect that changes in the saliency a member state attaches to a proposal under negotiation has upon their intervention behaviour. A member state that attaches 0 saliency points to a proposal tends to make about three interventions over the course of negotiations, whereas a member state that attaches 100 saliency points to a proposal is expected to make over ten interventions over the course of the negotiations. This is in line with the expectation that the saliency that a member state attaches to a proposal is an important determinant of their intervention behaviour during negotiations.

DISCUSSION & CONCLUSION

The findings presented above suggest that member state behaviour during the negotiation process is very much affected by the structural elements of both the policy space associated with a particular proposal, and by the institutional environment within which they find themselves negotiating. The first set of analyses (Figs. 6.1) differentiated between the different levels of negotiation within the Council, revealing some differences in the approach that distinct member states take when making interventions during legislative negotiations. It was found that in general, larger member states tend to intervene more often than smaller member states at both the working group and Coreper levels of negotiation. This finding suggests a puzzle when put in the context of previous research regarding the effect of member state size on bargaining success, which found that larger member states have somewhat less bargaining success than smaller member states (Bunse *et al.* 2005; Slapin 2006; Mattila 2006; Thomson 2008b; Arregui and Thomson 2009). While larger member states intervene more often than smaller member states, this behaviour does not in fact translate into increased

bargaining success. The relationship between member state intervention behaviour and bargaining success is explored in more detail in the next chapter.

A second finding of interest emerging from Figure 6.1 is that member states tend to intervene more at the working group level than at the Coreper level of negotiation. This finding supports the results of previous studies, which examined the relative amounts of negotiation that occur at each level within the Council (Hayes-Renshaw 2001; Häge 2008). Such a finding should not come as a surprise, given that working groups tend to meet more regularly and are the setting in which many minor issues, not salient enough to reach the Coreper level of negotiation, are resolved.

The findings presented regarding the influence of structural factors associated with both the policy space for the proposal under consideration and the institutional environment are also of interest. The roles played by the Commission and Parliament's policy position and the expected outcome in shaping the intervention behaviour of the member states at the working group level are unequivocal. The relationship between a member state's policy position and these focal points has a significant effect upon the likelihood that they intervene, suggesting that these points in the policy space structure the manner in which member states behave during legislative negotiations.

The influence of these focal points at the Coreper level is less evident, with only the status quo being found to have an effect on member state intervention behaviour. The fact that a different negotiation dynamic seems to be at work in Coreper is in line with previous research, which suggests that norms of cooperation may have developed at this level within the Council, that might not exist at the working group and ministerial level of negotiation (Lewis 1998; 2003; Juncos & Pomorska 2006). The special role played by the Coreper in the negotiation process is something that future research should further investigate.

In contrast to a number of previous studies (Mattila 2004, 2006; Hagemann 2008), ideological factors such as a government's position on the left-right scale or integration policy dimensions do not directly affect member state negotiation behaviour, although it should be noted that the behaviour examined here is interventions during the negotiation process, rather than explicit voting behaviour explored in previous studies. This lends support to the idea that member states' ideological positioning is less important in determining legislative outputs than the structural characteristics of the policy space associated with the proposal under negotiation. The policy positions of important institutional actors—such as the Commission and Parliament, the status quo, and the expected outcome—function as focal points that shape the policy space and the negotiation behaviour of member states, but importantly, the influence of these focal points on member state behaviour is mediated through the institutional structure of the Council.

CHAPTER 7: AGENCY, LUCK, AND POWER IN THE COUNCIL OF MINISTERS

INTRODUCTION

This chapter seeks to explore the factors that determine member states' legislative bargaining success in the Council of Ministers of the European Union (EU). A member state's ability to influence legislative negotiations taking place within the Council of Ministers is of central importance, if they are to successfully participate in and contribute to the ever widening and deepening set of rules that govern the EU as an international organisation. Legislation decided at the EU level has a profound affect at the domestic level, where it must be implemented and complied with by citizens. As the EU has evolved over time, the scope of legislation has increased and the legislative decisions reached at the EU level now affect such disparate issue areas as agriculture, justice and home affairs, and foreign policy. This chapter seeks to explore whether or not differences in member state negotiation strategies affect the relative bargaining success of the member states involved.

A number of existing studies have addressed the question of what determines member state bargaining success in the EU. Bailer (2004) examined the role that exogenous power resources such as voting power and economic strength, and endogenous power resources, such as the extremity of an actors' position and the relative position of important institutional actors such as the Commission, have upon a member states' bargaining success. The study found that exogenous power resources lead to bargaining success only in certain policy fields, whereas endogenous power resources lead to bargaining success across all policy fields⁵⁰. Arregui and Thomson (2009) also address this question, and find that while there are large differences in

⁵⁰ This paper does not account for the clustering of policy position observations within issues and proposals, and is thus likely to underestimate the standard errors associated with the variables of interest (Gelman and Hill 2007). The present study ameliorates this problem by employing multi-level models that account for the nested structure of the data.

bargaining success between member states on individual proposals, there are no *systematic* differences between winners or losers in terms of bargaining success.

This study seeks to build upon these existing studies by considering member state agency in the negotiation process, alongside the factors that have already been investigated. Member state agency in the negotiation process refers to the active participation of member states in negotiations, and takes the form of direct interventions made during negotiations to signal policy positions. This aspect of legislative bargaining in the EU has received relatively little scholarly attention to date, due to the difficulty of acquiring data on which member states are actively pushing their policy positions at different stages in the negotiation process. A second contribution of the chapter is that it introduces a new measure of bargaining success that accounts for the saliency that member states attach to the issues and proposals under negotiation. This aspect of the negotiation process is important in accounting for bargaining success, as it provides an estimate of the substantive importance of the negotiations under consideration to the actors involved. This aspect of bargaining success has been neglected to date in the academic literature.

The chapter is divided into four sections. The first section develops a theoretical framework in which the different factors that are thought to influence member state bargaining success can be explored, and outlines the various hypotheses that are to be tested. The second section outlines the research design that is implemented and the data that will be used to test the hypotheses put forward in the previous section. The third section presents and discusses the results of a number of statistical analyses in relation to the hypotheses developed earlier. It is found that a combination of factors including agency, luck and power help to explain member states' relative bargaining success. The final section assesses the implications of the findings and then draws conclusions from these results, identifying a number of directions in which future research should proceed.

THEORETICAL FRAMEWORK

One must first define what is meant by bargaining success in the context of EU legislative negotiations, before the factors that determine a member state's bargaining success can be examined. Two distinct formulations of member state bargaining success shall be considered for the purposes of this study. In the first formulation, and building explicitly upon previous research, bargaining success is considered on an issue by issue basis. Previous studies have measured member state bargaining success as the absolute distance between a member state's initial policy position and the final outcome on individual issues that arose during negotiations for different proposals, with member states with initial policy positions closer to the final outcome having greater bargaining success (Bailer 2004; Arregui and Thomson 2009). This approach assumes that controversies are negotiated independently of one another, and is useful as it simplifies the bargaining space by dividing it into distinct independent dimensions along which member states can be more or less successful in bargaining. In light of these studies, the first conceptualisation of member state bargaining success will be at the issue level.

One weakness of the existing approaches to measuring bargaining success at the issue level is that it fails to take account of the intensity of preferences held by member states over the issues under negotiation. Junge and König (2007) point out the importance of accounting for issue saliency when one engages in spatial modelling of the decision making in the Council, and show that failing to account for issue saliency significantly distorts the results obtained in such analyses. On the basis of this argument, it is clear that one should account for issue saliency when assessing member state bargaining success, as any measure of bargaining success should reflect the intensity of the preferences held by the actors involved. The measure of bargaining success used here is therefore weighted by the saliency each member state attaches to the issue under consideration.

There are further problems associated with conceiving of the policy space under consideration in uni-dimensional terms. Such an approach necessarily assumes that each issue

that arises within a proposal is dealt with individually. A number of authors have pointed out that accounting for the multi-dimensional characteristics of the policy space is important from a theoretical point of view, and failing to do so can impact upon the results of the analyses (Steunenberg and Selck 2006; Junge and König 2007; Chapter 4 in this study). Therefore, the second measure of member state's bargaining success will be constructed at the proposal level, with appropriate saliency weights attached to each dimension. It is argued that one can capture the essence of what states are trying to achieve when they enter into negotiations on a particular legislative proposal by conceiving of bargaining success in this way.

This chapter argues that the factors that determine a member state's bargaining success can be divided into three distinct categories; those attributable to agency; those attributable to luck; and those attributable to differences in member state power. Agency based factors include the number of interventions a state makes during negotiations, and the level within the Council at which these interventions are made. Factors involving luck relate to a member state's initial policy position relative to other positions of importance in negotiations. Finally, factors related to differences in member state power include the relative size of the member state, and the number of votes that the member state holds within the Council. Each of these factors will be explored in turn, and the effect that they are expected to have on member states' bargaining success will be outlined.

AGENCY

One of the innovations of this chapter is that it reveals the role that interventions made by member states over the course of negotiations, and estimates their effect upon bargaining success. An intervention is defined as any explicit statement of disagreement with the Commission proposal as it stands, made by a member state at a Council meeting, during the negotiation process. Making interventions of this type during negotiations is the most direct way in which member states can make their policy positions known to other actors in the

negotiation process⁵¹. This aspect of member state behaviour when bargaining has received scant scholarly attention, due to the difficulty of acquiring data regarding which member states are active at different stages in legislative negotiations. Previous studies have tended to conflate the effort made by member states in the bargaining process with the saliency they attach to the issues under negotiation (Bailer 2004; Arregui and Thomson 2009). This study differentiates between the two, by arguing that saliency represents the intensity of member state preferences in terms of the curvature of their loss function that determines the utility received from a particular outcome (Achen 2006a; Junge and König 2007), whereas interventions represent the effort member states put into affecting the legislative process. It does so by providing a direct measure of member state effort in negotiations in terms of the interventions made over the course of negotiation. It is thus possible to assess whether interventions made during negotiations are an effective way to influence decision outcomes in the Council.

The previous chapter examined the determinants of member state interventions in detail, and found that the most important determinants of member state intervention behaviour were the structural aspects of the policy space under negotiation, and the location of other actors in this policy space. Interventions were found to occur in reaction to important focal points in the policy space. This chapter develops upon those findings, by examining whether or not member state interventions positively or negatively affect the relative bargaining success of the member states involved. Two distinct interpretations of the role that member state intervention behaviour plays in determining member state bargaining success are possible. The first interpretation assumes that interventions are proactive, and member states make them in order to directly influence the negotiation process in their favour. The second interpretation of

⁵¹ Records of member state interventions are kept in the footnotes of Council documents, which record the progress of negotiations through the Council. The manner in which member states make interventions in the Council is influenced by the rules of procedure relating to Council discussions. The rules of procedure dictate that, unless indicated otherwise by the Council Presidency, member states should only intervene when proposing changes to the proposal under negotiation and remain silent otherwise (2004/338/EC annex 4; 2009/937/EU annex 5). This implies that member state interventions are in most cases attempts to change the Commission proposal under negotiation, rather than expressions of agreement. This is important for the argument made below.

member state interventions holds that they are reactive, and seek to express member states' dissatisfaction with the outcome that is expected to prevail. The observable implications of each of these interpretations are different and are now explored.

If interventions are used by member states in a proactive manner, then their role is to influence negotiation outcomes directly, by making policy positions known to other negotiators. Member state negotiators seek to influence the content of the proposal under negotiation, and have their policy positions reflected in the final agreement by making their policy positions known on a particular issue through interventions. If member state interventions are used in a proactive manner and positively influence member state bargaining success, one would expect that member states that make more interventions tend to have more bargaining success. This leads to the following hypothesis:

H1: Member states that make more interventions will have more bargaining success.

In contrast to the proactive interpretation of member state interventions, should interventions be assumed to be reactive, one would expect that member states tend to intervene when negotiations are not proceeding in their favour. Interventions then act as a way in which member states can register their unhappiness, without negatively affecting negotiation progress. This argument has some precedence in the study of the legislative process in the EU. Slapin and Proksch (2010) analyse the role played by legislative speeches in the EP, and find that such speeches play a dual role, one which is to explain their position to other parliamentarians, and one which is to create a positive record of their opposition to a particular piece of legislation. When MEPs use speeches in the second manner, the aim is to register their dissent, in full knowledge that such interventions will have little effect on legislative outcomes. In a second study, this time examining formal statements entered by member states in the minutes of Council meetings, Hagemann (2008) finds that such statements are used by member states to record their opposition to a piece of legislation, without having to abstain or vote

against the legislation when it comes to the vote. Again, such statements are reactive, and made in full knowledge that negotiations are not proceeding in their favour. There are clear parallels between the role played by speeches and statements in these arguments, and the possible role played by member state interventions within the Council. If member state interventions are reactive and related to bargaining success in this manner, one would expect the following hypothesis to hold:

H2: Member states that make more interventions will have less bargaining success.

Relatively little attention has been paid to the role that the internal structure of the Council plays in determining decision-making outcomes. This study seeks to address this gap by accounting for how the level at which an intervention is made influences the effectiveness of said intervention. There are three distinct levels of decision making in the Council, ranging from the lowest working group level, through the intermediate Coreper level, right up to the Council of Ministers⁵². Member state negotiators can take explicit positions on controversies that arise within a proposal at any of these levels of negotiation within the Council. It is expected that the effectiveness of a member state's intervention will depend on the level at which the intervention takes place.

The lowest level of negotiation within the Council at which a member state can attempt to influence legislative outcomes in their favour is at the working group level. Council working groups are an important part of the legislative process and provide an arena in which the initial negotiations for draft proposals put forward by the Commission take place. Working groups are given considerable gate-keeping power by the rules which govern legislative negotiations, and agreements reached at this level will in most cases be adopted without further discussion.

⁵² This chapter focuses on the working group and Coreper level of decision making and excludes the Council of ministers level due to data concerns. The records for meeting at the Council of ministers level are not as detailed as those for the lower levels of decision making, and this made collecting the relevant data difficult and the quality of said data questionable in comparison to the data collected for the working group and Coreper levels.

Proposals that are agreed at the working group level are marked as roman I-points on Coreper agendas and A-points on ministerial agendas, and are thus in general nodded through without further debate at higher levels of negotiation within the Council (Häge 2008). While it was previously thought that these working groups deal mainly with the 'technical' details of the proposal, and leave the 'political' aspects to more senior bodies in the Council, this view has recently been challenged. Fouilleux *et al.* (2005: 611) claim that no clear distinction can be drawn between the 'technical' and 'political' aspects of negotiations undertaken by the working groups. In light of this finding, it is expected that an intervention by member states at the working group level will have an impact on their bargaining success. It is expected that:

H3: Member states which make more interventions at the working group level will have more bargaining success.

Member states can also attempt to influence negotiations in Coreper. Coreper is charged with preparing the work of the Council and acts as an intermediate level of negotiation within the Council, sitting between the working groups and the ministerial level (Article 207 of the Treaty establishing the European Community). While Coreper does not have any formal voting power to finalise agreements, in its role as the preparatory body for the ministerial level, it discusses proposals and divides them into a series of 'A' and 'B' points. 'A' points are issues which can be voted upon by the ministers without further debate, whereas 'B' points are issues where further debate is needed. This procedure gives Coreper an important gate-keeping role within the Council, as it determines which issues have been resolved and which issues need further debate and negotiation at the ministerial level (Häge 2008). Given the important position that Coreper occupies in the legislative process, it is expected that member state interventions made at this level of decision-making will have an impact on their bargaining success. This leads to the following hypothesis:

H4: Member states which make more interventions at the Coreper level will have more bargaining success.

While H3 and H4 are similar in terms of the direction of the effect that member state interventions are expected to have on their bargaining success, it is important to assess the effects individually in light of the findings presented in Chapter 6. That chapter demonstrated that the working group and Coreper levels of negotiation play very important roles in Council decision making, but that there seems to be important differences in the manner in which decisions are made at each level within the Council. If significant differences are observed in the substantive size of the effect that interventions have on member state bargaining success, depending upon the level within the Council at which interventions are made, this will add further weight to the claim that fundamentally different processes are at work at each level.

LUCK

In contrast to the agency based factors outlined above, over which member states have a large amount of control, there is little they can do to affect those due to luck. Barry (1980) argues that the proximity of a decision-making outcome to an actors' initial policy position might have little to do with their behaviour during negotiations, and instead be attributable to luck. This distinction arises from the fact that (for the most part) political decisions can be considered public goods, which by their very nature are non-divisible and non-excludable. If an actor has a policy position close to that of a winning coalition, it can free ride on the effort of the winning coalition in securing their desired outcome, without exerting any power in order to secure its' desired outcome. In such a situation, a member state can be said to be lucky, as its relative proximity to other actors in the policy space allowed it to free ride on the effort of others. The key step in this argument is the fact that a member state has little control over the initial policy positions taken by other actors at the outset of negotiations. An individual member state's policy positions is assumed to be fixed at the outset, and determined through the internal political processes within that member state. This assumption implies that member states have

little influence over the initial positions taken by each other, and thus their proximity to each other is exogenously determined and can be attributable to luck. In order to account for whether luck plays a role in determining bargaining success, the proximity of a member state's initial policy position to a number of important positions within the policy space is considered.

The first set of policy positions in the negotiation space that need to be considered is those of the other member states. The relative extremity of a member state's initial policy position, compared to those of the other member states, is an important factor to consider when explaining bargaining success. The exact effect that having an extreme initial position has on a member states' bargaining success is debated in the literature. Mokken *et al.* (2000) and Bailer (2004) argue that having an extreme initial position during negotiations increases a member state's bargaining success. They appeal to the argument that member states with extreme initial positions can act as veto players, and block the progress of negotiations, thus forcing concessions from those who want negotiations to progress. They also argue that given the propensity of the Council to try and reach consensus, taking an extreme initial position can be advantageous and increase bargaining success as other member states seek to accommodate the extreme actor. If the extremity of a member state's initial policy positions affects bargaining success in this manner, one would expect the following hypothesis to hold.

H5a: Member states with more extreme initial policy positions relative to those of other member states will have more bargaining success.

In contrast, Arregui & Thomson (2009) draw the opposite conclusion regarding the influence of extreme initial policy positions due to the role of consensus building within the Council. They argue that because EU legislative negotiations are characterised by "cooperative and inclusive modes of interaction" which shape decisions, outcomes tend to be a compromise between actors. This interpretation of the legislative process has found support in the empirical literature, which found that legislative outcomes can be predicted using a variant of the Nash

bargaining solution (NBS) (Achen 2006a). This variant of the NBS is simply the average of a member states' initial policy positions, weighted by their relative capabilities and the saliency they attach to the issue under consideration. If the NBS can successfully predict decision-making outcomes within the Council, then member states with more extreme initial bargaining positions should be less successful in bargaining. This is due to the fact that cooperative modes of interaction are thought to lead to compromise solutions located between member state initial positions rather than at the extremes. It is therefore expected that:

H5b: Member states with more extreme initial policy position relative to those of other member states will have less bargaining success.

The initial policy position of a member state relative to that of the European Parliament is another factor that may affect their bargaining success, and can be attributed to luck. The Parliament has become more and more important in the legislative process over recent years, with a series of treaty revisions increasing its power to affect decision-making outcomes (Steunenberg 1997; Crombez 2001a; Napel and Widgrén 2006). Given the important role of the Parliament in EU decision making, having an initial policy position close to the Parliament is likely to increase a member states' bargaining success, as outcomes are likely to be heavily influenced by the Parliament. It is therefore expected that:

H6: Member state's with policy position closer to the European Parliament will have more bargaining success.

A second institutional actor whose policy position is likely to matter in determining bargaining success is that of the Commission. The Commission, as proposer of legislation, is thought to have a significant influence over decision-making outcomes (Pollack 2003). Commission power stems from the fact that the Commission is the sole actor with proposal capabilities, which give it significant agenda-setting power. Once a proposal is put forward by the Commission, the voting rules within the Council are thought to determine the extent of the

Commission's agenda-setting power. Under the codecision procedure the exact role played by the Commission is a matter of debate within the academic literature. Some argue that the Commission has significant agenda-setting capabilities (Crombez 2003; Steunenberg 2001), while others contend that because the Council and the Parliament can reach an agreement independent of the Commission, this mitigates the Commission's agenda-setting power (Tsebelis and Garrett 2000, 2001). A number of empirical studies have assessed the influence of the Commission over legislative negotiations and have found that in spite of the fact that codecision decreases the formal power of the Commission; its policy position still has a significant influence over negotiation outcomes (Thomson and Hosli 2006). As a result, member states with initial policy positions close to that of the Commission should have increased bargaining success. This leads to the following hypothesis:

H7: Member states with initial policy position closer to the Commission will have more bargaining success.

The final variable attributable to luck that is thought to affect member state bargaining success is the distance between that member state's initial policy position and the status quo. The status quo is thought to play an important role in the decision-making process in the Council, as it represents the state of affairs that would hold, if actors fail to reach an agreement on the proposal under negotiation. The status quo should be influential in determining a member states bargaining success due to a veto players type argument (Tsebelis 2002). Conservative member states with positions close to the status quo will seek to block the progress of legislation, and if they are successful, then having an initial policy position close to the status quo will increase a member states bargaining success. This leads to the following hypothesis:

H8: Member states with initial policy positions closer to the status quo will have more bargaining success.

A third set of factors thought to influence legislative bargaining success is related to member states' relative power. The concept of power has received a large amount of scholarly attention in the EU context. For the purposes of this study, member state power is conceived of in two distinct ways. The first aspect of member state power that will be examined is the number of votes they hold in the Council. Here, voting power is conceptualised in *a priori* terms and measured using a Shapley-Shubik (1954) power index⁵³. While explicit use of voting power has been found to be relatively rare (Mattila and Lane 2001; Mattila 2004; 2006; 2009), the exact role that differences in member state voting power play in determining legislative outcomes is a source of controversy. At the theoretical level, one would expect that member states with more voting power would be more successful in bargaining situations, as they can leverage this voting power in order to influence the decision outcome. In contrast to this expectation, a number of studies have found that decision outcomes in the EU tend to slightly favour smaller states (Mattila 2006; Thomson 2008b). This chapter shall therefore test the following hypothesis in order to determine how voting power influences member state bargaining success:

H9: Member states with more voting power will have more bargaining success.

A second variable that captures the relative power of member states is their relative size in terms of population (Bailer 2004; Arregui & Thomson 2009). Larger states can be expected to have greater access to resources that can be used to influence bargaining outcomes. This might take the form of having the economic resources to offer side payments in return for support on a particular proposal, or having the bureaucratic resources to engage in lobbying others involved in the negotiations. Regardless of how differences in member state size

⁵³ Details of how this index is constructed are given in the research design section below. For an extensive discussion of the advantages and disadvantages of voting power indices see Garrett and Tsebelis (1999a; 1999b), Lane and Berg (1999), Holler and Widgrén (1999).

manifest themselves in terms of power, it is expected that larger member states will be more successful in bargaining. This leads to the following hypothesis:

H10: Member states with a larger population will have more bargaining success.

RESEARCH DESIGN

The dataset upon which much of the following analysis is based upon has been constructed through an extended series of semi-structured interviews with stakeholders involved in the negotiation of the proposals under consideration, as described in Chapter 3⁵⁴. In these interviews, stakeholders were first asked to identify the most important controversies that arose during negotiations. They were then asked to identify and place the positions that were taken on these controversies on 100 point policy scales, and then place the actors involved on these policy scales. This approach to researching the legislative process in the EU is well established, and has provided significant insight into the manner in which negotiations proceed and controversies are resolved⁵⁵.

Each issue in the dataset is specified in this manner, which allows one to recreate a detailed spatial model of the negotiations and the issues that arose therein. These data are then used to calculate the various variables of interest elaborated upon in the theory section above. In order to construct a measurement for bargaining success, it is assumed that states come to the negotiation table with a pre-existing set of policy positions that they wish to see included in the final legislative agreement. Heterogeneity among stakeholder policy positions leads to conflict, and in order to reach agreement, member states engage in bargaining so as to reach compromise solutions. As mentioned earlier, two distinct dependent variable of interest will be utilised. The first set of analyses presented below shall analyse bargaining success at the issue

⁵⁴ These interviews were completed by the present author, Rory Costello, Robert Thomson, and Javier Arregui.

⁵⁵ Important studies in this vein include a 2004 special issue of *European Union Politics* 5(1), and Thomson *et al.* (2006).

level, and is simply the distance between a member state's initial policy position and the final outcome on a particular issue, weighted by the saliency each member state attaches to the issue under consideration.

The second set of analyses shall consider bargaining success at the proposal level, and measures bargaining success as the weighted Euclidean distance between a member state's initial policy position and the final outcome. When one wishes to account for the saliency that actors attach to the proposals under consideration, one must consider the differential impact that the saliency attached to each individual dimension has upon the proposal as a whole, and also whether or not actor preferences are separable across these different dimensions. For the initial specification of the multi-dimensional measure of bargaining success, only the first issue regarding issue saliency will be accounted for. The issue of non-separable preferences is not considered due to data limitations. Therefore, it is assumed that all actors have separable preferences.

In order to generate the equation for the weighted Euclidean distance, it is necessary to introduce a matrix of saliency weights and interaction terms \mathbf{A}_i which is structured as follows (Hinich & Munger 1997):

$$\mathbf{A}_i = \begin{bmatrix} a_{11} & a_{12} \\ a_{21} & a_{22} \end{bmatrix}$$

Within this matrix, the main diagonal terms, a_{11} and a_{22} , are the saliency terms and the off diagonal terms are the interaction terms. The saliency terms measure the relative value the actor i places on each dimension and are assumed to be non-negative. The interaction terms, a_{12} and a_{21} , measure the extent to which changes in the value of one dimension affect the expected level chosen in the other dimension. When these terms are not zero, actors' preferences are non-separable. In the model under consideration here, as mentioned above, the interaction terms will be assumed to be zero ($a_{12} = a_{21} = 0$) thus making preferences separable.

When one combines the matrix \mathbf{A}_i , which represents a diagonal matrix of saliency weights, with a formula for finding the Euclidean distance between two points in a multi-dimensional policy space, the formula for the weighted Euclidean distance is as follows, in which the distance between a vector of coordinates \mathbf{y} and \mathbf{z} is:

$$\|\mathbf{y} - \mathbf{z}\| = \sqrt{[\mathbf{y} - \mathbf{z}]^T \mathbf{A}_i [\mathbf{y} - \mathbf{z}]}$$

By assuming that the matrix \mathbf{A}_i is diagonal, actor i 's indifference curve is an ellipse centred on i 's ideal point with the major axes parallel to the policy dimensions. The intuition behind this is that because actor i values each issue differently, equal departures from his ideal point have different impacts on actor i 's utility (Hinich & Munger, 1997). Bargaining success is thus conceptualised in an n -dimensional policy space, with the number of dimensions (n) relevant to each calculation equalling the number of controversial issues that arose during negotiations for the proposal under consideration. Conceiving of bargaining success in this way allows one to account for the multi-dimensional nature of legislative bargaining in the EU, and it is thought that this provides a more complete picture of how legislative negotiations should be modelled (Junge and König 2007).

In order to identify the number of interventions made by each member state at each level within the Council, the records of negotiations kept by the General Secretariat were analysed and the necessary data were extracted using computer aided text analysis⁵⁶. This involved using the systematic labels attached to member state's interventions as tags which can be detected using a dictionary based concordance program. Once a member state tag was detected, the corresponding intervention was extracted from the document of interest and coded by the level within the Council at which the intervention took place. Once these data were assembled, the interventions were coded by the level at which they were made, in order to create a measure of intervention activity at each level of negotiation within the Council. These

⁵⁶ See Chapter 3 for a detailed discussion of this process.

new data help establish a much more detailed picture of the process of negotiation that took place for the legislative proposals under consideration.

The variable measuring the extremity of a member state's initial position was created by calculating the distance between a member state's initial policy position and the average position of the other member states. Similarly, the distance between a member state's initial policy position and that of the Parliament and the Commission is calculated as the distance between those particular positions. For the first set of analyses at the issue level, these distances are simply the absolute value of the distance between a member state's initial policy position and the position of interest. For the second set of analyses at the proposal level, the distances involved are calculated as the Euclidean distance between the member state's initial policy position and the position of interest in an n-dimensional policy space⁵⁷. Again, the number of dimensions (n) relevant to each calculation is simply the number of controversial issues that arose during negotiations.

The independent variables measuring member states' population is measured in millions and taken from the Eurostat dataset (Thomson *et al.* 2006). The relative voting power capabilities of the member states involved are accounted for using a Shapley-Shubik voting power index (Shapley and Shubik, 1954). The capabilities attributed to the various member states in the decision-making process are based upon their relative voting power in terms of the number of votes they possess within the Council. The Shapley-Shubik index is an *a priori* measure of member state voting power, and is constructed by listing all possible winning coalitions for a particular issue and then identifying critical voters in each coalition, a critical voter being a member state that changes a losing coalition into a winning coalition. A member states' voting power is calculated as the ratio of critical votes to total possible votes for that particular issue (Pajala *et al.* 2002).

⁵⁷ Saliency is not accounted for in the measurement of the relevant positions of other actors in the negotiation process, as these measures seek to capture coalitional possibilities, rather than the utility a member state receives from a particular outcome.

Table 7.1 presents the summary statistics for the variables of interest. These statistics shall be useful at a later stage for interpreting the substantive effect of the variables of interest.

Table 7.1: Descriptive statistics for dependent and independent variables.

Variable	N	Mean	S.D.	Min	Max
<i>Dependent variable</i>					
Issue level bargaining success	633	16.9	18.71	0	100
Proposal level bargaining success	351	47.75	30.12	0	136.71
<i>Independent variables at Issue level</i>					
WG interventions	633	5.32	11.51	0	62
COREPER interventions	633	3.18	5.53	0	41
Total interventions	633	8.51	12.83	0	63
Extremity of policy position	633	22.94	17.75	1.6	92
Distance to EP	633	55.89	38.52	0	100
Distance to COM	633	39.02	38.65	0	100
Distance to SQ	633	44.79	41.28	0	100
Voting power (SSI)	633	3.91	2.89	0.8	8.7
Population	633	19.71	23.55	0.4	82.5
<i>Independent variables at Proposal level</i>					
WG interventions	351	5.28	11.31	0	62
COREPER interventions	351	2.48	5.12	0	41
Total interventions	351	7.77	12.7	0	63
Extremity of policy position	351	75.37	26.86	0	127.28
Distance to EP	351	101.74	43.51	0	183.3
Distance to COM	351	78.72	47.92	0	200
Distance to SQ	351	63.27	51.87	0	173.2
Voting power (SSI)	351	3.83	2.87	0.8	8.7
Population	351	18.99	23.12	0.4	82.5
Number of issues	351	3.18	1.41	1	5

ANALYSIS

It is useful to examine the relative differences in the bargaining success of each member state across all proposals in the dataset, before considering the determinants of said bargaining success. Figure 7.1 displays the mean bargaining success of each member state with an associated 95% confidence interval at the proposal and issue level.

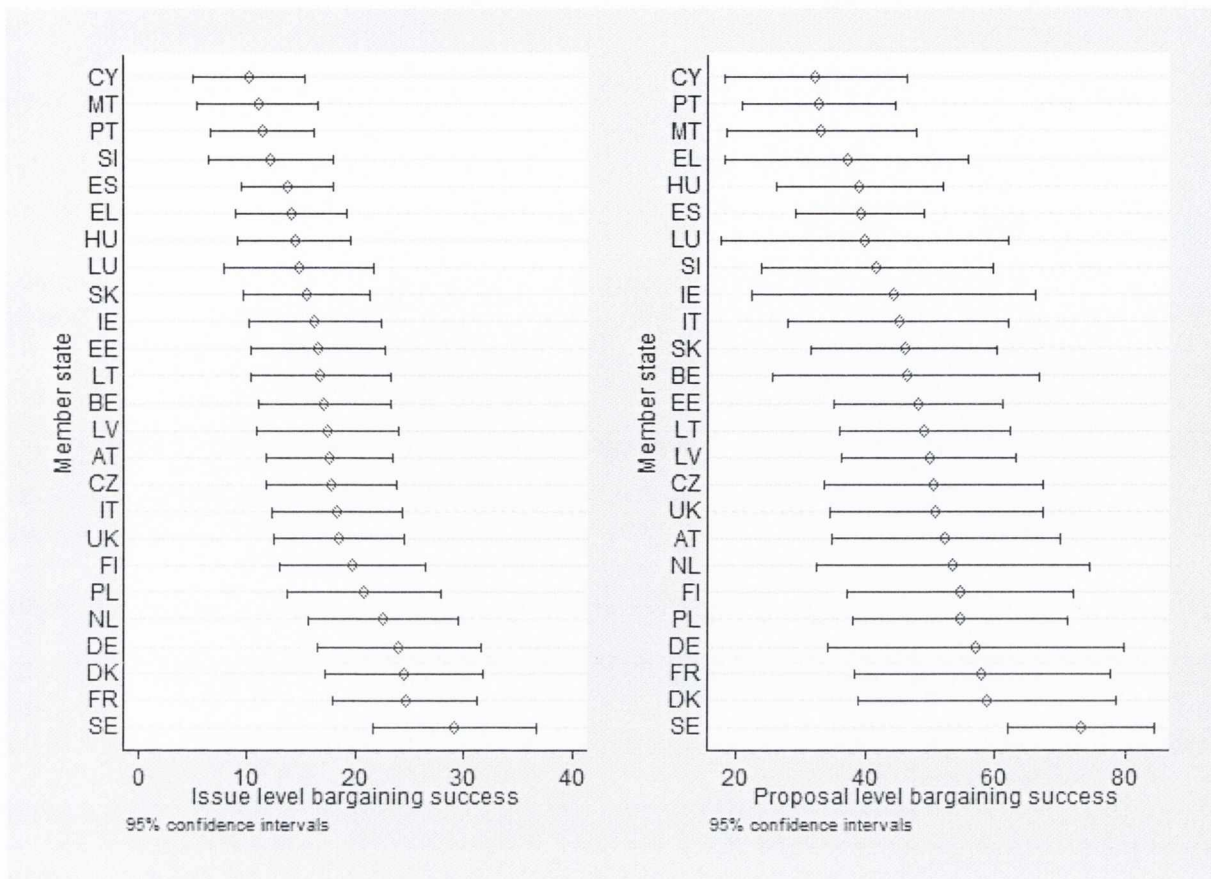


FIGURE 7.1: MEAN BARGAINING SUCCESS OF MEMBER STATES AT PROPOSAL AND ISSUE LEVEL WITH 95% CONFIDENCE INTERVALS

The mean bargaining success for all member states is 47.75 at the proposal level and 16.9 at the issue level, as noted in table 7.1. At the proposal level, there is little significant difference between member states' bargaining success, with most member states having a mean bargaining success between 40 and 80 policy point distance between their initial policy positions and the final decision outcome. At the issue level, there is even less difference between member states' mean bargaining success. These findings are in line with previous research (Arregui and Thomson 2009).

Table 7.2 below presents the results of a series of multi-level regression analyses at the issue level of negotiation. It should be noted that a positive coefficient implies an *increase* in the distance between a member state's initial policy position and the final outcome, and thus a *decrease* in that member states' bargaining success, and vice versa. A multi-level regression model is appropriate given the multi-level structure of the data, with member states' initial

policy positions nested within issues which are in turn nested within individual proposals in the dataset (Gelman and Hill 2007). Table 7.3 presents the substantive effects of the significant variables when one moves from the minimum to the maximum of each variable, in order to aid in interpretation.

The results presented below suggest that out of the factors attributable to agency, luck and differences in member state power, it is mainly agency and luck that determines member state bargaining success at the issue level. With regard to agency, it is observed that interventions made at the working group have an effect on member state bargaining success (models 1 and 2) with each extra intervention at this level leading to a 0.347-0.350 point increase in the saliency weighted distance between a member state's initial policy position and the final outcome. The substantive effect of moving from the minimum of no interventions to the maximum of 62 interventions during proposal negotiations leads to a +21.51 point increase in the saliency weighted distance between a member state's initial policy position and the final outcome.

Table 7.2: Factors affecting the distance between member states' bargaining success at issue level.

	Model 1	Model 2	Model 3	Model 4
<i>Fixed effects parameters</i>				
WG interventions	0.347 ^{***} (0.0829)	0.350 ^{***} (0.0828)	-	-
COREPER interventions	0.032 (0.131)	0.029 (0.131)	-	-
Total interventions	-	-	0.250 ^{***} (0.0664)	0.251 ^{***} (0.0664)
Extremity of policy position	0.258 ^{***} (0.0460)	0.261 ^{***} (0.0460)	0.266 ^{***} (0.0459)	0.269 ^{***} (0.0459)
Distance to EP	0.165 ^{***} (0.0203)	0.165 ^{***} (0.0203)	0.164 ^{***} (0.0203)	0.164 ^{***} (0.0203)
Distance to COM	0.134 ^{***} (0.0175)	0.134 ^{***} (0.0175)	0.133 ^{***} (0.0175)	0.133 ^{***} (0.0175)
Distance to SQ	0.042 [*] (0.0181)	0.041 [*] (0.0181)	0.0398 [*] (0.0182)	0.0387 [*] (0.0182)
Population	0.096 ^{**} (0.0339)	-	0.0954 ^{**} (0.0334)	-
Relative voting power	-	0.767 ^{**} (0.274)	-	0.757 ^{**} (0.271)
Constant	-8.458 ^{**} (2.599)	-9.602 ^{***} (2.725)	-8.585 ^{***} (2.571)	-9.700 ^{***} (2.697)
<i>Random-effects parameters</i>				
Member states (ln)	1.024 ^{***} (0.269)	1.029 ^{***} (0.268)	0.993 ^{***} (0.276)	1.003 ^{***} (0.273)
Proposal level (ln)	-13.22 (620.0)	-12.20 (.)	-15.58 ^{**} (5.645)	-15.19 [*] (6.279)
Issue level (ln)	2.164 ^{***} (0.149)	2.166 ^{***} (0.149)	2.135 ^{***} (0.149)	2.137 ^{***} (0.148)
Residual (ln)	2.580 ^{***} (0.0294)	2.580 ^{***} (0.0294)	2.585 ^{***} (0.0293)	2.585 ^{***} (0.0304)
Wald Chi-2	281.7	281.5	276.3	275.7
Log likelihood	-2574.7	-2574.7	-2576.5	-2576.7
N	633	633	633	633

Note: Multi-level random intercept models with maximum likelihood estimates. There are in 46 separate issues in the dataset nested in 15 proposals. Standard errors in parentheses. † $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Table 7.3: Substantive effects when going from min to max for significant variables at the issue level.

Variable	Model	Range	Effect
WG interventions	1	62	+21.51
Total interventions	3	63	+15.75
Extremity of policy position	1	90.7	+23.4
Distance to EP	1	100	+25.8
Distance to COM	1	100	+16.5
Distance to SQ	1	100	+4.2
Population	1	82.1	+7.55
Relative voting power	2	7.9	+6.06

In contrast, interventions at the Coreper level have no significant effect on bargaining success, as neither are statistically significant (models 1 and 2). When one considers the effect of total interventions, one finds that they do have a statistically significant effect on bargaining success, with each one unit increase in interventions leading to a 0.25 point increase in the saliency weighted distance between a member state's initial policy position and the final outcome in model 3 and a 0.251 point increase in model 4. The positive coefficient associated with each of these findings lends support to the idea that member states use interventions to signal their unhappiness with the direction in which negotiations are going, and suggests that interventions are reactive, rather than proactive in their relation to bargaining success.

When one comes to consider the results associated with factors that are attributable to luck, one finds that all are highly statistically significant with positive coefficients. Of the four factors attributable to luck, the extremity of a member state's initial policy position is the most substantively important, with each one point increase in position extremity leading to between a 0.258 and 0.269 point increase in the saliency weighted distance between a member state's initial policy position and the final outcome (model 1 to 4). Substantively, when one moves from the minimum to the maximum value for this variable, there is a +15.75 point increase in the saliency weighted distance between a member state's initial policy position and the final outcome. This finding suggests that member states with moderate policy positions tend to have

more bargaining success, and is in line with literature that suggests that EU legislative negotiations are characterised by compromise between actors (Arregui and Thomson 2009).

A similar effect is observed for the distance between a member state's initial policy position and that of the EP. Each one unit increase in the distance between a member state's initial policy position and the EP leads to a 0.164-0.165 increase in the saliency weighted distance between that member state's initial policy position and the final outcome. Substantively, if a member state is 100 policy scale points away from the EP, the saliency weighted distance between a member state's initial policy position and the final outcome increases by +25.8 scale points. This suggests that the EP's policy position has a strong influence over the relative bargaining success of member states in legislative negotiations in the Council.

The policy position of the Commission is also seen to be influential in determining member state bargaining success. Each one unit increase in the distance between a member state's initial policy position and that of the Commission leads to a 0.133-0.134 point increase in the saliency weighted distance between a member state's initial policy position and the final outcome. If a member state is 100 policy scale points away from the Commission, the saliency weighted distance between a member state's initial policy position and the final outcome increases by +16.5 scale points. This finding suggests that the Commission has an impact on legislative negotiations, despite the fact that its formal decision-making power is limited relative to member states and the EP.

A member state's proximity to the status quo is also statistically significant, but the size of the effect is rather small, with each one unit increase in the distance between a member state's position and the status quo leading to a 0.39-0.042 point increase in the saliency weighted difference between a member states position and the final outcome. If a member state is 100 policy scale points away from the status quo, the saliency weighted distance between a member state's initial policy position and the final outcome increases by +4.2 scale points.

Differences in member state size in terms of population, and voting power are also seen to have a strong significant effect on bargaining success. Larger member states are predicted to have significantly less bargaining success than smaller member states. Each one unit increase in the population variable leads to a 0.095-0.096 point increase in the saliency weighted difference between a member states position and the final outcome (model 1 and 3). The substantive difference between being Malta which has the smallest population, and Germany which has the largest population, is not very large, with Germany experiencing a +7.55 increase in the saliency weighted difference between a member states position and the final outcome, compared to Malta. Similarly, each one unit increase in the relative voting power of a member state leads to a 0.757-0.767 point increase in the saliency weighted difference between a member states position and the final outcome (model 1 and 3), and a +6.06 point increase when one compares Germany to Malta. This finding suggests that differences in member state size and voting power are somewhat important in determining legislative bargaining success, but the direction of the effect is surprising, given that larger member states have more *a priori* power than smaller member states.

Table 7.4 below presents the results of a series of multi-level regression analyses of the determinants of bargaining success at the proposal level. Steunenberg and Selck (2006), Junge and König (2007), and Chapter 4 in this thesis have demonstrated that it is important to account for the multi-dimensional nature of legislative negotiations in the EU. Table 7.5 again demonstrates the substantive effects of the significant variables at the proposal level.

Table 7.4: Factors affecting member state bargaining success at proposal level

	Model 5	Model 6	Model 7	Model 8
<i>Fixed effects</i>				
WG interventions	0.124 (0.133)	0.131 (0.133)	-	-
COREPER interventions	-0.128 (0.225)	-0.124 (0.225)	-	-
Total interventions	-	-	0.0554 (0.111)	0.0621 (0.111)
Extremity of policy position	0.611*** (0.0572)	0.610*** (0.0572)	0.615*** (0.0571)	0.614*** (0.0571)
Distance to EP	0.127*** (0.0372)	0.126*** (0.0372)	0.125*** (0.0372)	0.125*** (0.0373)
Distance to COM	0.263*** (0.0250)	0.264*** (0.0250)	0.266*** (0.0249)	0.266*** (0.0249)
Distance to SQ	-0.0169 (0.0288)	-0.0171 (0.0288)	-0.0191 (0.0287)	-0.0193 (0.0288)
Population	0.0733 (0.0606)	-	0.0735 (0.0602)	-
Voting power (SSI)	-	0.397 (0.494)	-	0.399 (0.491)
Number of issues	-3.411 (1.971)	-3.418 (1.973)	-3.474 (1.935)	-3.481 (1.937)
Constant	-21.34** (6.888)	-21.38** (7.069)	-21.46** (6.771)	-21.51** (6.951)
<i>Random-effects parameters</i>				
Member states (ln)	1.656*** (0.243)	1.681*** (0.239)	1.641*** (0.247)	1.666*** (0.242)
Proposals (ln)	2.251*** (0.210)	2.252*** (0.210)	2.227*** (0.209)	2.228*** (0.209)
Residual (ln)	2.777*** (0.0401)	2.777*** (0.0401)	2.780*** (0.0400)	2.780*** (0.0400)
Wald chi-2	441.6	439.9	440.2	438.5
Log likelihood	-1500.4	-1500.8	-1500.8	-1501.2
N	351	351	351	351

Note: Multi-level random intercept models with maximum likelihood estimates. All models contain 374 policy position observations nested in 15 proposals. Standard errors in parentheses † $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Table 7.5: Substantive effects when going from min to max for significant variables at proposal level.

Variable	Model	Range	Effect
Extremity of policy position	5	127.28	+77.77
Distance to EP	5	183.3	+23.28
Distance to COM	5	200	+52.6

The results displayed in table 7.4 again suggest that member state agency play little role in determining member state bargaining success at the proposal level. It can be seen that making interventions at any level within the Council has no effect upon member state bargaining success. This finding contrasts the finding produced at the issue level of analysis presented above, and could be due to the fact that the effect of member state interventions upon bargaining success tends to average out more at the proposal level as member states seek compromise solutions across sets of issues.

In contrast, it appears that luck again plays an important role in determining a member states' bargaining success at the proposal level, with all four factors attributable to luck having a statistically significant effect upon member state bargaining success. The relative extremity of a member state's initial policy position has a large effect on that member states' bargaining success. Each one unit increase in a member states' relative extremity leads to a 0.61-0.615 policy point increase in the saliency weighted distance between that member state's initial policy position and the final outcome (model 5-8). Substantively, when one moves from the minimum to the maximum value for this variable, there is a +77.77 point increase in the saliency weighted distance between a member state's initial policy position and the final outcome.

Similar to the results observed in models 1-4, the distance between a member states position and the Parliament also has an effect upon that member states bargaining success, with each one unit increase in that distance leading to a 0.125-0.127 scale point increase in the saliency weighted distance between a member state's initial policy position and the final

outcome (model 5-8). Substantively, when one moves from the minimum to the maximum value for this variable, there is a +23.28 point increase in the saliency weighted distance between a member state's initial policy position and the final outcome. This is again in line with the expectation that having an initial policy position close to that of the Parliament increases a member states bargaining success.

A similar, but substantively more important effect is observed for the distance between a member state's initial policy position and that of the Commission. Each one unit increase in the distance between a member state's initial policy position and that of the Commission leads to a 0.263-0.266 (model 4-8) scale point increase in the distance between a member state's initial policy position and the final outcome. When one moves from the minimum to the maximum value for this variable, there is a +52.6 point increase in the saliency weighted distance between a member state's initial policy position and the final outcome. This finding supports the idea that having an initial policy position close to that of the Commission increases a member states' bargaining success.

In contrast to the findings at the issue level, a member states position relative the status quo does not have a significant effect upon saliency weighted bargaining success. This suggests that when one considers all the issues raised in a proposal as one single policy space, the status quo has less influence over the bargaining process.

The influences of the final set of factors, which are attributable to differences in member state power are again not statistically significant. A member states relative voting power as measured by the Shapley-Shubik index is not statistically significant in model 1 and 2, which is in line with Bailer (2004) and Thomson (2011), but contradicts the findings of Arregui and Thomson (2009). A similar result is observed for member state population, with population size having no statistically significant effect on bargaining success (model 5 and 6).

CONCLUSION

The findings presented in this chapter provide new insight into the determinants of bargaining success within the Council of Ministers. It was found that role of member state agency in the negotiation process is limited, whereas luck and power play an important role in determining member state bargaining success at the issue level. The first set of factors considered were those over which member states had control, i.e. the number of interventions to make over the course of negotiations. At the issue level of analysis, it was found that interventions made at the working group level within the Council were associated with less bargaining success. This finding suggests that rather than interventions positively affecting bargaining success, they instead seem to act as a signal that negotiations are not going well for the member state making the intervention, and noticing this, said member state wishes to make this fact known to other negotiators. This result was also found to hold when considering total interventions, but not when considering interventions at the Coreper level. When one considers bargaining success at the proposal level, interventions are found to have no significant relationship with bargaining success. This is an interesting finding, as it suggests that member states intervention behaviour is related to specific issues that arise during negotiations, rather than more broad expressions of dissatisfaction with proposals as a whole.

In light of the finding that interventions seem to be acting as a signal of discontent, in the knowledge that such an intervention is likely to have little positive effect upon bargaining success, the question that arises is to whom this signal is addressed. A number of distinct audiences come to mind. The first and most obvious audience that a negotiator will wish to address is the principle who's interested they are meant to be defending (Pollack 2003). Within the institutional environment of the Council, this means that working group and Coreper officials are making interventions in order to demonstrate to their Minister, and in turn the government they serve, that they made an attempt to implement the instructions and

negotiation brief they were given, despite the fact that they are aware that they are unlikely to affect the final outcome.

More generally, interventions might be made with broader domestic audiences in mind, so that it can be shown that government representatives made a valiant effort to stop legislation with negative effects on domestic constituencies being agreed upon, despite the fact that they were unsuccessful in preventing an agreement being reached. This idea is in line with the findings of Hagemann (2008) and Slapin and Proksch (2010), who look at formal statements in the Council records and plenary speeches by MEPs respectively. These authors argue that such behaviour can be explained by the fact that the actors making the statements or speeches do so as a signal to domestic audiences that their interests are being represented at the EU level.

A second reason that negotiators will make interventions despite the fact that they are unlikely to affect their bargaining success is related to the idea that legislative negotiations in the EU can be seen as a repeated game in which willingness to compromise on a particular issue now will be reciprocated with concessions at a later date. In a repeated game, there will be situations in which a member state's representative is likely to know that the national brief they have been given is unrealistic given the positions of other member states, but will state the case regardless, so that their concerns with a particular outcome, and their willingness to compromise on this issue have been signalled to other negotiators. The hope is that the willingness to compromise in one situation will be noted by the other negotiators and reciprocal concessions will be granted by other actors in other contexts.

In contrast to agency based factors, it appears that luck plays an important role in determining member state bargaining success at both the issue and proposal level. The large substantive effects associated with the relative extremity of a member state's initial policy position, and its proximity to the Parliament and Commission, suggests that a member states' bargaining success is to a large extent determined by factors beyond its control. This is not

surprising given the diversity of interests inherent in the EU, and the fact that no fixed coalitions have been found to exist within the Council (Thomson *et al.* 2004). Having an initial policy position near possible compromises or near the positions of important institutional actors is thus advantageous for member states, in term of bargaining success, as these points in the policy space tend to be closer to decision outcomes.

Factors relating to member state power were found to affect member state bargaining success for the issue level analyses, but this finding did not hold for the proposal level analyses. The direction of the effect at the issue level was found to be positive, suggesting that larger member states actually have less bargaining success than their smaller counterparts. Arregui and Thomson (2009) suggest that smaller member states might achieve more bargaining success as they represent a smaller cross section of interests, thus enabling their representatives to put forward more coherent and focused arguments when they take positions on issues, and the findings presented here support that view. Given the cooperative norms that are thought to dominate Council decision making, these types of arguments are thought to be particularly effective and lead to more bargaining success.

While the insights provided by the current study shed light on the role that agency, luck and power play in determining member state bargaining success, much remains to be explored. The scope of the current study is limited to proposals under the codecision procedure with the qualified majority voting rule. It is reasonable to expect that under different decision-making procedures and voting rules, the role that agency and luck play in determining bargaining success should vary. While exploring such questions is beyond the scope of this study, the direction in which future research might proceed is clear. Future studies should further delve into how member states strategies of negotiation vary, and the influence that each level of negotiation plays in determining member state bargaining success. By exploring these questions, a greater understanding of the internal workings of Council negotiations will be gained.

CHAPTER 8: WHAT HAS BEEN LEARNED AND WHAT REMAINS TO BE ADDRESSED?

INTRODUCTION

The previous chapters have provided insight into the manner in which the Council of Ministers reaches decisions in legislative negotiations, and the manner in which different actors seek to influence the decision-making process. This chapter reviews the findings presented, and considers some of the implications that emerge from these findings for those engaged in the decision-making process, and for those studying this process. It begins with a discussion of the role of the institutional structure in shaping the decision-making process, before examining the role of legislative committees within the Council in light of the findings presented in the thesis. It then considers which member states (if any) are best able to influence the decision-making process in terms of bargaining success and how they exert this influence, before concluding with a discussion of the broader implications of the study for political science audiences, and a discussion of aspects of the decision-making process that require further academic attention and study.

CAPTURING THE LEGISLATIVE PROCESS USING SPATIAL MODELS OF POLITICS

Much academic debate in political science in general has centered on how to think about politics in analytical terms, and how best to capture actor positions in a policy space (Milyo 2000; Benoit and Laver 2006). While those engaged in constructing analytical models of politics often make implicit assumptions about the dimensionality of political space, and the manner in which distinct dimensions relate to one another, determining which assumptions best reflect the underlying processes that produce political outcomes is an empirical matter (Benoit and Laver 2006: 41).

The debate surrounding how best to capture an analytic picture of politics has also emerged in the study of the legislative process in the EU, with scholars debating the best way to capture this process utilising different conceptualisations of the policy space under negotiation (Junge and König 2007). Chapter 4 sought to engage this debate by investigating the influence that different methodological choices in modelling the decision-making process have upon the predictive accuracy of game theoretic models of the legislative process. It elaborated upon a number of distinct procedural models of the decision-making process, which differed from each other in the manner in which they conceived of the policy space under negotiation. The relative performance of these competing models of the legislative process provided insight into the manner in which different methodological choices affect the accuracy of the predictions made by these models.

The first finding of note was that accounting for the dimensionality of the policy space under negotiation and the saliency that actors attach to each of the dimensions under consideration was important when assessing the impact of legislative rules on the negotiation process. In the aggregate, the two-dimensional variant of the procedural model with issue saliency outperformed the one-dimensional variant and the two-dimensional variant without issue saliency across most combinations of legislative procedure and voting rule on proposals decided upon before and after the 2004 enlargement. These findings suggest that the more complete and integrated picture of negotiations provided by a multi-dimensional conceptualisation of legislative bargaining in which issue saliency is accounted for is appropriate when analysing EU politics. This is in line with the findings presented by Junge and König (2007), who also analyse the impact of the dimensionality of the political space upon legislative negotiations, and fits well with theoretical arguments found elsewhere in the political science literature (Hinich and Munger 1997). The theoretical implication of this finding is that those interested in modelling the legislative process in the EU should account for the multi-dimensional nature of the policy space under negotiation, and the role that issue saliency plays

in negotiations. This insight informed the research design in Chapters 6 and 7, which conceptualise of the policy space in a multi-dimensional manner.

The substantive implication of this finding is that negotiators appear to see negotiations for a particular proposal in a holistic manner, and can weigh each of the issues that arise in negotiations for a proposal against one other, and are aware of how other actors value the alternatives under consideration. Negotiators see the links between different controversies, and can translate utility values associated with one issue into values associated with another. This is evident from the fact that negotiation outcomes are best predicted using a multi-dimensional conceptualisation of the policy space with saliency that each actor attaches to their positions in that space accounted for.

The impact of decision-making rules on the legislative process was also found in Chapters 5, which looked at the influence of voting power over the negotiation process at different levels of negotiation in the Council. Voting power can be thought of as related to the institutional rules, as the legislative rules determine the number of votes each member state can bring to bear on the decision-making process within the Council, and the voting rule used to aggregate these votes. The manner in which power is brought to bear in the legislative process is considered in the next section, alongside other aspects of the committee system that impact upon the decision-making process.

THE ROLE OF COMMITTEES IN THE DECISION-MAKING PROCESS WITHIN THE COUNCIL OF MINISTERS

A second important contribution of the research presented in this thesis is that it draws attention to the important role that the committee system within the Council of Ministers plays in the decision-making process. A number of different aspects of the committee system were examined, from the varying role that member state power plays in determining decision-making outcomes across different legislative settings, to the manner in which negotiators pursue

different intervention strategies and have varying bargaining success depending upon what level within the Council these strategies are implemented.

WHAT DETERMINS THE LEVELS OF INVOLVEMENT OF EACH LEVEL OF NEGOTIATION IN THE COUNCIL?

The first analysis presented in chapter 5 considered whether the distribution of actors' initial positions on a particular issue had an influence on the relative involvement of each level of negotiation in the Council in the negotiation process. The empirical evidence presented demonstrated that issues with a higher heterogeneity of actor positions tended to involve more discussions at the Coreper and Ministerial level, while issues with a lower level of position heterogeneity tended to have a higher level of working group involvement. This finding compliments existing studies of the involvement of each level of negotiation in discussions (Foullieux *et al.* 2005) and suggests that whether or not an issue is considered 'political' or 'technical' has less impact upon where an issue is discussed than the potential for conflict represented in a highly heterogeneous set of initial policy positions. It suggests that one cannot label the lower levels within the Council as more technically orientated than the higher levels, as all levels can deal with all types of issues should enough controversy surround an issue. That being said, there are important differences between the different levels of negotiation in the Council that are now considered.

THE WORKING GROUP LEVEL OF NEGOTIATION

Chapter 5 also demonstrated the important role that the working group level of negotiation within the Council plays in the decision-making process. It first identified an important set of scope conditions that are thought to affect the decision-making process at the working group level, and then explored the manner in which these scope conditions affected member states' use of power to influence negotiation outcomes. It was argued that the working group level of negotiation is characterised by relatively high levels of negotiator rotation, a relatively low level of issue density, and a relatively low level of insulation from outside

influence. This set of scope conditions was thought to increase the use of relative power to influence the decision-making process at this level. The chapter tested this expectation by implementing three variants of the Nash bargaining solution (NBS), one of which accounted for differences in member state power, one which accounted for power and issue saliency, and one which equalised power across all member states, considering issue saliency alone. Issues that were finalized at the working group level were found to be better predicted by the NBS models that accounted for differences in member state power (Table 5.1). A second analysis that compared the predictive accuracy of each model to the percentage of discussions that took place at the working group level also supported the hypothesis that power matters at the working group level (Figure 5.3). These findings add weight to the arguments made by Juncos and Pomorska (2006) that negotiators at the working group level have not fully internalised the norms of cooperation and consensus style decision making thought to be at work at other levels of negotiation in the Council.

The fact that power is used by member states to influence negotiations at the working group level has a number of substantive implications for policy makers and those interested in EU politics in general. Firstly, it appears that member states seek to influence the decision-making process at this level through the use of power. This might be explained by the fact that working groups can be seen as gate keepers in the legislative process to a certain degree, with controversies that are resolved at this level, requiring no further discussion at higher levels within the Council. Member states thus seek to influence negotiations at this level, as they are aware of the gate keeping position occupied by the working groups in the negotiation process.

Another indication that negotiators seek to influence the legislative process at the working group level of negotiation is that member states' intervention activity is greatest at this level of negotiation. Chapter 6 considered member state intervention activity at the working group level and found it to be higher than at the Coreper level within the Council. This is probably due to the fact that the working groups deal with each proposal in a very detailed

manner in an attempt to iron out minor agreements without involving more senior levels of negotiation. Intervention behaviour was found to be a function of a member states' position relative to other positions of importance in the policy space under negotiation, the saliency that was attached to the proposal, and the relative size of a member state in terms of population. In contrast, ideological variables such as a member state's position on the left-right dimension, and the pro-/anti-integration dimension were not found to have a significant effect upon intervention behaviour. This suggests that these background ideological positions are less important in determining behaviour at the working group level than the substantive issues at stake for a particular proposal under negotiations.

Interestingly, the results presented in Chapter 7 suggest that even though member states are most active at the working group level in terms of interventions made, this activity does not positively affect their bargaining success. In fact, an increase in working group level interventions is related to an increase in the distance between a member state's initial position and the final outcome at the issue level, while this effect disappears at the proposal level. This result is suggestive of a situation in which member states intervene in order to signal dissatisfaction with the direction in which negotiations are proceeding, rather than in the expectation that such interventions will positively affect their bargaining success. The determinants of bargaining success are explored in more detail below.

THE COREPER LEVEL OF NEGOTIATION

The Coreper level of negotiation within the Council also plays an important role in the legislative process, as it acts as an intermediary between the lower working group level and the higher ministerial level of negotiations, as well as an arena in which conflict between negotiators can be resolved in its own right. In a similar approach to that taken for the working group level, Chapter 5 identified a distinct set of scope conditions that were present at the Coreper level of negotiation, which were expected to impact upon the decision-making process. Coreper was thought to be characterised by relatively low levels of negotiator rotation, a

relatively high level of issue density, and a relatively high level of insulation from outside influence. This particular set of scope conditions was expected to lead to a situation where negotiators were less likely to use power to influence the negotiation process, yet the empirical findings relating to this expectation were rather mixed. The base model, which accounts for actor positions and power, was found to best predict decision outcomes out of all three models, suggesting that power plays a role at the Coreper level of negotiation. The saliency weighted NBS model, that equalised power across member states, was found to predict outcomes better than the power-saliency weighted NBS model (Table 5.1), although these sets of model predictions could not be statistically distinguished from one another. Finally, as the percentage of discussions at the Coreper level increased, the NBS model with equal power was found to perform relatively better (Figure 5.3).

These mixed results make it rather difficult to come to a firm conclusion regarding the role of power at the Coreper level. If power was indeed less utilised at the Coreper level of negotiation within the Council, this would have been indicative of the fact that consensus seeking rather than hard bargaining better characterises negotiations at this level (Lewis 2005). However, the empirical evidence presented in table 5.2 suggests that the opposite is the case, with the base model, which only accounts for actor power and relative policy positions performing best. In contrast, the evidence presented in figure 5.3, which compares the relative performance of the power-saliency and saliency weighted models, suggests that increasing Coreper involvement tends to decrease the role of power in negotiations. Further mixed results can be found in existing literature, with Lewis (2005) finding evidence of consensus style decision making, but Naurin (2010) pointing out that consensus seeking and deliberative forms of negotiations are most common when the issues at stake are relatively unimportant.

The mixed empirical results relating to the type of decision making that occurs in Coreper suggests that the arguments relating to the special position of Coreper in the legislative process and the role that power plays in decision-making at this level needs to be carefully

considered. If actors are using power to coerce one another in Coreper negotiations, then the idea that a culture of consensus and norms of agreement regulate actor behaviour become difficult to maintain. Furthermore, the fact that outcomes are generally seen as compromises between actors might be the result of log-rolling, rather than norms regulated consensus seeking. If this is the case, then Lewis' (1998, 2005) arguments about consensus style decision-making seem out of place. Unfortunately, distinguishing between these competing explanations of legislative outcomes decided upon at the Coreper level is beyond the scope of the current thesis, as it is impossible to empirically distinguish between the observable implications of each explanation of outcomes given the data that is analysed here. That being said, there is a clear opportunity for future research to delve further into the manner in which power influences Coreper level negotiations. Such an undertaking would no doubt provide insight into the rather mixed results presented in chapter 5 relating to the role of power in Coreper negotiations, and also the findings presented elsewhere in the literature relating to the type of decision making that goes on in Coreper.

Chapter 6 investigated the frequency of member state interventions at Coreper meetings. Member states were found to make less interventions in Coreper meeting when compared to working group meetings. This was thought to be the case for a number of reasons. Firstly, as argued in Chapter 5, Coreper has a much broader policy remit, and thus has less time to focus on individual legislative proposals. Secondly, the fact that proposals usually pass through the working group level (where many less salient controversies are resolved), before reaching Coreper, suggests that negotiators have less need to intervene at the Coreper level of negotiation.

The findings presented in Chapter 6 suggest that the role played by Coreper in the legislative process differs from that of the working groups. Coreper considers issues and controversies that the working groups were unable to resolve, and prepares dossiers for discussion at the ministerial level of negotiation. These finding complement those presented in

chapter 5 relating to the determinants of how much each level is involved in the negotiation process. Similar to the working group level, Coreper can act as gate keeper in the legislative process, selecting which issues are to be discussed at the ministerial level. Unlike the working group however, Coreper has a broader policy remit, and can identify potential compromises across proposals in order to resolve conflict⁵⁸. Future research should further investigate Coreper's privileged position in the legislative process, and assess how this impacts upon negotiator behaviour and the legislative process.

The findings presented in Chapter 7, relating to the effect of Coreper level interventions on bargaining success were that an increased number of interventions had no significant effect on decision-making outcomes at either the issue or proposal level. This might be suggestive of the fact that interventions are a response to a situation in which negotiations are not going in favour of the negotiator making the intervention. The fact that increased interventions at the Coreper level do not increase bargaining success might also speak to the idea that it is difficult to change a Commission proposal once it has been introduced.

THE MINISTERIAL LEVEL OF NEGOTIATION

Negotiations at the ministerial level of negotiation within the Council proved more difficult to examine due to the challenges associated with acquiring data relating to negotiator activity at this level. In light of this, only Chapter 5 directly considers this level of negotiation. The findings presented in Chapter 5 regarding the role of power at the ministerial level of negotiation were mixed. The base model and power-saliency weighted NBS performed slightly better than the saliency weighted NBS (table 5.2), suggesting that power is influential at the ministerial level of negotiation when one considers the level at which an issue is decided upon. In contrast, when one considers the percentage of discussions that take place at the ministerial level, as this percentage increases the influence of power over the decision-making process is

⁵⁸ It should again be noted that this claim is not directly tested in this thesis due to issues with data constraints.

found to decrease. This suggests that power is not as important in determining decision-making outcomes when the ministerial level of negotiation is heavily involved in negotiations. Unfortunately, it proved impossible to analyse the ministerial level of negotiation in the other chapters in the thesis due to data limitations, so providing further insight into this level of negotiation was beyond the scope of this study.

WINNERS, LOSERS, AND BARGAINING SUCCESS IN THE COUNCIL OF MINISTERS

Chapter 4 to 6 focused mainly upon the inputs and processes associated with legislative decision making, but it is also important to consider legislative outputs and whether the different influence strategies employed by member states affect their bargaining success. Chapter 7 considered legislative outputs, and examined the impact that various factors had upon member states ability to influence these outcomes in their favour. These factors were divided into three distinct categories, relating to member state agency, luck and power. Member state bargaining success was found to be a function of 1) the distribution of a set of important positions in the policy space under negotiation (determined by luck), and 2) characteristics on the member states themselves (related to power and policy preferences).

AGENCY

Member state agency refers to their negotiation behaviour over the course of negotiations, and in specific relates to the interventions they make at different meetings held to discuss the proposals under consideration. The previous section considered member state interventions at the working group and Coreper level separately, but Chapter 7 also considered them together. In Chapter 7, an increase in the total number of interventions was found to increase the distance between a member state's initial policy position and the final outcome at the issue level, while this effect disappeared at the proposal level. Member state interventions signal opposition to the contents of a proposal under negotiation, yet this opposition was not found to translate into increased bargaining success. Instead of interventions positively

affecting bargaining success, it appears that intervention activity is best seen as a form of protest with regard to the direction in which negotiations are headed. Interventions might also be seen as a signal to domestic constituencies that the negotiator making the intervention attempted to change the content of the proposal under negotiation, in spite of the fact that this attempt was unsuccessful. This interpretation of interventions would be congruent with the findings of Slapin and Proksch (2010), who examine MEP's interventions in legislative debates in the Parliament.

The ineffectiveness of interventions in influencing bargaining success might also speak to the agenda-setting strength of the Commission, and the fact that it can be difficult to change the content of a proposal once it has been introduced. This would be in line with previous research on the influence of the Commission under consultation (Crombez 1996). The findings presented in Chapter 7 relate to proposals subject to the codecision procedure, which gives the Council and Parliament *post-hoc* amendment capabilities through the conciliation process. Whether or not the Commission retains influence at these later stages in the negotiation process has yet to be determined. Future research should further investigate the role that conciliation plays in affecting the Commission's agenda-setting power, as the findings presented here are suggestive of the fact that the conciliation process is important, but do not directly investigate Commission agenda-setting power and the role of conciliation in the legislative process.

LUCK

In contrast to the ineffectiveness of interventions, a member states' relative position in the policy space under negotiation has a much stronger effect in increasing bargaining success. The extremity of a member state's initial policy position and its proximity to the Parliament and Commission all has an effect on its bargaining success. This was found to be the case when considering controversies within proposal on an individual basis, but also when tested against a multi-dimensional conceptualisation of the policy space under negotiation. The relative position of a member state's initial policy position relates to the likelihood that the outcome will be in

the vicinity of that position, whether or not the member state exerts any influence over negotiations. A member state with an initial position close to the initial positions of many other member states, the Commission and Parliament will find it much easier to free ride on coalitions with these actors on these issues than a member state further from these positions. Importantly a member states initial position relative to other positions of importance in the policy space is to a large degree determined by luck, as said member state has little control over the initial positions taken by other actors.

The fact that initial positions have such a strong influence on final decision outcomes suggests that the initial stages of negotiation play a defining role in the negotiation process, and those seeking to influence legislative outcomes should focus upon these early stages of negotiation. This is due to the fact that once actors have formed their positions in negotiations; these positions have a strong influence on outcomes. It also suggests that future research should investigate the position formation process, as this process appears to have an important impact upon the decision-making process and in determining the outcomes decided upon much later in negotiations.

POWER

While Chapter 5 investigated differences in the influence of power over the decision-making process, the results in Chapter 7 show that on individual controversies, power is somewhat influential, but when one considers bargaining success at the proposal level this influence is mitigated. On an issue by issue basis, both relative voting power and power measured through the population proxy have a small impact upon bargaining success, but the direction of the effect is in favour of smaller member states. This suggests that smaller member states are better able to influence particular issues in negotiations in their favour, but that this influence tends to disappear at the proposal level. The explanation suggested for this finding was that larger member states represent broader constituencies, take more positions on issues, and their bargaining success is thus likely to suffer as a result. In contrast, smaller member

states are able to target the specific issues that affect their narrower domestic constituencies, and exert influence on these issues, while ignoring issues that do not affect their narrower domestic constituencies. The narrower range of domestic interests represented by smaller member states limits the number of issues they must take positions on, and thus positively affects their bargaining success at the issue level. This interpretation of the results is in line with that presented by Arregui and Thomson (2009).

The finding that smaller member states achieve slightly more bargaining success at the issue level is worrying for those concerned with the democratic legitimacy of the decisions reached at the EU level. If the legislative process favours smaller member states, then the implication is that their interests are being over-represented in negotiations, as they are leveraging their influence in a more effective manner. This appears to be a price larger member states are currently willing to pay, as they already agree to a slight skew of voting weights in favour of smaller member states (Hosli 1999), yet from a democratic point of view, it appears to be somewhat questionable, as citizens preferences are being weighted differently, depending upon their nationality. The fact that this effect disappears at the proposal level is more reassuring, and suggests that perhaps this is less of a problem than it might first appear to be.

LIMITATIONS OF THE CURRENT STUDY AND THE POTENTIAL FOR FUTURE RESEARCH TO ADD TO OUR UNDERSTANDING OF THE LEGISLATIVE PROCESS IN THE EUROPEAN UNION

Before concluding the thesis with a discussion of the broader implications of the findings presented in this thesis for policy makers and EU observers alike, it is useful to consider some limitations of the current study, and areas that future research should address. The limitations that are pointed out should not be seen as undermining the findings produced by the present study, but instead should be seen as opportunities that future research might take advantage of in order to further our understanding of the legislative process in the EU.

The first limitation of the current study that should be noted is that in contrast to the working group and Coreper levels of negotiation, the ministerial level of negotiation within the Council has received much less attention. This was due to the fact that collecting data on member state interactions at the ministerial level is much more difficult, due to the fact that accessing government ministers for interviews is difficult, and the Council records for ministerial level meetings are much less informative. The theoretical and empirical insights into the decision-making process at lower levels of negotiation provided in this thesis are indicative of the processes that might be at work at the ministerial level, yet a complete account of Council decision making should consider the ministerial level of negotiation in more detail, given that it is the legislative body that has the final say on Council decisions. Unfortunately, no immediate solution to the data issues associated with studying the ministerial level of negotiations is obvious, given the fact that access to government ministers is unlikely to become easier, and the current transparency commitments relating to the ministerial level, which circumscribe the amount of information available, are unlikely to change any time soon. In spite of this, there is a clear need for future research to engage with the ministerial level of negotiation, and it is hoped that the insights provided here might inform such efforts.

A second limitation of the current study is that the research design decision to treat each level of negotiation within the Council discreetly was a necessary simplifying assumption used to create a tractable model of legislative negotiations. In reality, each of the levels of negotiation interact on a continuous basis, with legislative proposals passing up and down levels within the Council, and between different legislative institutions. This aspect of negotiations was touched upon in Chapter 4, which explicitly modelled the interactions between legislative institutions, and Chapter 5, which demonstrated that decisions are taken on different issues within a proposal at different stages in the negotiation process, and at different levels within the Council. In light of the findings of both of these chapters, it is clear that future research should further

delve into the interaction of different institutions and institutional contexts in the legislative process.

The third aspect of legislative decision making that future research should explore is the manner in which negotiators respond to the characteristics of the different fora that constitute the institutional structure of the decision-making process. In Chapter 5, three distinct characteristics of the institutional context were considered: 1) the level of insulation negotiators enjoy from outside influence; 2) the level of rotation of negotiators; and 3) the issue density associated with a particular institutional context (Lewis 2005; Juncos and Pomorska 2006). It has been shown that each of these factors impact upon various aspects of negotiator behaviour, such as the intervention strategies they pursue, but future research should delve further into their influence on member state behaviour and the decision-making process.

The fourth aspect of the decision-making process that future research should account for is the role that timing plays in the legislative process. The timing of a negotiator's attempt to influence the decision-making process can be expected to influence the effectiveness of said attempt. Future research might investigate different actors' ability to engage in agenda setting at different stages of the negotiation process, and within different institutional contexts. It could furthermore investigate whether certain actors are more prone to position changes at certain stages during negotiations, and whether the timing of such changes affect their ability to influence decision outcomes (Arregui 2008). Future research should also examine the role played by informal dialogues and conciliation committees convened between different institutional actors at later stages in the decision-making process. These institutional forums are thought to play an important role in resolving conflict between the Council, Commission, and Parliament, yet they have received relatively little scholarly attention (Bostock 2002; and König *et al.* 2007 are notable exceptions).

More broadly, the new opportunities presented through the analysis and extraction of data from Council records is something that future research should endeavor to exploit. The

findings presented in this thesis represent a step towards this goal, yet the data source can be leveraged to provide further insight into the decision-making process. This data source has the potential to provide insight into topics relating to coalition building between member states in the Council, and the dimensionality and structure of conflict in different policy areas. The Council records also present the opportunity to assess whether the transparency commitments of the EU are being implemented in a manner consistent with the obligations set out in the recent transparency decisions (Regulation no. 1049/2001). One can easily track which documents are being withheld from the public altogether, which are being released in a redacted form, and which are freely available. This information can be used to assess whether certain policy areas are subject to more censorship than others, and if this is the case, whether this censorship benefits certain actors or interest above others.

IMPLICATION OF THE RESEARCH FOR ACADEMICS, POLICY MAKERS AND EU OBSERVERS

The findings presented in this volume suggest that academics, policy practitioners and EU observers alike need to be aware of the important role that the working group and Coreper levels of negotiation within the Council plays in determining the decision-making outcomes reached by this institution. These levels of negotiation act as arenas in which much of the conflict between member states is resolved, and the manner in which negotiation activity at these levels impact upon other aspects of the legislative process cannot be ignored.

This finding is relevant to an audience much broader than those interested in the EU alone. It is relevant to anyone interested in explaining how institutional contexts affect the behaviour of those who act within them. It demonstrates that actors' behaviour is determined for a large part by the institutional environment in which they negotiate, and the constellation of countervailing preferences which they face. These claims can be found in the institutionalist literature in general, and rational choice institutionalist literature in particular, and this thesis

can be seen as providing further support for the argument that institutions shape behaviour and outcomes.

When looking for a more specific audience for the findings presented here, they can be seen as relevant to those who examine committee decision making in political systems in general. Committees are an integral part of most political systems, and understating how these committees reach decisions, and interact with each other and with the other institutional actors involved in the legislative process is of central importance for those wanting explain how legislation is produced. Shepsle (1979) was one of the first to formally account for the structural role of committees in inducing equilibrium outcomes in political systems. This thesis takes Shepsle's assertions as a starting point, and builds upon them by examining individual negotiator behaviour at the micro negotiator level, rather than at the macro committee level. It has shown that at the level of the negotiator, the manner in which actors behave within legislative committees is affected by the characteristics of the committee itself and its position in the broader political system. Negotiator behaviour is shown to be influenced by the power that each actor can bring to bear on the decision-making process within a committee, and the preferences and positions that actors take during negotiations. The thesis thus relates macro committee level variables to individual negotiator behaviour at the micro level to give a more complete picture of the manner in which committee negotiations function.

Interestingly, this micro level behaviour in terms of the interventions that actors make over the course of negotiations is found to be reactionary, in that it is a response to the fact that outcomes are not going in favour of the actor making the intervention. This finding is relevant to those interested in negotiator agency and behaviour in negotiations broadly defined. If outcomes are for a large part determined by the distribution of power and preferences at the outset of negotiations, then one must look carefully at why negotiators choose to intervene. This thesis has argued that negotiators intervene to signal their unhappiness about the direction in which negotiations are going, despite the fact that such interventions rarely change the outcome

that results. There are a variety of potential audiences for these signals, which include the other negotiators in the room (based on the idea that negotiations are a repeated game) or domestic level actors (who are interested in whether or not their interests are being represented in legislative negotiations). Future research should further investigate the effect of potential audiences on negotiator behaviour and whether the logic at work in Council negotiations is also at work in other legislative contexts. If negotiators are aware of potential audiences, and these audiences affect their behaviour during negotiations, then questions about legislative transparency come to the fore for those interested in negotiation behaviour and the determinants of decision-making outcomes.

The findings presented in this thesis also have implications for those concerned with the quality of governance at the EU level. The EU has been beset in recent year by complaints about the representativeness and legitimacy of the legislative decisions it has produced. One can easily call into question the democratic legitimacy of decisions reached behind closed doors by unelected bureaucrats within working group and Coreper meetings, as the decision-making process at these levels lacks transparency, and the decision makers in these committees are unelected and only indirectly accountable to EU citizens. While the EU has made much progress in improving the transparency of the legislative process in recent years, through the release of the legislative records that are analyzed in detail in this thesis, much more could be done to improve both access and transparency of the decision-making process within the Council. Such demands must of course be balanced against the potential negative effects of increased transparency on the ability of negotiators to compromise and change policy positions, yet the results presented in this thesis suggest that the committee level within the Council plays an important role in the decision-making process, and these decision-making forums should thus be open to public scrutiny.

A final implication of the findings presented in this thesis is that any future attempts to reform the legislative process in the EU must take into account the important role played by

each level of negotiation within the Council. The current institutional arrangements within the Council have empowered certain actors and lead negotiators to behave in certain ways in certain institutional contexts. Any potential reforms are likely to change the way in which actors behave during negotiations, by affecting the scope conditions, potential audiences of negotiation behaviour, or changing the institutional rules that are thought to impact upon negotiator behaviour. Whether these are positive or negative changes obviously depends upon the specific reforms being proposed, yet before any such reforms are implemented, the potential impact of such reforms should be considered. The most appropriate way in which to assess the potential impact of institutional reforms is to understand the effects of current institutional arrangements on the negotiation process. This thesis has sought to do exact that, and in doing so, hopes to inform the debate surrounding the impact of the institutional environment upon legislative politics in the EU.

APPENDIX: LIST OF PROPOSALS CONSIDERED IN THESIS

The following legislative proposals are included in this study.

Agriculture

- 1998/0110/CNS: Regulation on the common organisation of the market in milk and milk products
- 1998/0323/COD: Regulation for the prevention and control of certain transmissible spongiform encephalopathies
- 1999/0202/CNS: Regulation on production aid for cotton
- 1999/0235/CNS: Regulation on the common organisation of the market in bananas
- 1999/0236/CNS: Regulation regarding a support system for producers of certain arable crops to include flax and hemp grown for fibre
- 1999/0246/CNS: Regulation on the common organisation of the market in milk and milk products
- 2005/0028/COD: Regulation on spirit drinks
- 2005/0099/CNS: Directive on chickens kept for meat production
- 2005/0118/CNS: Regulation on the sugar sector
- 2006/0132/COD: Directive on pesticides
- 2007/0026/CNS: Regulation on milk
- 2007/0045/CNS: Regulation on financing the common agricultural policy
- 2007/0138/CNS: Regulation on the common organisation of the market in wine
- 2007/0242/CNS: Regulation regarding the support scheme for cotton
- 2008/0104/CNS: Regulation on modifications to the common agricultural policy
- 2008/0105/CNS: Regulation on rural development

Internal Market

- 1995/0341/COD: Directive (thirteenth) on company law concerning takeover bids
- 1996/0085/COD: Directive on the resale right for the benefit of the author of an original work of art
- 1996/0112/COD: Directive relating to cocoa and chocolate products intended for human consumption
- 1996/0114/COD: Directive relating to honey
- 1996/0115/CNS: Directive relating to fruit juices and certain similar products intended for human consumption
- 1996/0161/COD: Directive on the sale of consumer goods and associated guarantees
- 1997/0264/COD: Directive relating to insurance against civil liability in respect of the use of motor vehicles
- 1997/0359/COD: Directive on the harmonization of certain aspects of copyright and related rights in the Information Society
- 1998/0134/COD: Regulation concerning the Community customs code
- 1998/0191/COD: Directive on a common framework for electronic signatures
- 1998/0240/COD: Regulation on orphan medicinal products

- 1998/0325/COD: Directive on certain legal aspects of electronic commerce in the internal market
- 1999/0158/COD: Directive on food additives other than colours and sweeteners
- 1999/0238/COD: Directive concerning the safety of toys
- 2005/0246/COD: Regulation laying down the Community Customs Code
- 2006/0196/COD: Directive on postal services
- 2007/0028/COD: Regulation laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State
- 2007/0035/COD: Directive on mergers

Justice and Home Affairs

- 1996/0116/CNS: Regulation concerning the establishment of Eurodac for the comparison of the fingerprints of applicants for asylum and certain other third-country nationals
- 1999/0154/CNS: Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- 1999/0274/CNS: Decision creating a European Refugee Fund
- 2000/0030/CNS: Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement
- 2000/0127/CNS: Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons
- 2004/0287/COD: Regulation on the Visa Information System
- 2005/0127/COD: Directive on intellectual property rights
- 2005/0167/COD: Directive on illegally staying third-country nationals
- 2005/0182/COD: Directive on data retention
- 2006/0031/COD: Directive on weapons
- 2006/0140/COD: Regulation on Rapid Border Intervention Teams

General Affairs

- 1998/0299/CNS: Regulation regarding the implementation of measures to intensify the EC-Turkey customs union
- 1998/0300/COD: Regulation regarding the implementation of measures to promote economic and social development in Turkey
- 1998/0354/CNS: Decision establishing a Community Action Programme in the field of civil protection
- 1999/0132/CNS: Regulation relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, in particular through the setting-up of the European Agency for reconstruction
- 1999/0214/CNS: Regulation on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership
- 2000/0032/COD: Regulation concerning access to documents of the European Parliament, the Council and the Commission

- 2004/0163/AVC: Regulation on the European Regional Development Fund, the European Social Fund and the Cohesion Fund (same package as 2004/167/COD)
- 2004/0167/COD: Regulation on the European Regional Development Fund
- 2005/0124/CNS: Regulation on the European Neighbourhood and Partnership Instrument Regulation establishing an EU Agency for Fundamental Rights
- 2005/0245/COD: Directive on payment services

Fisheries

- 1996/0160/CNS: Regulation laying down certain technical measures for the conservation of fishery resources
- 1998/0347/CNS: Regulation laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector
- 1999/0047/CNS: Regulation on the common organisation of the markets in fishery and aquaculture products
- 1999/0050/CNS: Regulation establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy
- 1999/0138/CNS: Regulation laying down certain control measures applicable in the area covered by the Convention on Future Multilateral Co-operation in the North-East Atlantic Fisheries
- 1999/0163/CNS: Regulation on closer dialogue with the fishing industry and groups affected by the common fisheries policy
- 1999/0255/CNS: Regulation for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms
- 2003/0318/CNS: Regulation on hake
- 2003/0327/CNS: Regulation on sole
- 2004/0169/CNS: Regulation on the European Fisheries Fund
- 2007/0114/CNS: Regulation concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters
- 2007/0223/CNS: Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing
- 2007/0224/CNS: Regulation on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears
- 2008/0093/CNS: Regulation on the conclusion of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania for the period 1 August 2008 to 31 July 2012

Environment

- 2004/0218/COD: Regulation on the financial instrument for the environment LIFE+
- 2005/0183/COD: Directive on air pollution
- 2005/0211/COD: Directive establishing a Framework for Community Action in the field of Marine Environmental Policy (Marine Strategy Directive)
- 2005/0281/COD: Directive on waste

- 2006/0129/COD: Directive on water policy
- 2006/0206/COD: Regulation on the banning of exports and the safe storage of metallic mercury
- 2006/0304/COD: Directive on the trading of emission allowances in the aviation sector
- 2007/0297/COD: Regulation on car emissions

Transport and telecommunications

- 1999/0083/COD: Directive with regard to the transport of dangerous goods by road
- 1999/0252/COD: Directive on the interoperability of the trans-European conventional rail system
- 2000/0060/COD: Directive 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
- 2000/0067/COD: Regulation on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers
- 2000/0184/COD: Directive on a common regulatory framework for electronic communications networks and services
- 2004/0156/COD: Regulation on the further implementation of the European satellite radionavigation programmes (EGNOS and Galileo)
- 2004/0240/COD: Directive on port services
- 2005/0007/COD: Regulation on passengers with reduced mobility travelling by air
- 2005/0283/COD: Directive on energy-efficient vehicles
- 2006/0130/COD: Regulation on common rules for the operation of air transport services in the Community
- 2006/0272/COD: Directive on railway safety
- 2006/0273/COD: Directive on the interoperability of the Community rail system
- 2007/0013/COD: Directive on airport charges
- 2007/0249/COD: Regulation establishing the European Electronic Communications Market Authority
- 2007/0291/COD: Regulation establishing the European Network and Information Security Agency as regards its duration

Economics and Finance (ECOFIN)

- 1998/0189/CNS: Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States
- 1998/0087/CNS
- Directive on taxes on cigarettes
- 1998/0193/CNS: Directive to ensure a minimum of effective taxation of savings income
- 1998/0252/COD: Directive on the taking up, the pursuit and the prudential supervision of the business of electronic money institutions
- 1998/0311/CNS: Directive on the common system of value added tax
- 1999/0056/CNS: Directive on the possibility of applying on an experimental basis a reduced VAT rate on labour-intensive services
- 1999/0151/CNS: Regulation on budgetary discipline

- 2000/0223/CNS: Directive on the common system of value added tax, with regard to the length of time during which the minimum standard rate is to be applied
- 2008/0143/CNS: Directive on reduced rates of value added tax

Culture

- 1999/0275/COD: Decision on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA - Training) (2001-2005)
- 1999/0276/CNS: Decision on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus - Development, Distribution and Promotion) (2001-2005)
- 2005/0260/COD: Directive on broadcasting

Development

- 2000/0062/COD: Regulation concerning action against anti-personnel landmines in developing countries
- 2000/0062B/CNS: Regulation concerning action against anti-personnel landmines

Education

- 1998/0195/COD: Decision establishing the second phase of the Community action programme in the field of education Socrates

Employment

- 1999/0192/CNS: Decision establishing the Employment Committee
- 1999/0225/CNS: Directive establishing a general framework for equal treatment in employment and occupation
- 2004/0209/COD: Directive on working time
- 2005/0214/COD: Directive on occupational pensions

Energy

- 1999/0127/COD: Directive on energy efficiency requirements for ballasts for fluorescent lighting

Health

- 1999/0244/COD: Directive concerning the manufacture, presentation and sale of tobacco products

Industry

- 1998/0288/CNS: Regulation implementing Articles 85 and 86 of the Treaty

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