Decision-Making in the European Union – Or, the Meticulous Design of Power Dispersion*

Toma de decisiones en la UE – o el minucioso diseño de la dispersión del poder

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Summary: I. Introduction.—II. Decision-making procedures in EU legislative politics. 1. Assent, consultation, and cooperation. 2. Codecision and OLP.—III. Decision-making within the institutions. 1. The Commission. 2. The Parliament. 3. The Council.—IV. Trying to make theoretical sense of it all.—V. Conclusion.

Abstract: How does the European Union («EU») make decisions? Is power concentrated or dispersed? Who should those interested in EU legislative affairs observe or try to influence? To answer these questions this article reviews the main legislative procedures of the EU using a standard rational choice approach. It does so by looking at both inter-institutional politics between the Commission, the Council, and the Parliament, and intra-institutional politics within each of these institutions. I make three main arguments, two positive and one negative. On the positive side (a) it can be shown that the EU is characterized by a calculated dispersion of power; and (b) despite its limitations, the rational choice approach to decision-making analysis does a satisfactory job in explaining EU procedures, including when some actors' decisions seem a priori irrational. On the negative side, the dispersion of power which characterizes the EU makes popular heuristic theories such as principal-agent inappropriate.

Keywords: European Union, decision-making, legislative process, spatial models, power dispersion

Resumen: *¿Cómo toma sus decisiones la Unión Europea? ¿Está el poder concentrado en manos de unos pocos, o está disperso? ¿A quién tendrían que dirigirse aquellos con intereses que dependen de decisiones legislativas europeas? Para responder a estas preguntas, el presente artículo revisa los principales procedimientos legislativos de la UE utilizando la metodología estándar de los modelos espaciales en la teoría de la elección racional. Después de un primer examen de las relacio-*

nes inter-institucionales entre la Comisión, el Consejo y el Parlamento, se procede a un examen más detallado de la toma de decisión en el seno de cada una de estas instituciones. Los principales argumentos son tres, dos más constructivos y uno más crítico. Primero, se puede demostrar que la UE se caracteriza por una dispersión calculada del poder. Segundo, a pesar de sus limitaciones, los modelos espaciales producen resultados satisfactorios en la explicación de los procedimientos de la UE, incluso cuando las decisiones de algunos actores parecen a priori irracionales. Tercero, y de manera más crítica, la dispersión del poder que caracteriza a la UE hace que varias teorías actualmente utilizadas para entender la UE, como la del principal-agente, no sean apropiadas.

Palabras clave: Unión Europea, toma de decisión, proceso legislativo, modelos espaciales, dispersión del poder.*

I. Introduction

This article focuses on the decision-making procedures of the European Union («EU»). The time span covered here goes from the Luxembourg compromise of 1966 and all the way up to today's main legislative procedure, the ordinary legislative procedure («OLP», Articles 289 and 294 of the Treaty on the Functioning of the European Union, «TFEU»). My goal is not merely to describe these procedures using the standard tools of spatial game theory models, but also to (a) present some new theoretical considerations (e.g. if the study of decision-making points to a dispersion of power, then are principal-agent models, which by definition assume that the principal(s) hold(s) all bargaining power, adequate tools for the analysis of EU politics?); (b) discuss some intriguing empirical cases (e.g. if the Council is the most powerful institution in the EU, then why did Spain accept in 2007 a decrease in its voting weight there in exchange for a mere four additional seats at the Parliament?); and (c) point to different ways forward for new research in this subfield of EU politics.

A few introductory remarks are in order. First, like for any other political system, be it private or public, national or international, the analysis of decision-making revolves around the search for the most powerful actor(s) in the system. Formal power may come in at least three different forms: agenda-setting power (i.e. the ability to make proposals that are difficult to amend, thus forcing all players who would rather have a new law than no new law at all to support the proposal); veto power (i.e. the ability to block changes to the status quo); and voting power (i.e. the probability of being the pivotal voter by allowing a coalition to reach quota). Discovering which actors has what power and when is by definition an analytical activity. One

ceases to think in terms of the system as a whole, and tries instead to iden-tify which actors are truly sufficient and/or necessary in bringing about pol-icy change or stability. Rousseau's idyllic *volonté générale* gives way to Condorcet's cautious political mathematics.

In line with that analytical approach, the scholarly works on which I base my analyses belong to that branch of the social sciences which seeks to offer structure-based explanations based on the concept of equilibrium. Non-equilibrium and/or agency-based explanations, such as arguments about the exceptional wits, charm, or chance of one actor, or arguments about more dynamic phenomena such as socialization effects or path de-pendence, both of which occur over long sequences of events, are excluded. Put differently, the research question which this article attempts to answer is this: Assuming that all actors are rational[1], that this rationality can only be examined within the confines of carefully defined events[2], and that all actors play their best response to everyone else's best response, who yields power in EU politics?

Although the answer turns out to be far from straightforward, it is also of great theoretical and practical importance. From a theoretical point of view, studying the locus of power in different institutional contexts has been a major preoccupation for political scientists since Aristotle's compar-ative study of constitutions in *Politics*, Ramon Llull's *Artificium electionis personarum*, and the French *philosophes*' study of electoral systems. More recently, the advent of the new institutionalism, which posits that even small institutional differences are enough to explain significant variations in political and policy outcomes, has contributed to the centrality of deci-sion-making studies in political science. Insofar as the EU is an exceptional experiment in international cooperation, understanding its decision-making practices is widely seen as one of the most promising ways forward in the development of the theory of politics and international relations.

From a practical point of view, knowing who among a plethora of dif-ferent actors are more powerful than others is of paramount importance not only for the actors themselves, or for lobbyists and their clients, but also for all those who care about the input- and output-legitimacy of the European polity. For example, even a small change in the weighted votes of member states in the Council may result in a rather significant change in the prob-ability that a given state becomes pivotal. Lobbyists who consider which

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[1] For the purposes of the present analysis define actors as rational when they (a) hold transitive and stable preferences over the course of an event; and (b) are capable of thinking forward to the consequences of their actions and of reasoning backwards in order to select the action which maximizes their payoff.

[2] William H. Riker, «Events and situations», *Journal of Philosophy* 54, n.º 3 (1957).

national administration to contact ahead of the vote in the Council need to know about that. But so do those who feel frustrated at finding that their country is not the pivotal player in the Council over long sequences of decision-making events.

I will argue that the answer to our general question of who yields power in the EU is far from straightforward. The reason is not only our inability to produce a reliable general-equilibrium model of EU decision-making but also the conscious design of EU institutions in a way that power remains dispersed. Since the very beginning of European integration in the 1950s, the Council has been considered the most powerful actor. However, it can normally only pass legislation on the basis of a Commission proposal, only if the Parliament does not veto it, and only as long as the Court does not overrule it. As for the Commission, it symbolizes the supranational spirit of the whole endeavor of European integration. Nevertheless, its members vote by simple majority, it has to operate under a strict collegiality rule, it has no own implementing administration, and it is obliged to strategize in order to avoid adverse Court rulings. Regarding the Court, it is often described as the teleological engine behind European integration. Still, it cannot publish dissenting opinions, it always faces the threat of a treaty revision, and above all it is often staffed with judges who have spent their careers in the Commission and/or in national administrations.[3] Put differently, the Commission and the Court keep a tight rein on the Council; the Council and the Court keep a tight rein on the Commission; and the Council and the Commission keep a tight rein on the Court. As if that were not enough, each one of these institutions is a complex non-unitary organization which must itself

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[3] Since I will not be covering the Court suffice it to say here that, according to my own conservative estimate, at the time of their appointment a stunning one third of the judges of the European judiciary were neither judges nor law professors but supranational or national bureaucrats or politicians. About forty per cent were not part of the legal profession. About ten per cent had previously held positions in other branches of the EU's government – including in the Commission. Before becoming a judge at the ECJ, Luxembourg's Jean Mischo had worked in the private office of two commissioners, and had been Permanent Representative (i.e. ambassador) of his country before the EU. The Netherlands' Pieter Verloren van Themaat had been both director at the Dutch Ministry of Foreign Affairs, and Director General for Competition at the Commission. Germany's Heinrich Kirschner, Greece's Michail Vilaras, and Italy's Enzo Moavero Milanesi had all been senior civil servants at the Commission for more than a decade. Slovenia's Verica Trstenjak had been secretary general of the Slovenian government. Other examples abound. And if we add to our calculations those judges who had previously represented their national administration in the Council or in the comitology committees, the percentage of ECJ judges who had previously worked for other branches of government doubles to exceed 20 per cent (http://curia.europa.eu/jcms/jcms/Jo2_7014/). In short, the commonly accepted view that French president de Gaulle's 1962 replacement of Jacques Rueff with Robert Lecourt established the independence of the Court may not be correct.

aggregate internal preferences before playing the inter-institutional game. As mentioned above, the resulting dispersion of power is, of course, not an accident, but the product of deliberate institutional design. The meteoric rise of the European Parliament as a second legislative chamber alongside the Council, and since the Treaty of Nice one with the same powers as the Member States to refer matters to the Court, has only contributed to that.

The remaining parts of this article are organized as follows. Section 2 describes the main decision-making procedures in EU legislative decision-making since 1966, namely assent, consultation, cooperation, and co-decision. Section 3 pushes the analysis deeper by describing the main decision-making procedures *within* the Commission, the Parliament, and the Council. Section 4 critically reviews the main way political scientists have sought to make sense of it all, namely principal-agent models. Section 5 concludes by discussing the intriguing case of the European politics of the Spanish administration in 2004-2007, and with a few thoughts about alternative theoretical lenses.

II. Decision-Making procedures in EU legislative politics

This section reviews the main legislative procedures used in the EU, both in the more distant past (II.1) and since the Treaty on European Union of 1992 (II.2).[4]

1. *Assent, consultation, and cooperation*

Historically, the EU has relied on four legislative decision-making procedures: assent, consultation, cooperation, and different variants of co-decision. This section reviews the first three.

The assent procedure was the main legislative procedure used during the twenty-year period between the Luxembourg Compromise in 1966 and the Single European Act («SEA») in 1986. The Commission had the exclusive power to make legislative proposals, the Council acted almost as a sole legislative chamber which could either adopt or amend the proposal, and finally the Parliament needed to give its assent before a text approved by the Council could become law. That simple procedure led many

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[4] Unless explicitly stated in the text, this section is based on an updated reading of the standard analysis of EU decision-making procedures found in George Tsebelis and Geoffrey Garrett, «Legislative politics in the European Union», *European Union Politics* 1, n.º 1 (2000).

to believe either that the Commission had agenda-setting power (it had, after all, a monopoly over proposals), or that the Parliament had a veto power (since its assent was needed to pass a law), or both. That impression was, of course, mistaken. After the Commission had made its proposal, the Council could only pass or amend its proposal by *unanimity*. Since both passing and amending required the agreement of the government most opposed to the Commission proposal (i.e. presumably the most anti-integrationist national government), the European executive lacked agenda-setting power. As for the Parliament, as long as its preferred option was closer to that of the Commission than to that of the government most opposed to the Commission's proposal, it would logically not exercise its veto power against anything that came out of the Commission's proposal. In short, under the assent procedure all the decision-making power belonged to the government most opposed to the Commission's proposal. In conformity with the wish of French president de Gaulle, power was concentrated, and it was veto-based.

It is useful to think about these effects using a simple one-dimensional spatial model where actors' preferences are represented by points on a continuum, and where utility declines in the distance from that point. The single dimension we use may represent preferences over integration, ranging from least integrationist at the far left to most integrationist at the other extreme. For the sake of simplicity we place along that continuum seven governments with equal voting rights (A, B, C, D, E, F, and G), a status quo condition at the far-left end (SQ), and the Commission on the far-right end (COM). If I am national government E, my ideal point will be between that of national government D and national government F, both of which are better for me than the ideal point of national governments C or G, and among which I am indifferent.
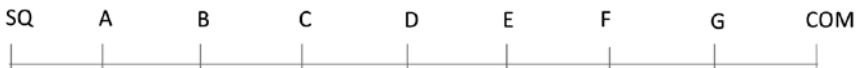

Figure 1

EU legislative politics in one dimension

Notice that under the unanimity rule of the assent procedure the Commission could not hope to make a proposal that would move policy very far away from government A's ideal point. If, for example, it proposed a relatively modest policy that coincided with government D's ideal point in the hope of making the status quo move rightwards, government A, which preferred SQ to C, would veto that. So would it with proposals at C's ideal point, and perhaps even at B's ideal point. Similarly, as long at the Parlia-

ment was on the right of government A, it would never exercise its veto right. Government A —perhaps France under de Gaulle and then Britain under Thatcher— held all the decision-making power.

The SEA changed all that, partly by reverting to the pre-Luxembourg procedure known as consultation, and partly by creating a new procedure known as cooperation, and which gave more powers to the Parliament.

Regarding consultation, it re-introduced a strategically interesting asymmetry whereby the Council could adopt the Commission's proposal by Qualified Majority Voting («QMV»), but could only amend the Commission's proposal by unanimity. In other words, it became easier for the Council to pass the law than to amend the bill. In terms of our model in Figure 1, QMV had two far-reaching consequences: (a) the pivotal government at which the Commission had to start aiming when drafting its proposal was not anymore government A, but government C; and (b) the Commission acquired agenda-setting power vis-à-vis the pivotal government in the Council. As long as the Commission's proposal was closer to C's ideal point than to SQ, C could be expected to endorse it. Provided the Parliament, which needed to be consulted, was not on the extreme left, the Commission's proposal was sure to become law. Indeed, the revolutionary consequence of the new decision-making rule was that the EU could now adopt policies very close to government F's ideal point – or, in substantive terms, it could now start implementing its new competition policy in the areas of state subsidies and deregulation without fearing that a single recalcitrant national government might veto those policies.

Cooperation was rather similar to consultation, but with the interesting added twist that the Parliament gained «conditional agenda-setting power»[5]. Under cooperation Parliament gained real legislative powers, in the sense that it could now more than just make its voice heard: it could truly amend Commission proposals and, if the Commission acquiesced, force the Council to take those preferences into account. For, as long as the Parliament's amendments were accepted by the Commission, then the revised text reached the Council, where national governments voted by QMV to pass the law or by unanimity to amend the proposal. Thus, provided the Parliament and the Commission shared the same ideal point, that procedure resulted in the same outcomes as consultation, namely somewhere between the ideal points of governments E and F, and probably closest to the latter. And, again, the revolutionary consequence of the new decision-making rule was that the EU could now start adopting all those laws that would help cre-

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[5] George Tsebelis, «The power of the European Parliament as a conditional agenda setter», *American Political Science Review* 88 n.º 1 (1994).

ate the Single European Market and a European social policy, in line with the preferences of the Commission and the Parliament, rather than with those of a «conservative» national government. The fact that a conservative country like Great Britain chose to opt out of the EU's social policy demonstrates that at least some actors understood well the implications of these decision-making procedures.

Although cooperation was eventually abolished by the Treaty of Lisbon, it is worth noting two additional features. First, provided the Commission acquiesced to the Parliament's amendments, the latter could take EU policy towards more integrationist positions than even the most integrationist national government would have originally wanted. This is illustrated in Figure 2 below. If, for example, governments D, E, F, and G clustered around D's ideal point, then the Parliament could force an outcome on the right of even the right-most national government.

Recall that under QMV the pivotal voter in the Council was government C. Provided distance D between C's ideal point and the Parliament's amendment was smaller than distance d between C's ideal point and SQ, C would endorse the Parliament's amendment even though it effectively brought policy in entirely new territory, i.e. to the right of the ideal point of government G. (It is easy to see how that result remains intact for most intuitively plausible positive distances between the Parliament's and the Commission's preferences.) That is how the EU became an «extreme» liberalizing force in different areas of market regulation[6], as well as an «extreme» regulating force in health and safety regulation and in environmental regulation[7].
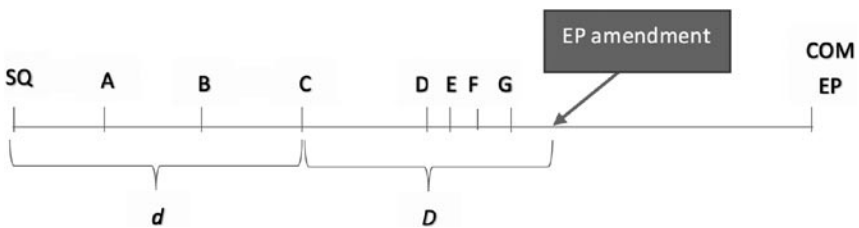

Figure 2

EU legislative politics under cooperation

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[6] See Bruno Jobert, ed., *Le tournant néolibéral en Europe* (Paris: L'Harmattan, 1994); Giandomenico Majone, ed., *Regulating Europe* (London: Routledge, 1996).

[7] Giandomenico Majone, «The European Union between Social Policy and Social Regulation», *Journal of Common Market Studies* 31 n.º 2 (1993).

Second, note that an in-depth understand of the politics of cooperation requires an understanding of the reasons why different actors may hold different preferences. Consequently, it requires that we learn more about the internal operation not of two, but of three complex organizations: government C and the Commission, of course, but also the European Parliament. That is, because the new procedure contributed to the dispersion of power (and by the same token to the dispersion of responsibility!), it forced political scientists to delve into the intricacies of politics within EU institutions.

2. *Codecision and OLP*

Since 1992 the EU has gone through several episodes of redesigning its main legislative decision-making procedure: codecision I (Maastricht), codecision II (Treaty of Amsterdam), the triple-majority rule for the Council (Treaty of Nice), and OLP with a revised double-majority rule for the Council (Treaty of Lisbon).

Box 1 below reports the original text of Article 189b of the Maastricht treaty instituting the codecision procedure.

BOX 1: Article 189b of the Treaty on European Union (codecision)

Article 189b

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.
2. The Commission shall submit a proposal to the European Parliament and the Council.
3. The Council, acting by a qualified majority after obtaining the opinion of the European Parliament, shall adopt a common position. The common position shall be communicated to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

   If, within three months of such communication, the European Parliament:

   (a) approves the common position, the Council shall definitively adopt the act in question in accordance with that common position;
   (b) has not taken a decision, the Council shall adopt the act in question in accordance with its common position;

(c) indicates, by an absolute majority of its component members, that it intends to reject the common position, it shall immediately inform the Council. The Council may convene a meeting of the Conciliation Committee referred to in paragraph 4 to explain further its position. The European Parliament shall thereafter either confirm, by an absolute majority of its component members, its rejection of the common position, in which event the proposed act shall be deemed not to have been adopted, or propose amendments in accordance with subparagraph (d) of this paragraph;

(d) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, it shall amend its common position accordingly and adopt the act in question; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve the act in question, the President of the Council, in agreement with the President of the European Parliament, shall forthwith convene a meeting of the Conciliation Committee.

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

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

6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted unless the Council, acting by a qualified majority within six weeks of expiry of

the period granted to the Conciliation Committee, confirms the common position to which it agreed before the conciliation procedure was initiated, possibly with amendments proposed by the European Parliament. In this case, the act in question shall be finally adopted unless the European Parliament, within six weeks of the date of confirmation by the Council, rejects the text by an absolute majority of its component members, in which case the proposed act shall be deemed not to have been adopted.

7. The periods of three months and six weeks referred to in this Article may be extended by a maximum of one month and two weeks respectively by common accord of the European Parliament and the Council. The period of three months referred to in paragraph 2 shall be automatically extended by two months where paragraph 2(c) applies.

8. The scope of the procedure under this Article may be widened, in accordance with the procedure provided for in Article N(2) of the Treaty on European Union, on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest.

It is important to read Article 189b twice: one from the beginning to the end (in order to get a feeling about the sequence of moves and to appreciate the introduction of a conciliation effort for those cases where the Parliament fails to agree with the Council's common position and the Council intends to reject the Parliament's amendments); and one in the analytically more correct way from the end to the beginning (in order to get a feeling about rational actors' incentives and thus to understand who gains what from the specifics of that conciliation effort).[8]

The backwards reading reveals three complementary points that only very experienced forward readers can understand. First, codecision did give the Parliament an absolute veto power (see the second sentence in paragraph 6), which thus made it more powerful than under cooperation. At the

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[8] The backwards reading corresponds to the logic of backwards induction used in the analysis of sequential-moves games. Rational actors who move first know that if someone else gets to move after them, then they have to anticipate the possible choices of that second mover. They understand that what seems to be the move which would maximize their payoff if they were the one and only actor participating in the event (e.g. propose an extreme solution which corresponds to their ideal point) may actually turn out to be counter-productive (e.g. the second-moving actor will prefer rejecting the bill rather than settling on a compromise solution). Whether explicitly or implicitly, they analyze the situation from the end backwards. They first ask what the second mover's reaction might be to all their (i.e. the first mover's) possible options, and then choose that option which maximizes their payoff. That is the thought process we as analysts try to emulate by reading the sequence of moves backwards.

same time, however, codecision also took away from the Parliament all the agenda-setting power it had gained in 1986 (see paragraphs 6 and 3). Second, the agenda-setting power lost by the Parliament went directly to the Council, and more specifically to the pivotal government in the Council (see the first sentence in paragraph 6; in our one-dimensional model government C acquires agenda-setting powers). As we shall see below, the realization that whoever lied at C yielded important powers sparked renewed interest in the internal workings of the Council, and more particularly in ways to find who might be at C with what probability. Third, the Commission also lost its agenda-setting powers, for two reasons: (a) its role in the Conciliation Committee, where new amendments can be made (see first sentence of paragraph 5), is merely that of an honest broker (see second sentence of paragraph 4); and (b) before the Conciliation Committee, the Commission does not mediate between the Parliament's amendments and the Council's vote on those amendments (see paragraphs 2(d) and 3). If anything, the Commission constrains the Parliament, not the Council.

Let us now apply all that to our model in Figure 1 assuming first that the Parliament shares the same ideal point as the Commission, and that SQ lies at the far left. In the end of codecision, it is national government C who makes an offer to the Parliament. In theory, that offer may lie between C and E, so that all national governments in the minimum winning coalition of C, D, E, F, and G can support it. In practice, unless some external reason gives governments D or E bargaining leverage over government C, the latter will be able to impose its views. Finally, under the same assumptions but for policy areas where SQ is towards the right rather than at the far left, national government C may try to use its agenda-setting power to revert to a less integrationist policy. As long as the relatively pro-integration Parliament can exercise its veto, however, all such attempts will be futile.

That relatively «conservative» or «anti-integrationist» arrangement came to an end with the treaty of Amsterdam of 1997. The revised codecision procedure, often referred to as codecision II, removed the last two stages of codecision I, making the legislative procedure end at the Conciliation Committee stage. The Parliament lost its absolute veto power over the final proposal by the Council. Simultaneously, however, the Council (i.e. national government C in our model) lost its ability to make a final proposal to the Parliament. Naturally, the importance of the latter element dwarfed that of the former, since now the Parliament could no longer be either overruled by the Council or presented with take-it-or-leave-it options (i.e. blackmailed). The Parliament had become an equal co-legislator. Everything in the EU legislative process now depended on the relative bargaining strength of the two legislative chambers, which shared agenda-setting power.

That new arrangement was extended by the Treaty of Lisbon, whereby codecision came to be called Ordinary Legislative Procedure. The only notable amendments concerned changes in the preference aggregation rules within the Commission (empowerment of the President), the Council (new triple and then double majorities), and the Parliament (new national quota).

Note finally that the bargaining between the two chambers is of the unstructured kind. There are no rules which one or the other player can use to their advantage. The only two things that seem to matter are the two institutions' (im)patience and their respective best alternative to negotiated agreement. The institution with more patience and with a better fallback position will be able to drag the final outcome closer to its own ideal point. Apart from invoking informal rules, focal points, and/or package deals[9], there seems to be only one way we can try advancing specific predictions about the outcome of that bargaining: dropping any kind of unitary actor assumption and delving into the internal politics of the two chambers in order to find who exactly represents the Council[10], and who exactly represents the Parliament[11].

III. **Decision-making within the institutions**

We saw above that the interactions of three institutions —the Commission, the Parliament, and the Council— are central to EU decision-making. Crucially, we also saw that the Council is not a unitary actor but a complex organization whose preferences change according to voting rules. This section pushes the analysis forward by presenting some elements of the decision-making process within each of the three main institutions.

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[9] Christopher Achen, «Evaluating political decision making models» in *The European Union decides* ed. by Robert Thomson, Frans Stokman, Christopher Achen and Thomas König (Cambridge: Cambridge University Press), 264-298; Raya Kardasheva, «Package deals in EU legislative politics» *American Journal of Political Science* 57 n.º 4 (2013); Robert Thomson, *Resolving Controversy in the European Union*. (Cambridge: Cambridge University Press, 2011)

[10] Jason Barr and Francesco Passarelli, «Who has the Power in the EU?» *Mathematical Social Sciences* 57 n.º 3 (2009); Frank Häge «Who decides in the Council of the European Union?» *Journal of Common Market Studies* 46 n.º 3 (2008).

[11] Giacomo Benedetto, «Rapporteurs as legislative entrepreneurs: The dynamics of the codecision procedure in Europe's parliament.» *Journal of European Public Policy* 12 n.º 1 (2005); Simon Hix, Abdul Noury, and Gérard Roland, *Democratic Politics in the European Parliament*. (Cambridge: Cambridge University Press, 2007).

1. *The Commission*

Our spatial model describes the Council in terms of seven different ideal points but retains a unitary actor assumption for the Commission. Although some authors would agree with such a simplification, others take exception. The resulting debate is important not only because it influences how we view the consultation and cooperation procedures in which the Commission yielded significant powers, but also because it helps clarify assumptions about who the Council and the Parliament delegate powers to under OLP.

Note preliminarily that since 2004 the Commission consists of one commissioner per Member State. Both its President and its members are appointed through procedures which empower the Council and individual Member States, though the Parliament has a veto power. According to Article 234 TFEU, the Commission is collectively accountable before the Parliament. According to the Commission's own Rules of Procedure, «the principle of collective responsibility implies that the members of the Commission have an equal saying in decision-making». So, although the President sets out the policy guidelines for the Commission and is responsible for its political guidance, the college makes decisions by absolute majority rule.

There exist at least four clearly distinguishable positions on the Commission's preferences, two of which would support our simplifying assumption and two of which would take exception with it. First, according to the classic view of Ernst Haas, it is «entirely appropriate to speak of a High Authority [Commission] ideology»[12]. Matching his assumption and his conclusion, Haas argued that the High Authority of the European Coal and Steel Community was «the repository of the European General Will». That unitary actor assumption was maintained up to the 1990s, and it is also underpinning our models in Figures 1 and 2. That view was aided by the declaration of certain policy-makers to the effect that commissioners rarely, if ever, voted in the college. Authors working in this tradition thus contributed to the search for explanations which relied exclusively on the attributes of the system as a whole, rather than on what went on within an institution.

A second view holds that internal Commission politics is one-dimensional and therefore that the absolute majority and the unrestricted amendments rules in the college will empower the median voter in the college of commissioners[13]. That view may therefore be understood as offering an

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[12] Ernst Haas, *The Uniting of Europe: Political, Social, and Economic Forces, 1950-1957.* (Stanford: Stanford University Press, 1958), 456.

[13] Mark Pollack, *The engines of European integration: Delegation, agency, and agenda setting in the EU.* (New York: Oxford University Press, 2003), 37.

updated, analytical justification for Haas' view. Indeed, as Mark Pollack notes, the Commission «behaves coherently and predictably, according to a shared set of organizational preferences». Note however that there may be some tension between Pollack's two statements: either all commissioners share the same set of organizational preferences, in which case they are all the median voter and there is no need for a vote, or there is a vote, which would only be necessary if commissioners did not share the same preferences! Despite that possible incoherence, Pollack's view has become rather influential, particularly among scholars who seek to understand EU decisions through a principal-agent lens.

After Haas but before Pollack a third position had emerged in the 1990s, possibly aided by reports of Commission President Jacques Delors having to rely on Pascal Lamy, his «Exocet» *chef de cabinet*, to discipline other commissioners and force the college to adopt his own views. According to that view, «there is no centre of the centre», and «any assumption that the Commission will reflect a European average is conjectural». Rather, «problems of boundary definition, overlap, and poaching abound [so that] the mobilizing of a college majority is rarely a simple matter», and «there is no archpriest to instruct how things work». Common to these works was the characterization of the Commission as a «multi-organization».[14] The logical implication, of course, is that our placing of the Commission at the right-hand end of our continuum in Figures 1 and 2 may be arbitrary. The Commission may sometimes be there, but it may also be anywhere on the left of that extreme. That may have far-reaching implications, particularly for the European Parliament under a cooperation procedure, which would thus loose its conditional agenda-setting power.

The fourth method used in the literature to define Commission preferences consists in identifying the general ideology of «the commissioner holding the portfolio under which the relevant law has been adopted»[15]. That general ideology of each commissioner is identified on the basis of the following reasoning: since commissioners more often than not belong to political parties, they should have the same policy preferences as those

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[14] Keith Middlemas, *Orchestrating Europe: The Informal Politics of European Union 1973-1995*. (London: Fontana Press), 214-232. See also Thomas Christiansen, «Tensions of European governance: politicized bureaucracy and multiple accountability in the European Commission.» *Journal of European Public Policy* 4 n.º 1 (1997); Michelle Cini, «La Commission Européenne: Lieu d'émergence de cultures administratives. L'exemple de la DGIV et de la DGXI.» *Revue Française de Science Politique* 46 n.º 3 (1996); Laura Cram, «The European Commission as a multi-organization: social policy and IT policy in the EU.» *Journal of European Public Policy* 1 n.º 2 (1994).

[15] Fabio Franchino, *The Powers of the Union*. (Cambridge: Cambridge University Press), 138.

parties; since parties express their general ideology in electoral manifestos, individual commissioners can be assumed to hold the same views as those expressed in the electoral manifesto of the political party which appointed them.

The mere existence of these rather different views is testimony to the fact that we still know little about preference aggregation inside the Commission. Three inter-related issues seem particularly important. First, to the best of my knowledge, political scientists have not yet worked out the precise role of the President vis-à-vis his fellow commissioners. Although we can speculatively propose that the President is becoming increasingly influential, it is also worth noting that the increase in his formal powers has been accompanied by the appointment of relatively weak figures (three from small or very small countries, and a chaotic intellectual from Italy). Second, although the Treaties and the Rules of Procedure clarify that the college decides by absolute majority, we do not know whether commissioners vote in round-robin tournaments (which would presumably empower the President), with a Borda count rule (which might empower protesting commissioners), or using some other rule. Finally, something that political scientists do know but have not yet fully exploited is the relatively frequent occurrence of public disputes between commissioners. That phenomenon lends support to the second view on Commission preferences as those of an uncertain multi-organization. For, if commissioners knew beforehand the outcome of their costly public battles (as the first, third, and fourth views would have it), they would spare themselves the cost of fighting them.

2. *The Parliament*

Like with the Commission, our simple spatial model describes the Parliament as a unitary actor in a one-dimensional political space – as an organization with virtually no internal politics. The implicit assumption is that the preferences of the Parliament are those of the median voter at the hemicycle (i.e. the floor, which in Brussels parlance is called the plenary). Yet a burgeoning literature shows that neither is the Parliament a unitary actor nor does it take decisions in a one-dimensional space.

First, the organizational cohesion of the Parliament has tended to erode. Over time the strengthening of the Parliament in the EU legislative procedure, and increased media attention, have led to an increase in the cohesion of political groups. That has in turn led to an increase in the salience of the left-right cleavage, which simpler accounts unduly ignore. The more recent success of openly Eurosceptic right-wing parties in Britain (UKIP), France (Front National), Germany (AfD) and elsewhere can be expected

to strengthen that trend. As a result, the Parliament does not always defend pro-integrationist positions – in terms of our model, it is not always on the right-end extreme.

Second, the power of the median voter at the plenary is mitigated by the internal procedures of the Parliament, and more specifically by fact that she can be subjected to the informal (i.e. expertise-based) agenda-setting power of the parliamentary committee's chairperson and the text's *rapporteur*. Rapporteurs are nominated by party leaders and appointed by committees. They consult with the other EU institutions and with third parties, and they draft the reports on which the plenary votes. The evidence shows that they often do so with partisan purposes in mind[16]. What is more, there is evidence from the area of environmental policy that rapporteurs are rarely challenged successfully by competing amendments[17]. Power is therefore shared between party leaders, the committee chairperson, the rapporteurs, and the plenary.

With that in mind it is easy to see that legislative decision-making under OLP may not always oppose on the one hand the Parliament and the Commission and on the other hand the Council. To take just one example consider the case where left-right considerations prevail in the Parliament. If the Parliament and the Council come from the same ideological family legislation will be relatively easy to pass; when they come from competing ideological families, it will be harder.

3. *The Council*

Unlike for the Commission, we had already relaxed the unitary actor assumption about the Council in Section 2. Here we only need to add that, seen ex ante, QMV means that each national government has a certain probability of being the pivotal voter in the Council (i.e. being national government C). Given that different national governments have different numbers of votes, that probability will vary across governments, yielding different voting powers.

The weight of each national government in the Council was redefined twice: once in the Treaty of Nice and once in the Treaty of Lisbon. Nice in-

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[16] Giacomo Benedetto, «Rapporteurs as legislative entrepreneurs: The dynamics of the codecision procedure in Europe's parliament»; Antoine Yoshinaka, Gail McElroy, and Shaun Bowler, «The appointment of rapporteurs in the European Parliament.» *Legislative Studies Quarterly* 35 n.º 4 (2010).

[17] Steffen Hurka, «Changing the output: the logic of amendment success in the European Parliament's ENVI committee.» *European Union Politics* 14 n.º 2 (2013).

creased the QMV threshold from 71 per cent to 75 per cent, and introduced what is known as a triple majority, so that legislation could only be passed if it were supported by (a) a qualified majority of the votes, and (b) a majority of states (c) representing at least 62 per cent of the population. Lisbon reduced these requirements to two: a majority of member states representing at least 65 per cent of the population.

Political scientists calculate voting power indices in various ways. Where, as in the Council, the order in which voters join an alliance matters, the most appropriate method is the Shapley-Shubik Power Index («SSPI»).

Table 1

Population, number of votes, and SSPI scores in the Council Under the Nice and Lisbon treaties

Member state	Population in 2009 (millions)	Number of votes	SSPI Nice	SSPI Lisbon
Germany	82.0	29	.087	.163
France	64.4	29	.087	.110
United Kingdom	61.6	29	.087	.111
Italy	60.0	29	.087	.107
Spain	45.8	27	.080	.073
Poland	38.1	27	.080	.070
Romania	21.5	14	.040	.042
Netherlands	16.5	13	.037	.033
Greece	11.3	12	.034	.023
Belgium	10.8	12	.034	.022
Portugal	10.6	12	.034	.023
Czech Republic	10.5	12	.034	.023
Hungary	10.0	12	.034	.022
Sweden	9.3	10	.028	.020
Austria	8.4	10	.028	.020
Bulgaria	7.6	10	.028	.020
Denmark	5.5	7	.020	.015
Slovakia	5.4	7	.020	.015
Finland	5.3	7	.020	.015
Ireland	4.5	7	.020	.012
Lithuania	3.3	7	.020	.012
Latvia	2.3	4	.011	.010
Slovenia	2.0	4	.011	.010
Estonia	1.3	4	.011	.009
Cyprus	0.8	4	.011	.007
Luxembourg	0.5	4	.011	.007
Malta	0.4	3	.008	.007

SSPIs are calculated in four steps. First, list all sequential coalitions. Second, in each sequential coalition, determine the pivotal voter, which is the voter that allows the coalition to reach quota. Third, count how many times a voter is pivotal in the list of sequential coalitions. Finally, convert these counts to decimals by dividing by the total number of sequential coalitions. Table 1 below is based on Barr and Passarelli[18] and reports SSPI scores for all Council members under the rules of the Nice treaty and under the rules of the Lisbon treaty.

The most striking feature of Table 1 is the considerable loss of voting power that Spain and Poland experienced. I shall go back to that point in the next Section.

IV. **Trying to make theoretical sense of it all**

A lot of the analysis above is offered at a micro-level of theorizing. Two detailed readings (one forwards, the other backwards) of a constitutional provision lead to the identification of the actors with agenda-setting and/or veto power, and that is then modeled using the technology of sequential-moves spatial models to identify the likely effects of that allocation of power.

Many political scientists have attempted to place that micro-level theorizing in the context of broader theories of politics and/or international relations. One the most exciting results that these efforts have produced is the conceptualization of EU politics in terms of the theory of incentives (principal-agent, «PA»). Seen through that lens, national governments are the principals —i.e. the ultimate beneficiaries of European integration— and the Commission, the Parliament, and the Court are their agents – i.e. the organizations responsible for producing an effort which maximizes the principals' utility. Two of the most important issues informing the principals' decision-making concern (a) who is going to be the agent receiving implementation powers, and (b) how much discretion that organization will enjoy. The former corresponds to the classic problem of adverse selection, while the latter corresponds to that of moral hazard. One considerable advantage of thinking about EU politics this way is that it allows for significantly sharper predictions than do bargaining models.

Most work has concentrated on the issue of moral hazard and the principals' attempts to circumscribe it[19]. The driving idea here is that suprana-

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[18] Barr and Passarelli, «Who has the Power in the EU?»

[19] Renaud Dehousse, «Delegation of powers in the European Union: The need for a multi-principal model.» *West European Politics* 31 n.º 4, (2008); Imelda Maher, Stijn Billiet,

tional agents may develop preferences which are not aligned to those of their principals and use a combination of information asymmetry and institutional power to pool policy away from the ideal point of the principals. Anticipating that possibility, the principals set up an array of incentives which serve to change the preferences of the agents. That is, principals create a game which, if played by a rational agent, should lead to a constrained-optimal outcome for the principals. The incentives that go into that game are mostly control mechanisms such as restricted discretion, comitology committees, etc.

Although the PA approach can be refined to make it fit the rigorous requirements and findings of standard spatial models (e.g. by specifying that «principals» refers to the pivotal national government in the Council), it soon runs against certain limitations. To understand why, it may be useful to examine the nature of moral hazard using the sequential-moves game illustrated in Figure 3 below.
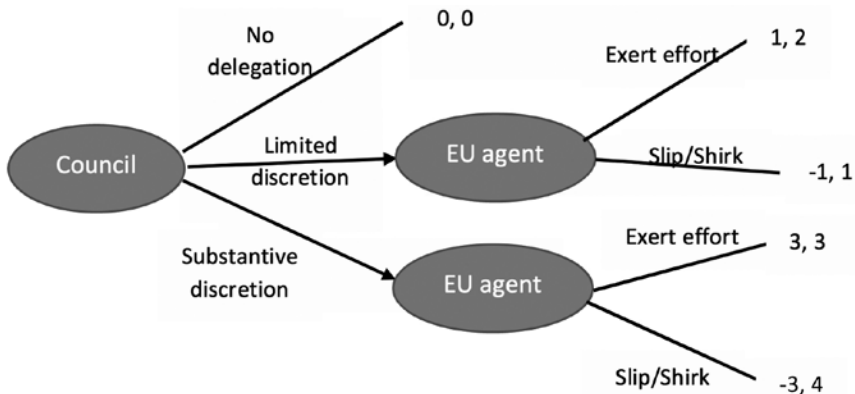
Figure 3

Moral hazard

In this game, the Council moves first in the EU legislative game, and has three options: not delegate any powers to the supranational agent, delegate limited powers to the supranational agent, and delegate substantive

powers to the supranational agent. If the Council («she») does not delegate any powers, the supranational agent («he») does not get to perform any tasks on her behalf. There is no acquisition of expertise, and no benefits from an EU-wide policy. At the same time, however, there is no risk of slippage and/or shirking. Neither gains anything and neither loses anything. Payoffs are 0 for the principal, and 0 for the agent.

If the principal decides to delegate powers to the supranational agent then the agent can choose between exerting some costly effort to satisfy the principal, or trying to slip and/or shirk (i.e. behave in a self-serving way, moving policy towards its own ideal point). Payoffs depend on how much discretion the principal has delegated to the agent. With limited discretion there is only limited acquisition of expertise, and benefits from an EU-wide policy are only moderate. At the same time, however, the risk associated with slippage or shirking is relatively small. So, if the agent exerts effort the principal receives 1 and the agent 2, and if he shirks or slips she receives –1 and he receives 1. Finally, if the principal delegates substantive discretion, then the benefits from the acquisition of expertise and from a fully Europeanized policy can be important – but so are the risks associated with slippage or shirking. Accordingly, if the agent exerts effort the principal gets 3 and the agent 3, and if he shirks/slips she gets –3 and he gets 4.

With these payoffs the principal knows that if the agent receives substantive discretion, he will shirk or slip, while if he receives restricted discretion he will exert effort. Anticipating that, the principal compares her own payoffs under these two circumstances and chooses to delegate restricted powers. That, of course, is a Pareto inefficient equilibrium, since at least one player (and in fact both) could in principle be made better off without the other being worse off. The principal does not take advantage of more expertise or of a truly European policy, and the agent has to live with restricted powers.

As mentioned above, the PA solution is for the principal to manipulate the incentive structure of the agent in such a way that, when delegated substantive powers, the agent will prefer exerting effort than shirking or slipping.[20] If the principal is to economize on agency costs, he must

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[20] The usual assumption in PA models is that the agent is risk averse (i.e. he will not accept to play a game which does not guarantee him some minimum level of benefits; for example he will prefer a payoff of 10 utiles for sure than a payoff of 30 utiles with a .5 probability and 0 utiles with a .5 probability). If the agent is not risk averse (i.e. if he is risk-neutral or risk-prone), then the incentives structure that the principals need create can be very different. Hence, what may sound like a technicality, turns out to have far-reaching consequences. The principals, and therefore also the analysts of PA games, need to be able to make a justified assumption about the agent's precise risk posture. As I argue in the main text, that may not be so easily done in EU politics.

either make the combination of substantive discretion and exercise of effort yield marginally more than 4, or make the combination of substantive discretion and shirking/slipping yield marginally less than 3. Whatever solution she adopts, it must be made credibly so that a risk-averse agent accepts it.

I submit that (a) this is an inaccurate description of EU politics, and (b) even if it were accurate, the PA solution would be very difficult, if indeed at all possible, to attain. First, this is an inaccurate description of EU politics for at least two reasons: (a) the implicit assumption of PA is that the principals have all the bargaining power to make the agent take-it-or-leave-it offers; yet that assumption is severely challenged by the fact that the Commission is responsible for supervising the correct implementation of EU policies by Member States, by the fact that the Commission has a monopoly over legislative proposals, and by the meteoric rise of the Parliament which challenges the Council (see Section 3 above); and (b) whereas moral hazard models assume that contracts are complete and enforceable, EU politics has often been characterized either by an alliance between the Commission and the Court such that even a shirking or slipping Commission does not receive the punishment payoff, or by situations where powerful Member States have contravened contractual obligations at no cost for them and at the sucker's payoff for the Commission. A well-known example concerns France and Germany's non-respect of the Stability and Growth Pact, where the Commission may have been originally offered 5 to exert effort, but only got –1 when it truly tried to do so.

Second, even if the PA assumptions could be ignored, it is very difficult to imagine how the pivotal voter in the Council could know the college's preferences so well as to propose an efficient redefinition of payoffs. Furthermore, even if the pivotal voter in the Council were as powerful as Germany under the Lisbon rules, it would only have a 16.3 per cent chance of being pivotal again at the time of paying (or not punishing) the agent. In other words, the system does not confer actors the necessary credibility to play PA games.

Due to these limitations some scholars have recently developed new research programs based on alternative theoretical lenses such as transaction cost economics[21] and incomplete contracts theory[22].

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[21] Adrienne Héritier, *Explaining Institutional Change in Europe*. (Oxford: Oxford University Press, 2007)

[22] Franchino, *The Powers of the Union*…; Henry Farrell and Adrienne Héritier, «Introduction: Contested competences in the European Union.» *West European Politics* 30 n.º 2 (2007).

V. **Conclusion**

We have reviewed the main decision-making procedures used in EU legislative politics from 1966 to the Lisbon treaty, focusing not only on inter-institutional relations but also on intra-institutional politics within the Commission, the Parliament, and the Council. One major conclusion we can present on that basis is that the EU is a complex political system where decision-making power is considerably more dispersed than simple accounts, PA or other, would have it. What is more, our historical perspective seems to show that this dispersion of power is not likely to diminish any time soon. The resulting policy advice is that everyone interested in EU decision-making procedures must (a) pay careful attention to all institutional rules, including apparently small ones; and (b) make as precise as possible an estimate of different actors' preferred policies.

I wish to conclude with a few words about the intriguing European politics of the Spanish Zapatero administration in 2004-2007. As shown in Table 1, between Nice and Lisbon Spain's SSPI went down from being roughly equal to that of the big Member States (.80 against their .87) to being considerably less than half that of Germany's (.073 against .163), and to about 65 per cent of that of the other big countries (.107-.111). How can we explain that loss?

The answer does not seem to invalidate our rational choice approach. Spain's decision does not seem to have been the result of ignorance, mistaken calculations, or inferior bargaining skills. Contemporary newspaper reports point to an acrimonious battle between the Spanish conservative party, which was defending the status quo negotiated by its leader in Nice, and the new Socialist government, which was very much willing to give up a significant chunk of its SSPI (*ABC* 16/06/2004; *El País* 20/10/2007; *Wall Street Journal* 17/03/2004.) They also highlight the fact that Poland was resisting more than Spain was, and that Spain was aware of that (Le Monde 18/02/2005). It would thus be mistaken to conclude that our rational choice analysis is wrong, for example because real actors do not perform the kind of calculations that political scientists do. On the contrary, they seem to be perfectly aware of the importance of decision-making rules. The question then is, why was Poland more willing to fight for its rights than Spain was?

To answer that question it seems necessary to point to two facts. First, and very much in accordance with our theory, Spain put a triple price on its loss: (a) France and Germany would agree to an extension of EU funding which they had previously threatened to cut (Financial Times 06/10/2003); (b) Javier Solana would be re-appointed as High Representative of the EU's foreign and security policy (that was agreed in 2004); and (c) Spain would receive four additional seats in the Parliament, whose power and influ-

ence were waxing. Second, the Zapatero administration's Europeanist turn obliged it to send a credible signal to the effect that Spain's conservative-party era of intense cooperation with the USA was over. To be credible, a signal must be clearly distinguishable from cheap talk. Overall, then, rather than being proof of the limitations of the rational choice approach to EU decision-making the intriguing politics of Spain's Zapatero administration lend it more support.

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